

**BASIC COURT OF MITROVICA**

**P. nr. 54/17**

**25 May 2018**

**IN THE NAME OF THE PEOPLE**

**THE BASIC COURT OF MITROVICA**, in the Trial Panel composed of EULEX Judge Arnout Louter as Presiding Judge and EULEX Judges Dariusz Sielicki and Radostin Petrov as Panel Members, with the participation of EULEX Legal Officer Chiara Tagliani as the Recording Officer, in the criminal case against:

**Z. V.**, nickname **Z.**, father's name **D.**, born .. in Mitrovicë/a, last known residence in S. C., Municipality of N., Montenegro, Serb nationality and Serbian citizenship, in detention on remand in this case since 11 November 2016;

Accused through the Indictment PPS no. 60/2012 filed by the Special Prosecution Office of the Republic of Kosovo (SPRK) on 20 April 2017, as amended on 17 April 2018, of the charges described as follows:

**COUNT I**

That, in violation of Article 3 common to the four Geneva Conventions of 12 August 1949, and of Articles 4, 5(1), and 13 of Protocol II of 8 June 1977, Additional to the 1949 Geneva Conventions, all rules of international law effective at the time of the armed conflict in Kosovo and at all times relevant to the present Indictment, the Accused, between 02 May 1999 and 03 May 1999, in his capacity as police officer reservist from the Vushtrri Police Station, with personal liability and /or acting in co-perpetration with other members of various Serbian forces (including reserve Police and paramilitaries) participated in an attack on the ethnic Albanian civilian population travelling in a convoy between Studime e Eperme and Studime e Poshtme, during which the civilians were intentionally subjected to brutal and unlawful killings, inhuman treatment, immense suffering, dislocation and displacement, application of measures of intimidation and terror, property confiscation, pillaging, and stealing on large scale of property that was not justified by military needs. Amongst those civilians killed, wounded and subjected to inhumane treatment for whom the Accused bears responsibility either directly or in co-perpetration with others were: EM, XM, F (Ah) G, ER, AB, RA, BG, AG, B.G. and an unidentified 14 years old boy as well as HA, SG and MG;

**COUNT III**

That, in violation of Article 3 common to the four Geneva Conventions of 12 August 1949, and of Articles 4, 5(1), and 13 of Protocol II of 8 June 1977, Additional to the 1949 Geneva Conventions, all rules of international law effective at the time of the armed conflict in Kosovo and at all times relevant to the present Indictment, the Accused, between 03 May 1999 and beginning of June 1999, in his capacity as police officer reservist from the Vushtri Police Station then acting as a prison guard, with personal liability and /or acting in co-perpetration with other members of various Serbian forces (including reserve Police) participated in the unlawful detention of large numbers of the ethnic Albanian civilian population, at the Smrekovnica/Smerkovnicë /Smerkovnicë Prison Mitrovica Region, including SK, BF, MU, FP, BM, SB, GH, AO, SO, IF, DF, S.G., Sa.G., SH, SM, SR, R.A., during which time they were intentionally subjected by the Accused to inhuman treatment and immense suffering through the infliction of torture, beatings and/or violations of bodily integrity and health as well as the application of measures of intimidation and terror;

whereas these actions were classified in the Indictment as **War Crimes against the Civilian Population**, provided for and punished by Articles 22 and 142 of the CCSFRY, currently criminalized by Articles 31, 152 and 153 of the CCK, in violation of Article 3 common to the four Geneva Conventions of 12 August 1949 and of Articles 4, 5(1) and 13 of Protocol II of 8 June 1977, additional to the 1949 Geneva Conventions;

After having held the Main Trial hearings, all open to the public, on 26, 27 and 28 September 2017, 4, 11 and 16 October 2017, 7, 8, 9, 13, 14, 17, 29, 30 November 2017, 4, 5, 6, 7 December 2017, 14 February 2018, 17 and 19 April 2018, 23 May 2018, all in the presence of the Accused Z.V. and his Defence Counsel NV, the Prosecutor of the Special Prosecution Office of the Republic of Kosovo (the Prosecutor), the representative of the Injured Party, and having the injured parties HA, SG, MG, V (K) M, IM, LM, Ah.G., SK, MM, MU, FP, BM, SB, GH, AO, SO, IF, DF, S.G., Sa.G., BF, been duly informed about the dates and place of all trial sessions;

whereas SG, and V (K) M were present on 26 September 2017, V (K) M and LM were present on 27 and 28 September 2017, on 4, 11 and 16 October 2017, on 7, 9, 17 November 2017, on 07 December 2017, and on 17 and 19 April 2018, B.G. was present on 16 October 2017, and EMA was present on 09 November 2017; furthermore, V (K) M and LM were present during the site visit of 22 February 2018;

After having held a site visit on 22 February 2018 in the presence of the Prosecutor of the Special Prosecution Office of the Republic of Kosovo (the Prosecutor), the representative of the Injured Party and the Defence Counsel NV;

Following the Trial Panel's deliberation and voting held on 23 and 24 May 2018;

Pursuant to Article 366 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPC) on 25 May 2018 in a public hearing and in the presence of the Accused, his Defence Counsel, the Representative of the Injured Parties and the State Prosecutor;

Renders the following:

## JUDGMENT

### I.

#### COUNT I

The Accused **Z.V.**is **FOUND NOT GUILTY**, because:

It was found not proven that the Accused, between 02 May 1999 and 03 May 1999, in his capacity as police officer reservist from the Vushtrri Police Station, with personal liability and /or acting in co-perpetration with other members of various Serbian forces (including reserve Police and paramilitaries) participated in an attack on the ethnic Albanian civilian population travelling in a convoy between Studime e Eperme and Studime e Poshtme, during which the civilians were intentionally subjected to brutal and unlawful killings, inhuman treatment, immense suffering, dislocation and displacement, application of measures of intimidation and terror, property confiscation, pillaging, and stealing on large scale of property that was not justified by military needs. Amongst those civilians killed, wounded and subjected to inhumane treatment for whom the Accused bears responsibility either directly or in co-perpetration with others were: EM, XM, F (Ah) G, ER, AB, RA, BG, AG, B.G. and an unidentified 14 years old boy as well as HA, SG and MG.

Therefore, pursuant to Article 364, Paragraph (1) Sub-Paragraph (1.3) of the CPC, the **Accused Z.V.**is, hereby, **ACQUITTED** of committing the criminal offence of **War Crimes against the Civilian Population**, provided for and punished by Articles 22 and 142 of the CCSFRY, currently criminalized by Articles 31, 152 and 153 of the CCK, in violation of Article 3 common to the four Geneva Conventions of 12 August 1949 and of Articles 4, 5(1) and 13 of Protocol II of 8 June 1977, additional to the 1949 Geneva Conventions.

### II.

#### COUNT III

The Accused **Z.V.**is **FOUND GUILTY**, because:

It was found proven that the Accused, between 03 May 1999 and beginning of June 1999, in his capacity as police officer reservist from the Vushtrri Police Station then acting as a prison guard, acting intentionally and in co-perpetration with other members of Serbian forces, while large numbers of the ethnic Albanian civilian population were kept in detention at the Smrekovnica/Smerkovnicë /Smerkovnicë Prison, Mitrovica Region, including SK, BF, MU, FP, BM, SB, GH, AO, SO, IF, DF, S.G., Sa.G., SH, SM, SR, R.A., subjected them to inhumane

treatment and immense suffering through the infliction of beatings, violations of bodily integrity and health as well as the application of measures of intimidation and terror.

Therefore, the **Accused Z.V.is CONVICTED** of committing the criminal offence of **War Crimes against the Civilian Population**, provided for and punished by Articles 22 and 142 of the CCSFRY, currently criminalized by Articles 31, 152 and 153 of the CCK, in violation of Article 3 common to the four Geneva Conventions of 12 August 1949 and of Articles 4, 5(1) and 13 of Protocol II of 8 June 1977, additional to the 1949 Geneva Conventions.

### **III.**

**The Accused Z.V.is hereby**

#### **SENTENCED**

to **six (6) years and six (6) months of imprisonment** in accordance with Article 142 in conjunction with Article 22 of the CCSFRY, in its wording as entered into force on 1 July 1977 that was retained in force by Section 1 Paragraph 1.3 of the UNMIK Regulation 1999/24 of 12 December 1999.

The time served in detention on remand since the Accused initial arrest on 10 March 2016 is to be included in the punishment of imprisonment pursuant to Article 50 Paragraph (1) and (3) of the CCSFRY.

### **IV.**

#### **Property claim**

Pursuant to Article 463 CCK the property claims that were submitted by the injured parties will be rejected. The injured parties may pursue their entire property claims in civil litigation.

### **V.**

#### **Costs of proceedings**

Pursuant to Article 453 Paragraph 4 of the CCK, the cost of the criminal proceedings shall be partially reimbursed by the Accused Z.V.in a lump sum of Euro 300, while any remaining cost of the criminal proceedings shall be paid from the budgetary resources.

## REASONING

### A. PROCEDURAL BACKGROUND

1. On 20 April 2017, the EULEX Prosecutor of the Special Prosecution Office of the Republic of Kosovo (the Prosecutor) filed the Indictment PPS no. 60/2012 against the Defendant **for three counts of War Crime against the Civilian Population**, provided for and punished by Articles 22 and 142 of the CCSFRY, currently criminalized by Articles 31, 152 and 153 of the Criminal Code of Kosovo (CCK), in violation of Article 3 common to the four Geneva Conventions of 12 August 1949 and of Articles 4, 5(1) and 13 of Protocol II of 8 June 1977, additional to the 1949 Geneva Conventions.
2. On 29 May 2017, the Presiding Trial Judge held an Initial Hearing pursuant to Article 245 of the CPC and, subsequently, the Defense submitted a motion for dismissal of Indictment to which the Prosecutor timely replied.
3. On 27 July 2017, the Decision on the Defense request to dismiss Count 2 of the Indictment PPS 60/2012 was issued, whereby the Defense request was granted and Count 2 of the Indictment was dismissed. It is to be noted that the Prosecutor did not object to the Defense Request for dismissal of Count 2.
4. In the same Decision on the Indictment, the Presiding Trial Judge sent the remaining Counts, namely Count 1 and Count 3, for Main Trial. This Decision was not subject of any Appeal by the parties.
5. Concurrently, on 27 June 2017 the Defense submitted a Request for Joinder of all proceedings ongoing against the Defendant, specifically PPS 90/14 and PPS 49/2009, since they also related to charges of War Crimes occurred during the same time frame and Indictments had been filed also in these cases.
6. After receiving the Reply of the Prosecutor, whereby the Prosecutor objected to the submitted request since the cases relate to different and distinct incidents, on 27 July 2017 the Court rejected the Defense Request as impermissible, since it was filed by a non-authorized person.
7. The Main Trial proceedings opened on 26 September 2017 and continued on 27 and 28 September 2017, 4, 11 and 16 October 2017, 7, 8, 9, 13, 14, 17, 29, 30 November 2017, 4, 5, 6, 7 December 2017, 14 and 22 February 2018, 17 and 19 April 2018, and 23 May 2018.

8. On 17 April 2018 the Prosecutor amended the Indictment<sup>1</sup>.
9. The enacting clause of the Judgment was announced on 25 May 2018.
10. Pursuant to Article 541 of the new Criminal Procedure Code (CPC) which entered into force on 01 January 2013<sup>2</sup>, the Trial was carried out according to provisions of the new Criminal Procedure Code of Kosovo (CPC).

## **B. COMPETENCE OF THE COURT**

11. The Law on Courts, Law no. 03/L-199 (LC) also entered fully into force on 1 January 2013 (Article 43). This regulates the territorial and substantive jurisdiction of the Court.
12. Under Article 11 Paragraph (1) of the Law on Courts, Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.
13. Article 9 Paragraph (2) Subparagraph (2.7) of the same Law states that the Basic Court of Mitrovica is established for the territory of the Municipalities of Mitrovica South and Mitrovica North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zveçan, Skenderaj/Srbica and Vushtrri/Vučitrn.
14. Based on the filed Indictment, the alleged criminal offences have taken place in the municipality of Vushtrri and, therefore, within the territorial jurisdiction of the Basic Court of Mitrovica, as per Article 29 Paragraph (1) of the CPC.
15. According to Article 15 Paragraph (1) Subparagraphs (1.2) of the above mentioned Law on Courts, the criminal offences of 'War Crimes' fall within the jurisdiction of the Serious Crimes Department of the Basic Court. Therefore, the case was adjudicated by the Serious Crime Department of the Basic Court of Mitrovica.
16. Upon filing the Indictment, the President of EULEX Judges addressed a written request to the Kosovo Judicial Council (KJC) to assign this case to a panel composed of a majority of EULEX judges and a EULEX judge as the presiding trial judge pursuant to Article 3.2, 3.5 and 3.6 of the Law on amending and supplementing the laws related to the mandate of the European Union Rule of Law Mission in the Republic of Kosovo - Law no. 05/L-103.
17. On 18 May 2017, the EULEX Judges Unit at the Basic Court of Mitrovica received the Decision of KJC no. 127/2017, dated 27 April 2017, assigning the criminal case P no. 54/2017 to a panel composed of EULEX judges and a EULEX Judge as the Presiding Trial Judge.

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<sup>1</sup> See Amended Indictment submitted in Court on 17 April 2018.

<sup>2</sup> CRIMINAL No. 04/L-123 PROCEDURE CODE.

18. No objections were raised to the composition of the Trial Panel.

### **C. THE MAIN TRIAL**

19. The Main Trial sessions were all open to the public and they were held on 26, 27 and 28 September 2017, 4, 11 and 16 October 2017, 7, 8, 9, 13, 14, 17, 29, 30 November 2017, 4, 5, 6, 7 December 2017, 14 February 2018, 17 and 19 April 2018, and 23 May 2018.

20. A site visit was held on 22 February 2018 in all the sites of the alleged criminal offences.

21. Due to unusual length of testimonies of witnesses for the prosecution the duration of the Main Trial exceeded the period of 120 calendar days prescribed in Article 314 Paragraph (1.2) of the CPC.

22. However, each adjournment ordered by the Trial Panel was always reasoned by indication of procedural actions to be taken during the next Court session

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

24. In accordance with Article (14) of the CPC, interpreters translated the Court proceedings and all Court documents relevant to the trial from English into Serbian and Albanian, and vice-versa.

25. Accuracy of the written record was simultaneously controlled by the Presiding Trial Judge in real time through the avail of a screen and this manner of recording made the use of other recording methods redundant as it appeared unlikely to achieve any better accuracy of the semantic content of the record.

26. During the Main Trial session of 26 September 2017, the Accused pleaded not guilty to both Counts.

27. During the sessions of 14 and 30 November 2017, 7 December 2017 and 14 February 2018, the Defence Counsel of the Defendant, lawyer NV, was substituted by the Defence Counsel LP.

28. The representatives of the Injured Parties, namely the representative of the Victims Advocacy Office, were present at all sessions and all Injured Parties were duly informed of the scheduled trial hearings.

29. The following Injured Parties attended the following sessions: SG, and V (K) M were present on 26 September 2017, V (K) M and LM were present on 27 and 28 September 2017, on 4, 11 and 16 October 2017, on 7, 9, 17 November 2017, on 07 December 2017,

and on 17 and 19 April 2018, B.G. was present on 16 October 2017, and EMA was present on 09 November 2017. Furthermore, V (K) M and LM were present during the site visit of 22 February 2018.

#### **D. EVIDENTIAL PROCEDURE**

##### *i) Evidence presented during the course of the Main Trial*

30. During the course of the Main Trial the following Prosecution Witnesses were heard:

- Witness SK on 27 September 2017;
- Witness RM on 28 September 2017;
- Witness Sh.G. on 28 September 2017;
- Witness NG on 04 October 2017;
- Witness BA on 11 October 2017;
- Witness HA on 11 October 2017;
- Witness IP on 16 October 2017;
- Witness BF on 16 October 2017;
- Witness S.G. on 07 November 2017;
- Witness MU on 08 November 2017;
- Witness GH on 08 November 2017;
- Witness SG on 09 November 2017;
- Witness FP on 09 November 2017;
- Witness SM on 13 November 2017;
- Witness BM on 13 November 2017;
- Witness SB on 14 November 2017;
- Witness SH on 14 November 2017;
- Witness MG on 17 November 2017;
- Witness B.A. on 17 November 2017;
- Witness DF on 29 November 2017;
- Witness TR on 30 November 2017;
- Witness AO on 04 December 2017;
- Witness IF on 04 December 2017;
- Witness SO on 07 December 2017;
- Witness Sa.G. on 14 February 2018.

31. During the course of the Main Trial the following Witnesses proposed by the Representative of the Injured Parties were heard:

- Witness S (H) R on 06 December 2017;
- Witness R (H) A on 06 December 2017;
- Witness B (S) G on 07 December 2017.



32. The Trial Panel was not in a position to hear the Witnesses proposed by the Defence, as elaborated below.

33. During the course of the Main Trial the following pieces of evidence were administered as exhibits:

- Exhibit 1: the sketch of the killing of ER and AB as marked by Witness NG, administered during the Main Trial session of 04 October 2017;
- Exhibit 2: the sketch of the killing of an unidentified boy as marked by Witness NG, administered during the Main Trial session of 04 October 2017;
- Exhibit 3: the sketch of the killing of E. and XM as marked by Witness NG, administered during the Main Trial session of 04 October 2017;
- Exhibit 4: the sketch of the killing of Fa.G. as marked by Witness NG, administered during the Main Trial session of 04 October 2017;
- Exhibit 5: set of photos of Smrekovnica/Smerkovnicë Prison, administered during the Main Trial session of 16 October 2017;
- Exhibit 6: photo number 14 of the above mentioned set of photos as marked by Witness MU, administered during the Main Trial session of 08 November 2017;
- Exhibit 7: the sketch of the killing of an unidentified boy as marked by Witness SG, administered during the Main Trial session of 09 November 2017;
- Exhibit 8: the sketch of the killing of an unidentified boy as marked by Witness MG, administered during the Main Trial session of 17 November 2017;
- Exhibit 9: Officer's report on meeting with Witness B.G., administered during the Main Trial session of 07 December 2017.

34. During the Trial Session of 17 April 2018, the Trial Panel administered the Final List of Proposed Prosecution evidence (the List)<sup>3</sup>. The Defence did not object to the List. Apart from exhibits already administered by the Court, the List contained, *inter alia*, the following evidence:

○ BINDER I –EULEX Witness Statements:

- SK- photo line-up, of 16 November 2015;
- NG- photo line-up, of 13 November 2015;
- B.A.- photo line-up, of 15 March 2016;
- BF- photo line-up, of 17 January 2017;
- MU- photo line-up, of 9 December 2015.

○ BINDER II –EULEX Witness Statements:

- B.A.- photo line-up, of 15 March 2016;
- BF- photo line-up, of 17 January 2017;
- MU- photo line-up, of 9 December 2015.

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<sup>3</sup> See PPS 60/2012 – Final List of Proposed Prosecution Exhibits submitted on 17 April 2018.

- BINDER IV –EULEX Witness Statements:
  - DF photo line-up, of 23 March 2017;
  - SO – photo line-up, of 30 March 2017.
  
- BINDER V – KFOR, ICTY, UNMIK and EULEX Police and Investigative reports (as elaborated in full in the List)
  
- BINDER V(a) - AUTOPSY REPORTS and related Material and correspondence (as elaborated in full in the List)
  
- BINDER IX UNMIK /ICTY WITNESS STATEMENTS:
  - NG- Police statement, Photo line-up, of 16 August 2005.
  
- BINDER XIII– ICTY CDS AND EXHIBITS (as elaborated in full in the list)
  
- 35. During the same Trial session, the Trial Panel administered a piece of evidence submitted by the Defence Counsel of the Defendant on 23 March 2018 in relation to news articles about the Defendant, as elaborated below. The Prosecutor did not object to this evidence.
  
- 36. All evidence was considered as admissible evidence.
  
- 37. The Defendant did not give any statement during the evidentiary phase.

**ii) Motions<sup>4</sup>**

- **Prosecution motions**

- *Prosecution Application for the Withdrawal of Witness MM*

38. On 06 March 2018, the Prosecutor filed with the Court an Application for the Withdrawal of Witness MM, considering the unavailability of the Witness to appear in Court and in

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<sup>4</sup> For all motions, see Binder Pnr 54/17 “Motions”.

light of the fact that the events the Witness was going to relate about, namely on Count I of the Indictment, had already been presented by other Witnesses. As evidenced throughout the course of the proceedings, the Court had tried several times to summon the Witness, but to not avail.

39. On 17 April 2018, the Trial Panel granted the Application pursuant to Article 258 of the CPC and the Prosecutor removed the name of the Witness in the submitted amended version of the Indictment.

- *Prosecution Application for New Evidence to be Admitted during the Main Trial*

40. On 06 March 2018, the Prosecutor filed an Application for New Evidence to be admitted during the Main Trial pursuant to Article 329 Paragraphs (3) and (4) of the CPC, whereby he requested the Court to admit as new evidence the ICTY Exhibit P02335 administered during the ICTY Case of ‘*Milutinovic et al*’<sup>5</sup>.

41. The said exhibit contains a response from the Ministry of Foreign Affairs of the Republic of Serbia to the ICTY with information received from the Ministry of Interior of the Republic of Serbia concerning persons who were member of the MUP (Police service) in Kosovo and the police stations they were assigned to back in 1999.

42. Item 5 on page marked K0530291 names the Defendant Z.V.as a “..reserve policeman in the SUP Vuctirn’.

43. The Prosecutor requested the admission of such piece of evidence considering its substantive probative and corroborative value.

44. The evidence was not objected by the Defence.

45. On 17 April 2018, the Trial Panel granted the Application pursuant to Article 329 Paragraph (4) of the CPC.

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<sup>5</sup> *Prosecutor vs. Milutinovic et al.*, Judgment of 26 February 2009, IT-05-87-T.

- *Prosecution Motion for Judicial Notice of Adjudicated Facts*

46. On 09 March 2018, the Prosecutor submitted a Motion for Judicial Notice of Adjudicated Facts, whereby he requested the Court to accept as proven, facts which were established as proven in the jurisprudence of the ICTY in relation to the existence of an armed conflict in Kosovo. To this regard, the Prosecutor attached to the request several ICTY Judgments as well as jurisprudence from Kosovo domestic Courts.

47. The Defence did not object to the motion.

48. On 17 April 2018, the Trial Panel granted the Application pursuant to Article 329 Paragraph (4) of the CPC.

• **Defence Motions**

- *Request for Mutual Legal Assistance (MLA) for Defence Witnesses*

49. On 27 June 2018, pursuant to Article 256 of the CPC, the Defence Counsel submitted a list of names of Witnesses to be called to testify before the Trial Panel as Defence Witnesses. These Witnesses were, as alleged by the Defence, either police reservists in Vushtrri at the critical times or commanding officers of Vushtrri Police station.

50. The Witnesses are allegedly residing in the Republic of Serbia and in his motion the Defense counsel stated that the Prosecutor had already filed twice a request for assistance to the judicial authorities of the Republic of Serbia in order to hear these Witnesses, but without any results.

51. On 21 November 2017, the Court issued a Request for Mutual Legal Assistance to the relevant authorities in the Republic of Serbia, thereby requesting the Serbian authorities to, firstly, locate the mentioned Witnesses and, once located, serve them with the respective summons and arrange, together with the Court officials, in Kosovo video-link hearings.

52. On 30 January 2018, the Court received from the Kosovo Ministry of Justice a Response sent on 26 December 2017 by the Ministry of Justice of Serbia with, in attachment, a

response from the War Crimes Department of the High Court in Belgrade dated 22 December 2017, whereby the High Court stated that it could not proceed with the request to summon the Witnesses due to lack of their personal details and accurate addresses.

53. After inquiring with the Defence counsel as to the possibility to get more personal data about the Witnesses, and upon receiving on 2 February 2018 a negative answer to this regard, on 16 February 2018 the Court issued a Reply to the Serbian authorities renewing the Request for attempts to be made by the relevant Competent Authorities in Serbia to locate the Witnesses and, once located, to have them summoned to appear before the Court by means of video-link.

54. On 09 March 2018, the Court received a notification issued from the High Court in Belgrade on 05 February 2018 attesting the dismissal of the Request.

55. Therefore, the Trial Panel had to reject the Defense request to summon Witnesses pursuant to Article 258 (2) (2.3) of the CPC, since the evidence was unobtainable.

- *Motion for supplementing the criminal proceedings*

56. On 23 March 2018, the Defence Counsel of the Defendant submitted a motion for supplementing the criminal proceedings in order to introduce three news articles publicly available on internet which were published with photographs of the Defendant and that relate to, respectively, the arrest of the Defendant back in March 2016, his extradition in November 2016 and the date the Indictment was filed in April 2017.

57. The Defence Counsel moved to introduce this evidence as a proof of prejudice of guilt towards his client and bias in his identification.

58. The prosecution did not object to the evidence.

59. On 17 April 2018, the Trial Panel granted the Application pursuant to Article 329 Paragraph (4) of the CPC.

## **E. FACTUAL FINDINGS**

### **E.1. Summary of the proven facts**

60. The Court had to establish what the proven facts are on the basis of the administered evidence submitted against the Accused Z.V. for the criminal offences of War Crimes.
61. Upon the admissible evidence presented and administered during the course of the Main Trial, and in light of facts already established by the Trial Chambers of the ICTY for which the Trial Panel took judicial notice, the Court considered the following relevant facts as proven beyond reasonable doubt.
- On or about 2 May 1999, forces of the FRY and Serbia attacked a number of villages north-east of the town of Vucitrn/Vushtrri, including Skrovna/Skromë, Slakovce/Sllakofc, Cecelija/Ceceli and Gornja Sudimlja/Studime e Epërme. The villagers were forced out of their homes, and many of their houses, shops and religious sites were completely burnt. The villagers, comprised largely of civilians as well as persons previously displaced from other communities in the Vucitrn/Vushtrri municipality were forced to form a convoy of between 30,000 and 50,000 people travelling on the “Studime Gorge” road, in the direction of the town of Vucitrn/Vushtrri. From the evening of 2 May 1999, forces of the FRY and Serbia consisting of Serbian Regular Army, Serbian Paramilitaries, Police and Police Reservists repeatedly attacked the convoy and harassed, threatened, beat and killed an extensive number of Kosovo Albanians and robbed and pillaged the valuables of many others.
  - The following Albanian civilians were killed in the attack: EM, XM, ER, F (A) G, AB, BG., AG, Rr.A. and an unidentified 14 years old boy, whereas HA survived.
  - The following Albanian civilians were subjected to inhumane treatment and pillaging during the attack: B.G., SG and MG.
  - Upon arrival in the town of Vucitrn/Vushtrri, between 2 and 3 May 1999, thousands of Kosovo Albanians in this convoy were detained by forces of the FRY and Serbia in the agricultural cooperative near the town of Vucitrn/Vushtrri.
  - Between 3-4 May 1999 while held there, the forces of the FRY and Serbia at the agricultural cooperative at this time consisting principally of Police and Police Reservists from Vucitrn/Vushtrri, separated Kosovo Albanian men of military age from women, children and the elderly.

- The forces of the FRY and Serbia transported the remaining hundreds of Kosovo Albanian men of military age from the agricultural cooperative to a prison in the village of Smrekovnica/Smerkovnicë, municipality of Vushtrri.
- Upon arrival to Smrekovnica/Smerkovnicë Prison and during several weeks of detention there in inhumane conditions, many of these Kosovo Albanians, as well as others detained in other operations by Serbian police, were subjected to beatings and inhumane treatment, following which some were released and forced to cross the border with Albania. During their period of detention they were guarded not only by Correctional Officers but also by Police and/or Police Reservists from Vucitrn/Vushtrri.
- Z.V. worked before the war as a clerk in the Municipal Court of Vucitrn/Vushtrri. During the war he was enrolled as reservist Police Officer. He was working in Smrekovnica/Smerkovnicë prison in Kosovo within the timeframe of 2 May to the beginning of June 1999.
- Within the timeframe of 2 May and the beginning of June 1999 the following persons were imprisoned in Smrekovnica/Smerkovnicë prison: SK, BF, S.G., Sa.G., MU, GH, FP, BM, SM, SB, SH, AO, IF, DF and SO, SR and R.A..
- Upon their arrival in Smrekovnica/Smerkovnicë, many prisoners did not receive food or water for three to four days.
- The conditions in Smrekovnica/Smerkovnicë were bad. Prisoners were kept with hundreds in a room that was too small to contain them decently. There were no beds to sleep on, as a result of which the prisoners slept on the concrete floor, if there was space to lie down.
- When finally allowed to go to the canteen of the prison for a meal, many prisoners were being beaten by guards who would be lined up in front of the entrance. Several prisoners declined from taking a meal out of fear of being beaten.
- Prisoners were prohibited finishing their meals in the prison canteen, because of insufficient time to eat their meals and being chased away from the canteen by persons responsible for guarding the prisoners. Z.V. was one of those persons. SK, SB and GH were among the victims subject to these measures of intimidation.
- Z.V. beat structurally several prisoners very severely, amongst whom BF, S.G., Sa.G., MU, FP, BM, SM, SB, SH, AO, IF, DF and SO, SR and R.A..
- The beating of those prisoners took place outside of the building where the prisoners were being kept. Z.V. used a baton and a broomstick to hit his victims on their hands, and if they would move their hands in the process, he would hit them on the head or the shoulders.

- After the beatings, the hands of the victims were swollen and – since they did not receive any medical care, with the exception of S.G. – they had to wrap their hands in socks that were soaked in water. Many victims still suffer from the consequences of these beatings.
- Z.V. was cruel in his behaviors towards the victims.

## **E.2. Summary of the unproven facts**

62. The Court considered the following relevant facts as *not* proven beyond reasonable doubt.

- It could not be proven that Z.V. between 2 May 1999 and 3 May 1999 in his capacity as a police officer reservist from the Vushtrri Police Station, with personal liability and/or acting in co-perpetration with other members of various Serbian forces (including reserve Police and paramilitaries) participated in an attack on the ethnic Albanian civilian population traveling in a convoy between Studime e Eperme and Studime e Poshtme.
- It could not be proven that Z.V. bears responsibility, either directly or in co-perpetration with others:
  - in the killing of: EM, XM, F (A) G, ER, AB, BG., AG, RA, and an unidentified 14 years old boy;
  - in the wounding of HA;
  - in the inhumane treatment of B.G., SG and MG.
- It could not be proven that the Defendant Z.V. participated in the unlawful detention of large numbers of the ethnic Albanian civilian population, at the Smrekovnica/Smerkovnicë /Smerkovnicë Prison Mitrovica Region, including SK, BF, MU, FP, BM, SB, GH, AO, SO, IF, DF, S.G., Sa.G., SH, SM, SR, R.A..

## **E.3. Analysis/assessment of evidence and probative value**

- **COUNT I**

63. With regards to the attack on the convoy travelling on the “Studime Gorge” road, in addition to the evidence heard in Court, the Trial Panel took judicial notice of the findings of the ICTY Trial Chambers in the case of Milutinovic et Alia<sup>6</sup>.

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<sup>6</sup> *Ibid* number 5.



64. The Trial Chamber found that:

*“...based on military orders and combat reports, .. on 2 May 1999 MUP and VJ forces were engaged in an action in the area around the villages of Slakovce/Slakofc, Cecelija/Cecelia, Donja Sudimlja/Studime e Poshtëme, and Gornja Sudimlja/Studimja e Epërme, which had a strong KLA presence. The action resulted in the collapse of the KLA. As a result of the conflict, a convoy of approximately 30,000 Kosovo Albanians formed, moving towards the south of the municipality. These people left their homes at least in part due to instructions or orders from the KLA. Once they departed, their movement was controlled by the MUP, who also robbed and mistreated them”<sup>7</sup>.*

65. And again:

*“The Chamber considers the convoy to have been comprised predominantly of civilians, even if there were some KLA members present or nearby”<sup>8</sup>.*

66. Although the Witnesses in their statements reiterated in details the events of the attack on the convoy, the Trial Panel does not deem necessary a thorough analysis of these descriptions in light of the findings already elaborated by the ICTY. The Trial Panel merely takes notice that the evidence heard in Court is in conformity with the ICTY findings.

67. The Trial Panel then had to assess the individual actions allegedly perpetrated by the Defendant based on the evidence adduced during the course of the Main Trial.

68. All Witnesses heard during the Main Trial had already been heard during the Pre-Trial stage by either the Police, including the EULEX War Crime Investigation Unit (WCIU), or the Prosecutor.

69. During the current Trial, the Trial Panel noted that, with regard to Count I of the Indictment, the same witnesses appeared to have mitigated their descriptions of the cruelties they had earlier stated they had undergone and/or the role the Defendant played therein. No satisfactory explanation was given of these divergences, nor has the Trial Panel found any concrete indication of pressure on the witnesses, either from the side of the Prosecution during their earlier statements or from the Defense prior to or during the Main Trial.

70. It is a notorious fact that with time even the most painful memories, when not regularly refreshed, tend to fade. However, the recounts given in Court by the Witnesses and the merged discrepancies, either with their previously given statements or with statements given in Court by other Witnesses, posed serious doubts as to the identification of the Defendant during the critical time, his presence at the crime scene and his alleged actions.

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<sup>7</sup> *Ibid*, Volume 2 of 4, para 796.

<sup>8</sup> *Ibid*, para 797.

The killing of EM, XM, ER and F (A) G

71. The killing of EM, XM, ER and F (A) G was related by the witness **NG**<sup>9</sup>.
72. NG was in the convoy of Studime in a trailer with his brothers SG and MG, whereas his other brother Fa.G. drove the tractor that was pulling this trailer. Their cousin F (A) G was driving the tractor in front of them.
73. Five people approached: three persons stopped the tractor and two continued. Of these three persons the witness recognized Z.V. and another person called A. K.. Z.V. was wearing police clothes, blue color, with inscription “milicija”. He was wearing a hat and carrying an automatic rifle.
74. The witness knew Z.V. because they both worked for the same company (Kosova Construction Company) and had daily communication. Vukotic later went to work for the municipal Court in Vushtrri. When Z.V. became a police officer the witness met him also in the street.
75. According to NG, Z.V. and A.K. made EM and XM step down from the trailer, as well as ER and AB. They were executed at a distance of approximately 3 meters. The witness cannot say who of the two (Z.V. or A.K.) carried out the execution. After this, Z.V., A.K. and a third person named D.S. took F (A) G and executed him. Because of the darkness the witness could not tell who did what.
76. His brothers **SG**<sup>10</sup> and **MG**<sup>11</sup>, who were also heard as witnesses in Court, did not mention seeing these killings at all. No explanation was given, or could be found, how it is possible that two witnesses, who are present at the same event at the exact same location, did not see these executions happen, executions that took place in a distance of 3 meters.
77. The Court also notes that NG, upon being heard as a witness on 12 September 2004, stated that he did not know who committed the murders of ER and F (A) G.
78. For this reason, although the Trial Panel finds established the murders of EM, XM, ER and F (A) G as an undisputed fact confirmed by the autopsies provided in the case file<sup>12</sup>, the Court finds the statement of NG not reliable as far as it concerns the involvement of the Defendant in these killings, since it could not be corroborated by witnesses who were

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<sup>9</sup> NG, hearing minutes of 4 October 2017, pages 5 to 56.

<sup>10</sup> SG, hearing minutes of 9 November 2017, pages 3 to 28.

<sup>11</sup> MG, hearing minutes of 17 November 2017, pages 3 to 26.

<sup>12</sup> See EULEX Binders V and Va as adduced on 17 April 2018.

present at the same time at the same place, and it diverged from his previous statement, without additional corroboration that could mitigate the diversion.

79. Also the sketches drawn by the witness NG in relation to the killings (**exhibits 1, 3 and 4**) were of no avail to the Court since they were not corroborated by similar sketches from other Witnesses.

*The killing of AB*

80. The killing of AB was related by the witnesses **NG** and **Sh.G.**.

81. NG states that Z.V. and A.K. went to the tractors of the R. and B. families and took ER and AB. The mother of AB was pleading, telling them that he got married that day, on which the perpetrators replied in Serbian language that they would arrange a marriage for him that evening once more. Z.V. killed one of them and A.K. another. They put their rifles against the bodies of the victims and shot them.

82. **Sh.G.**<sup>13</sup> stated how he saw She.B. begging not to kill his son (AB) because he was married that day, upon which the witness Sh.G. heard as reply “and now we will celebrate” and then 3 or 4 persons put him on the side of the road and executed him.

83. However, where NG mentions specifically two men (by name), Sh.G. mentions the presence of three or four men, without being able to identify them at that time, since, as stated by the Witness, ‘it was impossible to recognize them because most of them were wearing masks and it was also dark’.

84. In spite of the fact that Sh.G. stated that after the war he was told that one of the perpetrators worked in the factory “Ekstra”, the fact that he testified that the attackers were predominantly wearing masks and it was dark poses doubts as to the reliability of the possibility of recognizing the perpetrators and, hence, also on the recognition carried out by other witnesses.

85. Additionally, the brother of both witnesses, **MG**, did not mention seeing this killing at all. No explanation was given, or could be found, how it is possible that another witness, who is present at the same event at the same location, did not see this execution happen that took place in a distance of 3 meters.

86. The Court also reiterates what already mentioned above, namely that NG, upon being heard as a witness on 12 September 2004, stated that he did not know who committed the several murders, including the one of AB.

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<sup>13</sup> Sh.G., hearing minutes of 28 September 2017, pages 34 to 48.

87. For this reason, although the Trial Panel finds established the murder of AB as an undisputed fact related by different witnesses and confirmed by the autopsy and other reports provided in the case file<sup>14</sup>, the Court finds the statement of NG, where it comes to identifying Z.V. as one of the two perpetrators, which statement in that aspect is not corroborated by witnesses who were present at the same time at the same place, not reliable.

*The killing of an unidentified 14 years old boy*

88. The killing of an unidentified 14 years old boy was related by the witnesses **NG, SG** and **MG**.

89. NG stated that a boy of not even 20 years old tried to save his life by moving in between the witness' tractor and the tractor of the B/R family, pledging that he was a young person. The ones who were preparing the execution of EM, XM, ER and F (A) G ran after this boy. Namely, Z.V. and A.K. ran after the boy, and with a burst of shots they made him fall on the ground. After the boy fell down they exhausted one burst entirely.

90. SG states that Z.V. and the boy were in front of him, in the middle of two tractors. It all happened in a distance of about 2 or 3 meters from the witness. The boy was running away from other police officers and the boy touched Z.V.'s arm or elbow, upon which Z.V. grabbed the boy by the throat or mouth, saying "are you running, are you running away". The boy said 7-8 times "please don't kill me because I am only 14 years old". Z.V. let the boy go on a field, the boy started running away, upon which Z.V. shot with a burst of fire. The boy raised his hand, fell on the ground. When Z.V. came close to the boy he fired a single shot and hit him in the head. The witness later found out that the boy was from Bare village.

91. MG states that a policeman by the name of K. was chasing a young boy. In the process of running away he ran into Z.V., who grabbed the boy behind his head and took him 3 to 5 meters away from the road, and the kid laid on the ground, and the bullets were shot on him and he was killed. Some 3 or 4 bullets went through. The child cried "don't shoot me because I am not even 14 years old" while being pushed away from the road, just before being shot.

92. The Court notes that, as already stated above, the statement of NG raises too many doubts as to its reliability and it, therefore, cannot be relied upon by the Court unless corroborated in other ways.

93. In the case at hand, the other two witnesses who testified on this murder gave different versions of the course of events. Where NG mentions that both Z.V. and A.K. ran after the boy, MG states that a police officer with the name of K. was chasing the boy, who ran

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<sup>14</sup> See EULEX Binders V and Va as adduced on 17 April 2018.

into Z.V., upon which Z.V. took the boy with him and killed him. SG does not mention A.K. but relates how the boy was running away from “other police officers”.

94. Also in the way the boy was killed the statements of the witnesses do not corroborate. Where NG tells how Z.V. and A.K. made the boy fall on the ground with a burst of shots, and how they exhausted one burst entirely after he fell down, SG also mentions a burst of fire but only by Z.V. and after this a shot in the head of the boy. MG is only speaking of “bullets that were shot on him”, some 3 or 4 bullets went through. These three accounts of the killing of the boy differ in such a way, that forensic research on the body of the boy is paramount.
95. Unfortunately, the cause of death of the boy cannot be established, since his body was never identified, thus making forensic research impossible.
96. The witnesses also give different statements about the perpetrators: where NG identified Z.V. and A.K. as co-perpetrators, SG and MG only identify Z.V. as the perpetrator of the killing.
97. Furthermore, the sketches drawn by the Witnesses in relation to the killing (**exhibits 2, 7 and 8**) differ from one another as far as the location of the perpetrators and the killing of the boy are concerned.
98. Furthermore, the witnesses’ brother **Sh.G.**, who was also heard as witness in Court, did not mention seeing this killing at all. No explanation was given, or could be found, how it is possible that this witness, who is present at the same event at the same location, did not see these executions happen that took place in a distance of 3 meters.
99. For this reason, although the Trial Panel finds established the murder of an unidentified 14 years old boy as an undisputed fact related by several witnesses as elaborated above, the Court could not establish beyond reasonable doubt how this 14 years old boy was killed and by whom, because the witnesses statements on several important points do not corroborate.

*The killing of RA and the attempted killing of HA*

100. The killing of RA and the attempted killing of HA was related by the witnesses **B.A., BA and HA**.
101. In assessing the facts, the Court deems the statement of HA the most reliable, because he was one of the persons that was assaulted and knows best whatever happened to him.

102. On 2 May 1999 the witness **HA**<sup>15</sup> left Ceceli in the direction of Studime e Eperme. B.A., BA and RA were on the same tractor as the witness.
103. The witness was driving. RA was between the trailer and the tractor, B.A. and BA were in the trailer. BA was lying down in the tractor. Three persons wearing ammunition belts approached the tractor, close to Studime e Posthme. Two of them came to the witness and swore at him. One of them told him to get down and grabbed him. RA was told to come as well.
104. The man who grabbed him wore a mask and told him to hand over his money, which was 100 Deutsche Marks (DM). This person pointed the barrel of his automatic rifle on his shoulder and told him to turn around and walk towards the stream of water. The witness turned his back and heard a shot and was hit in his hip. He fell on his back. RA fell on the ground lifeless. After 10 minutes to half an hour his leg went up from the ground, due to a bullet, he could see holes in his leg. The man who grabbed and shot him was tall and had a mask on, thereby making it impossible for the witness to recognize him. He was bulky, not fat. The Witness stated he heard the voice of this man when he was lying on the ground. He heard other people call this man "Z". The Witness further added that he did not see Z.V. in Studime during that day.
105. The statement of B.A. and BA do not corroborate with the statements of HA on crucial points.
106. **B.A.** stated that he was traveling in the convoy from Studime e Eperme, through Studime e Posthme to Vushtrri<sup>16</sup>. Z.V. grabbed RA by the arm and pulled him down and also told HA to follow him. Z.V. moved them 2 meters away from the trailer. The victims gave money to Z.V. and were then turned facing the river.
107. Z.V. shot a burst of fire and both of them fell on the ground. After that a second short burst of fire was shot in the direction of HA and RA, upon which HA's leg jumped upwards. RA was dead, he was shot in the chest, but HA was still alive.
108. Z.V. was wearing a police uniform, with patches as a tiger and the color was blue with dark grey color. On the arm were police symbols. He had an automatic rifle, an AK-47. He was wearing a blue hat similar to a "Nike" cap, without a brim. He was about 2 meters tall, 27/28 to 30 years old, black hair. The witness stated that he could see the face of Z.V. from very close. The witness knows Z.V. from Vushtrri and he added that he would encounter him often when going to school and that Z.V. was working as a police officer. In 1996 the witness saw him in Court in civilian clothes.

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<sup>15</sup> HA, hearing minutes of 11 October 2017, pages 33 to 50.

<sup>16</sup> B.A., hearing minutes of 17 November 2017, pages 27 to 48.

109. The Witness **BA** testified that he was wounded by gunshots on 2 May 1999<sup>17</sup>. The next day the witness was in a trailer in the convoy from Studime e Eperme through Studime e Poshtme towards Vushtrri.
110. His paternal uncle HA was driving the tractor. His brother RA was also driving the tractor. His cousin B.A. was with him on the trailer. The witness was lying down in the tractor as also stated by the Witness HA.
111. When they were about to enter Studime e Poshtme they were stopped by Serbian police and military. His paternal uncle and his brother were taken out of the tractor and were put on the left side of the road. They were asked for money. They were turned with the back toward the road. Then they were shot instantly. First his brother fell on the ground, then his uncle.
112. There were three or four men who had approached the tractor, one of them was Z.V.. They were dressed in police clothes and were armed with Kalashnikovs. The witness was sitting on the trailer and had a clear view. It was Z. who pulled RA down from the tractor and who killed him. He was shot with a Kalashnikov. Initially they thought that both were killed, but his uncle was only wounded.
113. The witness was covered with a blanket, so that he would not be noticed since him and his relatives were afraid that if the attackers had seen that he was wounded they would have thought that he had been engaged in conflict.
114. Although the Witness stated that he could still see although covered, the Trial Panel is not convinced of the reliability of his statement also in light of the above highlighted discrepancies with the main victim of the actions in question, namely HA.
115. HA, the direct victim, testified how the person who shot at him was wearing a mask, therefore not corroborating the recounts of the other two witnesses.
116. For these reasons, although the Trial Panel finds established the murder of RA as an undisputed fact related by different witnesses and confirmed by the autopsy and other reports provided in the case file<sup>18</sup>, and it finds also established the attempted killing of HA as evidenced above, at the same time the divergence between the recount of HA and the other witnesses combined with the fact that the other two Witnesses did not testify previously as to the identity of the Defendant, made the Court assert that the statements of B.A. and BA cannot be relied upon where it comes to identifying Z.V. as the perpetrator of the shooting.

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<sup>17</sup> BA, hearing minutes of 11 October 2017, pages 3 to 33.

<sup>18</sup> See EULEX Binders V and Va as adduced on 17 April 2018.

The killing of B (B) G and AG

117. The only witness giving a statement about the killing of B (B) G and AG is **IP**<sup>19</sup>. The witness was with his family on a tractor. Five men in black clothes with hats and red ribbons approached his tractor. Z.V. was one of them. He knew Z.V. from Vushtrri, where everybody knew each other. He saw that Z.V. killed B (B) G. He walked some three meters from the tractor of the witness, and another tractor was there. Z.V. then took from the tractor B (B) G out of the tractor and killed him.
118. The witness also states that this group of people killed B (B) G's brother AG, but the witness did not see who shot him.
119. Since this account of events (or rather, the several accounts of events that the witness has given) is not corroborated with any other evidence pointing in the direction of Z.V., the Court tried to assess it in light of statements previously given by the Witnesses.
120. The Court notes that IP, upon being heard as a witness on 4 November 2005, stated that 3 Serbian police officers arrived, that he recognized as DK, A.K. and a man called "T." from Babimoc/Babin Most village. DK was the one who killed B (B) G. The witness did not mention the name of Z.V. at all.
121. The Court notes furthermore that the same witness, upon being heard on 16 April 2014, stated that he recognized several Serbs by the names of V, DJ, T, A.K. and DK. According to the witness B (B) G was shot by A.K.. Again, the witness did not mention the name of Z.V. at all.
122. For these reasons, although the Trial Panel finds established the murder of B (B) G and AG as an undisputed confirmed by the autopsy and other reports provided in the case file<sup>20</sup>, the Court deems the testimony of IP on who perpetrated the killing of B (B) G not reliable.
123. The statement furthermore does not provide the Court with evidence that Z.V. killed AG, since the witness stated that he did not see who killed him.

Beatings of SG and MG

124. Due to the above highlighted impossibility to rely on statements of Witnesses NG, SG and MG concerning the involvement of the Defendant in the critical acts, the Trial

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<sup>19</sup> IP, hearing minutes of 16 October 2017, pages 5 to 34.

<sup>20</sup> See EULEX Binders V and Va as adduced on 17 April 2018.



Panel could, hence, also not establish the involvement of the Defendant in beatings to which the witnesses SG and MG were subjected.

Other unreliable witnesses

125. **RM**<sup>21</sup> testified in Court as to how the Defendant Z.V. was among the attackers of the convoy and he killed her husband. However, the credibility of this Witness was severely affected by events that occurred in the Courtroom. Namely, the witness was found with written in the palm of her hand the following: “Z. pesudhe te marke” which was translated as to “Z., 50 Marks”. When questioned about this, the Witness stated that her nephew had written this in her palm, since she tends to forget things.
126. Such event inevitably affected the credibility of the Witness and, combined with the fact that the Witness did not previously identify the Defendant, it made her statement unreliable.
127. **B.G.**<sup>22</sup> recounted the day of the attack on the Studime convoy and how she was subject of pillaging and also of beatings at the hand of Serbian Police officers. Although the Trial Panel does not doubt the authenticity of the witness’s recount of the tragic events she suffered, it does doubt, nevertheless, the incrimination of the Defendant Z.V. in these events because of the following reasons.
128. Although she did not know Z.V., she was able nonetheless to identify him. At the same time, the witness testified how the Defendant would wear a mask and remove it only when he was talking to her. All these elements make the statement of the witness object of doubts as to its reliability.
129. The Officer’s Report taken from EULEX investigators when they first addressed the witness (**exhibit 9**) was not used by the Court in evaluation of the evidence given in Court by the Witness, considering that this statement was not taken in accordance with the Rule of evidence of the CPC. Nevertheless, had the Court been able to confront the Witness with this statement, it would have just highlighted more the discrepancies in the Witness’s identification of the Defendant.
130. As such, this witness was also found unreliable.

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<sup>21</sup> RM, hearing minutes of 28 September 2017, pages 3 to 34.

<sup>22</sup> B.G., hearing minutes 7 December 2017.

- **COUNT III**

131. Unlike for Count I, the Trial Panel found that the statements given by the Witnesses in relation to Count III allowed the Court to establish as proven the events that occurred at Smrekovnica/Smerkovicë prison between 3 May and beginning of June 1999 and the involvement of the Defendant in these events.

132. As elaborated below, the Witnesses were consistent and corroborated each other in their recounts of their arrival at Smrekovnica/Smerkovicë.

133. Some of them related how, after being interrogated upon arrival at the prison, they were asked to sign a declaration attesting that they were KLA members although they had clearly denied being KLA fighters and, as attested by the Witnesses, being the persons who interrogated them aware that they were not KLA members.

134. The Witnesses stated how for the first few days they did not receive any food and only a limited amount of water.

135. They, then, recalled their placement in the TV hall, for some of them directly after being interrogated, for others after few days being kept in other, often smaller, rooms. In any case, there were no beds provided in any of the rooms they were kept.

136. The Witnesses testified as to the bad conditions of detention they had to endure. Apart from not being provided with beds, they were squeezed together with hundreds of people in the TV hall for several days, in poor hygienic conditions, and with access to food conditioned by circumstances that will be elaborated below.

137. The Trial Panel could distinguish two sets of events concerning the actions carried out by the Defendant. Namely, the beatings and related acts perpetrated by the Defendant against the Witnesses and other Injured Parties, and the intimidatory behaviors carried out in the canteen while the victims were trying to eat their meals.

138. The Witnesses were consistent in their recounts of the course of the events and they were found credible and reliable. They corroborated each other even in the details of how the beatings were carried out and in their description of specific characteristics. Although some discrepancies indeed emerged, they were not so fundamental or remarkable to pose doubts as to the Defendant's involvement in the charged acts. Furthermore, the Trial Panel also found the Witnesses statements fair and not exaggerating, apart from few exceptions analyzed below which, nevertheless, were not considered of essential impact on the overall assessment.

Judicial notice

139. The Trial Panel took judicial notice of facts already established by the ICTY in the Mulitinovic case in relation to the detention of Albanians in the facilities of Smrekovnica/Smerkovicë prison.

140. The ICTY Trial Chambers found that:

*“...between 1 and 3 May MUP forces separated the convoy into three groups. The first group, comprised of women, children, and elderly people who had vehicles, was sent to Albania; the second group, comprised of women, children, and elderly people who had no means of transportation, was sent to nearby villages, among them Kičić/Kiçiq and Dobra Luka/Doberlluke; while the third group, containing mainly men of military age, was sent to Smrekovnica/Smerkovicë prison where they were detained and mistreated. Following detention in dismal condition for approximately three weeks, the detainees were taken to the Albanian border, where they were forced to surrender their identification documents and cross into Albania”<sup>23</sup>.*

Other undisputed facts

141. It is an undisputed fact that the Defendant Z.V. worked at the municipal Court in Vushtrri since at least 1992 at the acceptance office number 6, since not only this fact was related by **Witness TR**<sup>24</sup> and corroborated by several other witnesses in the Court, as elaborated below on the part on the recognition of the Defendant, but this was also confirmed by the same Defendant in other ongoing criminal proceedings against him and for which the Court takes judicial notice<sup>25</sup>.

142. Furthermore, based on evidence adduced by the Court, namely the ICTY Exhibit P02335 administered during the ICTY Case of Milutinovic at Al.<sup>26</sup>, as introduced into this case file on 17 April 2018 and which was not contested by the Defence, it is undisputed that the Defendant Z.V. was enrolled as police reservist in Vushtrri during the time of the conflict in Kosovo.

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<sup>23</sup> See *supra*, number 5, Volume 2 of 4, para 800.

<sup>24</sup> TR, hearing minutes of 30 November 2017, pages 2 -11.

<sup>25</sup> See statement given by the Defendant in criminal case Pnr 67/17 on 15 May 2018.

<sup>26</sup> See *Supra*, number 5.

Assessment of Witnesses statements

143. Witness **SK** was not a direct victim of actions carried out by the Defendant but he was an eye-witness to them.
144. The Witness recounted as follows the events occurring at Smrekovnica/Smerkovnicë prison<sup>27</sup>. On 2 May 1999, refugees who arrived in Vushtrri were put in the yard of the Agriculture Cooperative.
145. The next day, men were separated from women, they were put in trailers and transported to Smrekovnica/Smerkovnicë prison. Upon entering the prison, they were forced to pass through a cordon of police men who would hit them quite heavily with baseball bats and rubber bats. They were imprisoned in empty rooms, without beds. After 16 May, new prisoners were brought in and there was no more place to lie on the ground.
146. Upon their arrival, for three days they did not receive any food or water. Looking from the windows they could see guards beating people. People started dying from hunger and diarrhea, because the water that they finally got was contaminated.
147. The witness saw how Z.V. would beat people very hard with a rubber bat until they fell down unconscious.
148. Whenever the witness would see Z.V. there, he would not go to the canteen to eat, because he was maltreating people so badly. Three or four times he saw Z.V. beat people in the canteen. He would beat them until they bled when they were waiting in the queue for food. The Defendant often used a metal bar, and sometimes rubber bats and baseball bats to carry out his actions.
149. The witness relates how he saw Z.V. every day in prison, from 3 May until 23 May 1999, or at least it felt like every day. Z.V. would accompany people who were sent for interrogation and beat them with a rubber bat. And at some point he would put on music with loudspeakers and he would beat people and bring them out of the rooms.
150. **Witness S.G.** recounted how<sup>28</sup>, upon arrival at Smrekovnica/Smerkovnicë prison, he was placed in a basement with 60 to 70 other men, where they remained four days without food, only some water was available. On the fifth day the people from Shala and Bajgora were requested to line up and were taken away to another pavilion. The witness was not part of this group. After being ordered to go outside, he was hit by a police officer on the back of his head and in the neck.

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<sup>27</sup> SK, hearing minutes of 27 September 2017, pages 4 to 59.

<sup>28</sup> S.G., hearing minutes of 7 November 2017, pages 5 to 32.

151. After two more nights the witness was brought to the TV hall, where there were about 500 to 600 men. There was no place to lie down and it was only possible to sit.
152. Z.V. was guarding them in shifts. He would sit outside with other guards and they would grill meat and have beers.
153. The witness knew Z.V. very well, as elaborated below, and Z.V. recognized the witness as well. In fact, the Defendant told the witness that he knew that the witness was not a member of KLA, but he had provided KLA with ‘some help’.
154. The Defendant then ordered the witness to go outside and, once outside, he told him to put out his hands and he gave him numerous hits, about 80 times, on his hands with a rubber baton that was used by the police. When the Witness went back inside, he lost consciousness. This was the only time that the Witness was beaten by the Defendant. The Witness added to have received medical treatment on that occasion once back inside the prison building.
155. The Witness testified how, before him, his brother Sa.G. had also been maltreated by Z.V.. The witness saw this beating from inside the TV hall, through a window. The beating took place outside, at the stairs. Sa.G. was beaten on his hands as well.
156. Furthermore, the Witness added that also his neighbor MU was mistreated by Z.V., immediately after the witness was beaten himself.
157. With regard to the events occurring in the canteen, the Witness stated that during Z.V.’ shift people would not dare go to eat.
158. Even today the Witness cannot feel part of his arm. He was kept at Smrekovnica/Smerkovnicë from 3 to 22 May 1999.
159. **Witness Sa.G.**<sup>29</sup> stated that he went to the cooperative in Vushtrri on 2 May 1999, after escaping the bombing of Studime village. The next day he was brought to Smrekovnica/Smerkovnicë prison in a truck. He was placed in a pavilion known as “radio TV”, the TV hall. He did not receive food or drink for three days. After that he got some hard, dry bread.
160. After being interrogated he was hit on the hand by a paramilitary with a shovel handle, as a result of which his hand was broken. The guards were dressed in dark blue.
161. The Witness recalled how on one occasion, Z. hit him 30 times on the hands with a baton. When he withdrew one of his hands because of the blood that was gushing out of it, Z. hit him on the head. Once inside, the other detainees put water on his hands because of the bruises and the swollenness. This was the only occasion that he was beaten by the Defendant.

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<sup>29</sup> Sa.G., hearing minutes of 14 February 2018, pages 2 to 23.

162. Corroborating what stated by witness S.G., the Witness stated that after him, the witness' brother Sami was called outside. Through a window the Witness saw how his brother Sami was being beaten by Z.. Other men who were being beaten were: Sad. G., Aj.G., H.N..
163. Concerning the events in the canteen, the witness affirmed how they would not be able to eat in peace in the canteen. They would go in line, a police officer would come inside and start counting 1, 2, 3 and shout "go out!" and the last one in the line would never get a chance to get a meal.
164. Finally, also this Witness recalled seeing beer bottles lying on the ground outside and he added that Serbian nationalistic songs were being played.
165. **Witness MU** was sent to Smrekovnica/Smerkovicë Prison on the 3d of May<sup>30</sup>. He stayed with 16 people in a solitary room for two days and two nights, sitting on a floor of ceramics. He was given food on the second night, and there was water inside. On the third day they were brought to the pavilions, and they were beaten by several men with wooden sticks. After two nights in the pavilions, after being questioned, they were brought to the TV hall. In one part of that hall there were probably more than 400 men.
166. Z.V. was one of the men who were guarding them in 12 hours shifts. Corroborating what was stated by S.G. and Sa.G., the Witness testified that the Defendant beat two persons of the G. family (S.G. and Sa.G) before beating him. He was the third one in line that day.
167. The witness could not count the baton hits, between 72 and 80 hits on the hands. It happened at the entrance of the corridor. He was outside and others could see the events from inside, because there was a window and the glass was smashed. The witness marked this location point on **exhibit 6**. When the witness went back inside, Z.V. hit him on the head with a broomstick. He did not receive any medical treatment in prison.
168. Z.V. also prevented prisoners from eating their meals. As soon as they were served with food, they sat down to dine, he would struck the table with a baton and say 'give up all the plates', and it was only a few who managed to steal a small piece of bread and put in the pocket and eat it when they were sent back to their rooms.
169. Z. was using a wooden stick, a broom stick of half a meter in length type baton. He was beating people for 12 hours while he was serving his shift. He was beating newcomers. As already mentioned by other witnesses, also this witness stated that those who were beaten once by the Defendant were not beaten for the second time.
170. The witness also recalled that the Defendant would play nationalist, anti-Albanian music and he would grill meat outside.

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<sup>30</sup> MU, hearing minutes of 8 November 2017, pages 3 to 22.

171. **Witness GH** recounted how he stayed in Smrekovnica/Smerkovnicë prison from the 3rd to the 24<sup>th</sup> of May 1999<sup>31</sup>. For 5 days and 4 nights he was not provided with food, only with water that he got from the toilet. He was staying in the TV hall with 400 to 500 people.
172. Z.V. was one of the reservists conducting the security of prisoners and was wearing a reservist uniform. The witness was not beaten himself, but he eye-witnessed recurring beatings, including the beatings perpetrated by the Defendant against Sa.G. and S.G.. He added that when Z.V. was serving his shift he would just point out some persons and say: “you, you and you” and he would take them out and beat them, and you could hear the screams of the persons being beaten.
173. He testified as to the events occurring in the canteen. Meals were taken in the dining hall and they were ordered to go there with 100 persons at a time. One of the prisoners had to count the other prisoners, if he let 101 persons go, that person number 101 would be beaten or number 99, similarly, would be beaten. This beating was done by the reservists, amongst whom Z.V.. He would also prevent prisoners from finishing their meals, telling them to stop eating and go.
174. **Witness FP** stated how<sup>32</sup> men were separated from the women in the agricultural collective in Vushtrri and the men were sent to Smrekovnica/Smerkovnicë prison. The witness stayed there from 3 until 23 May 1999.
175. After being interrogated, Z.V. ordered another prisoner to hit the witness. When this man refused, Z.V. started hitting this man. The witness advised the other prisoner to hit him to avoid more beating by Z.V.. Upon this, the prisoner hit the witness very lightly on the shoulder. Z.V. also ordered the witness to hit the other prisoner. Finally Z.V. hit both men with a broom stick several times.
176. Z.V. was guarding the prisoners in shifts. He was wearing camouflage with “Milicia” insignia and an emblem with PJP, and something with an eagle of Serbia and crosses. When he would be in the shift it was terrifying to the prisoners. He would call people based on the villages of Vushtrri, for instance he would call all who were from Studime, line them up and beat them all and then he would continue calling other villages and beating other people.
177. There was no medical care in the prison.
178. When they went to eat, Z.V. would never let them eat and send them back.

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<sup>31</sup> GH, hearing minutes of 8 November 2017, pages 23 to 36.

<sup>32</sup> FP, hearing minutes of 9 November 2017, pages 29 to 45.

179. This witness also recalled how the Defendant would drink outside while grilling meat and playing nationalist songs.
180. Also Witness **BM**, upon his arrival at Smrekovnica/Smerkovnicë prison<sup>33</sup>, on the 3d of May, was sent to the TV room, where he stayed for about 3 days without eating or drinking. After that the prisoners received a big barrel of water and a loaf of bread. After a while the guards started giving him, and the other prisoners, food.
181. Z.V. hit him a hundred times on the palms of his hands with a baton. As a result his hands got bruised and swollen. He was also forced to fight with his brother SM by Z.. The witness started to brawl with his brother, but Z.V. told him “not like that” and slapped him on his left cheek and his ear, as a result of which his ear sounded 4 or 5 days after this incident as if a fly entered his ear. The witness told his brother to hit him. After the fight they were sent back to the room where they were kept. His brother was struck by another police officer, who was shorter. Other prisoners witnessed this fight and witnesses **DF** and **SR**, as elaborated below, testified in relation to these events.
182. While in the canteen, a police officer would start counting backwards from 10 to 1, and within this time frame they had to eat their food, and then leave, so they had to grab the food and put it in their pockets. All police officers did this, including Z.V..
183. **Witness SM** stated that<sup>34</sup> men were separated from the women and brought to Smrekovnica/Smerkovnicë prison on 3 May 1999. After being interrogated, he was being held in the TV room with 300 to 400 men. For four days he did not receive food, there was only some salt.
184. After visiting the toilet he was hit by an unknown person with a baton on his back, as a result of which he fell to the ground. Another time, a Serbian police officer pointed at him and told him to come outside. There the witness and his brother were ordered to hit each another. They hit each other slightly, upon which Serbian police officers started beating them because they were not beating each other hard enough. The police officer who addressed him and hit him was a shorter guy. There were also tall police officers. The fight lasted 3 or 4 minutes. His brother BM was hit by the same police officer that hit the witness. The witness was beaten once or twice, BM got more beating.
185. Witness **SB** arrived in Smrekovnica/Smerkovnicë prison on 23 May 1999<sup>35</sup>. He was being kept in a very narrow room with 40 other men for 13 days. The first 72 hours he did not receive food or drink.
186. Z.V. was wearing a police uniform and a dark blue cap. He had a wooden stick and he had also weapons. He treated people in the most inhumane way; he would hit them with whatever he would have in his hands. This happened whenever Z.V. had his

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<sup>33</sup> BM, hearing minutes of 13 November 2017, pages 22 to 47.

<sup>34</sup> SM, hearing minutes of 13 November 2017, pages 3 to 21.

<sup>35</sup> SB, hearing minutes of 14 November 2017, pages 2 to 24.



shift, during the day or during the night. There was no specific time, he would beat people at his convenience, without a specific timeline. The witness was able to see this through the window of the room where he was being kept.

187. The Witness did not experience beatings himself at the hands of Z.V., but he eye-witnessed other beatings perpetrated by the Defendant against other persons. He also added being terrified and afraid of what was going on.
188. The witness also gave accounts of the measures of intimidation perpetrated in the canteen during meals time, although he added not having seen Z.V. there.
189. Witness **SH**<sup>36</sup> was sent to Smrekovnica/Smerkovnicë prison, after the men were separated from the women. He was put in a hall similar to a movie theatre, the TV hall, where he stayed about three weeks. He was guarded by (amongst others) a person named Z.. Z. was a bit blondish and wore a hat.
190. The Witness was beaten by Z. on the palms of his hands and on his back, because he did not collect properly all the cigarette butts that were thrown away by Z. and his colleagues.
191. Z. would beat him with his club and he would play music while beating him. He would start beating the palms of the hands, or strike the head if the hands were removed. The heaviest beating would usually take place immediately after Z. took over the shift. The witness related having heard the Defendant say to another prisoner: “until you tell me what happened to my uncle, this is what you are going to get”.
192. Whoever the Defendant would beat, if they had been animals, they would have died. A relative of the witness was beaten disastrously. Another person was so severely beaten that he could not even stand or lie down on the floor.
193. The Witness was beaten by the Defendant on three occasions.
194. Also, the Witness stated that there was no chance to finish the food in the canteen, since the guards would say ‘3-2-1-0 stand up’. If there was no time to eat bread, they would take it with them.
195. Witness **BF**<sup>37</sup> opened the chapter of the victims/injured parties from Bare neighborhood.
196. He stated that, upon arrival in Smrekovnica/Smerkovnicë Prison, he was being detained in the TV hall with 600-700 other men. People urinated and defecated there because they could not get out. The first four days and nights he did not get water or food.

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<sup>36</sup> SH, hearing minutes of 14 November 2017, pages 24 to 43.

<sup>37</sup> BF, hearing minutes of 16 October 2017, pages 35 to 66.

197. Z.V. appeared in Smrekovnica/Smerkovnicë Prison on the second night the witness was detained there. He heard the name of the Defendant Z.V. for the first time in the morning of 3 May 1999, when he left the hangar of the agricultural cooperation where he spent the night. A woman, who used to work at the Court, recognized Z.V. and told the witness.
198. Z.V. beat him with a wooden stick of black color outside the TV hall and other people were able to see this from the window of the TV hall. The Witness recognized the TV Hall on **photo 14 of exhibit 5**.
199. As a result of the beatings, his wrist was broken. He was also hit twice on the head, because he did not hold his hands still. He did not receive any medical treatment. The beating happened outside the door, at the stairs.
200. The witness added that he was beaten together with other people from Bare village, namely IF, SO, AO, DF and Ja.F.. Z.V. dealt with regions, not with names. He would say, for example, ‘who is from Shala please come forward’.
201. The Defendant wore a uniform, blue somehow in grey. It was camouflage and his ribbon was blue. It was a police uniform.
202. The Witness was beaten by the Defendant on 3 or 4 occasions; one of them was when the witness came back from lunch from the canteen. He also added that the prisoners, who were in the pavilions where the ‘regular’ guardians were in charge, did not endure any torture.
203. Witness **AO**<sup>38</sup> was taken to the agricultural cooperative in Vushtrri. The men were separated from the women and brought to Smrekovnica/Smerkovnicë prison on 3 May 1999.
204. On 5 May 1999 he was interrogated. During the interrogation he was beaten with a rubber baton. After the interrogation he was brought to a movie hall in the prison, the TV hall, where at least 300 other men were being kept. There was nothing there initially and shortly after a big barrel with water was being brought in. After some time the water began to contaminate and soon after people started having diarrhea. There were also lice and fleas. The witness remained in the TV hall until 23 May 1999.
205. The most notorious of the guarding police men was Z., because when he was on shift he would beat people with a broomstick all day long. He was wearing a blue uniform.
206. The witness’ cousin, Re.O., was called outside and beaten up very badly by Z.. The witness could see this through an open window. His cousin had injuries on his hands.

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<sup>38</sup> AO, hearing minutes of 4 December 2017, pages 3 to 21.

207. Z. said: whoever is from Bare, (13 or 14 men) go outside, amongst whom Re.O., SO, Ze.F., F.F., DF, IF and Be. F.
208. He lined them up and they had to roll up their sleeves and he started beating everyone very badly, he hit everyone 70 to 80 times with a broomstick on their hands. The witness was the last person from Bare who was beaten up, he was hit 76 times with a broomstick. Whenever the witness was not able to hold out his hands, he was hit on the head and shoulders. When the witness moaned “ufff” Z. said to him: “ufff and what about my paternal uncle?”
209. Twice a day they were allowed to dine in the canteen. When Z. was on shift they had to run to the canteen and they would be beaten and kicked and slapped and hit by a column of police officers. To finish the meal, Z. would say “you have 2 minutes to finish your meal”. More than half of the men would not be able to finish the meal and some even were forced to return without having eaten at all.
210. On 23 May 1999 all the men were put into busses and driven to the Albanian border, where all their personal identification documents were taken from them, before crossing the border.
211. Witness **IF**<sup>39</sup> spent the night in the agricultural cooperative of Vushtrri on 2 May 1999.
212. The next day men were separated from the women and brought to Smrekovnica/Smerkovnicë prison. He stayed in the TV hall with 460 men. He did not receive food for four days. It was very filthy and people were covered with lice. He stayed in prison until 25 or 26 May 1999, and then was brought by bus to the border of Albania.
213. On a certain moment all the men from Bare village were ordered to go outside, it was a group of 13 to 14 men. The witness was the first to go out. Outside five police officers in uniform were sitting. The police officer who struck him with a broomstick was a very tall person and physically strong. The police officer said to the witness: “who raped Serbian women, who killed my paternal uncle, were you KLA?”. The witness was ordered to stretch his arms and was hit with the broomstick 30 to 50 times, and when he was not able to keep his arms stretched he was hit on the shoulder.
214. When he went back inside other men told him that the police officer who beat him was Z., they knew him because they were from Vushtrri and Z. used to work in the Court of Vushtrri.
215. The other people from Bare village were beaten as well, they came back inside with swollen hands and had also injuries on their backs. The witness remembers that amongst them were DF, AO, SO and BF.

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<sup>39</sup> IF, hearing minutes of 4 December 2017, pages 22 to 36.

216. The harshest ill-treatment was when they went to eat in the canteen, where they got only 2 minutes to finish their meals. When they started serving soup in the canteen, detainees were not able to eat the soup since it would have required more time to cool down. They would just get the bread and leave.
217. Witness **DF**<sup>40</sup> arrived on 2 May 1999 in the agricultural cooperative of Vushtrri, where he spent the night. The following morning the men were separated from the women and brought to Smrekovnica/Smerkovnicë prison. He was brought there to the movie room or cinema hall, the TV hall, and stayed there 21 days. There was only one toilet for a very large number of men. After some days a huge barrel of water was brought in, and when they started drinking this water they all got sick. Since not all men were able to use the toilet at the same time, they relieved themselves inside the hall.
218. They were not guarded by regular prison guards but by paramilitary, one of them was Z.V.. He beat and gravely mistreated the witness' cousin Re.O and when he let him go he told him: "whoever is from Bare, tell them to go outside, don't force me to go inside and bring them all one by one because it will be worse for you". So they went out, about 20 people, and were ordered to remove their jackets. Amongst them were BF, the witness' uncle Ja.F, the witness' cousin IF and AO.
219. Z.V. started ill-treating them with a broom stick; they all received 60 to 70 hits on their hands. This happened outside, in front of the building, at the bottom of the stairs. A blond person, who was a bit shorter, assisted Z.V. with this beating, when Z.V. was tired he would ask this other person to continue. There was no medical treatment in the prison.
220. When they were going to eat, Z.V. would come in and hit the table with the baton and he would count 3, 2, 1, stand up, you are done. They could hardly eat anything, so they would take some bread with them and put it in their pockets. When they would come back, the police formed two lines, so they would hit someone with a broomstick, or would kick them, depending how they were being hit.
221. The witness also recalled how the Defendant would bring alcoholic drinks while outside and would grill meat and play nationalist songs.
222. Finally, the witness added that the reason why the Defendant ordered men from Bare village to go outside was that the Defendant would allege that someone from his family was killed in Melenica or in Shala region.
223. Witness **SO**<sup>41</sup> stated that on 2 May 1999 he was forced out of the village where he was living and was taken to Smrekovnica/Smerkovnicë prison. He was sent to a big hall (he did not know if that was a TV room) where approximately 200 to 300 men were staying. There was no place to sleep, just a cement floor, and there were no blankets. He was kept in prison until 23 May 1999.

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<sup>40</sup> DF, hearing minutes of 29 November 2017, pages 2 to 24.

<sup>41</sup> SO, hearing minutes of 7 December 2017, pages 24 to 41.

224. "Z." was one of the police officers who guarded them and beat them up during one night. All the men from Bare were summoned to go outside. Z. was tall and well built.
225. The witness was ordered to hold out his arms and was hit on the palms of his hands, with something out of wood, like a broomstick, roughly one meter long. When he did not hold his arms out as Z. wanted, he got hit on his head and this happened twice. The witness does not remember how many blows he received.
226. Many men from Bare were beaten, amongst whom IF, Zej.F., AO, DF. The witness did not know Z. previously, other prisoners told him the name of "Z."
227. Another time Z. was hiding behind a tree and hit him on the back while the witness was going for dinner. The witness mentions they always were made to run when on their way to the canteen. Many times when they would say Z. was on shift, the witness would not go to eat because he could not run and it was better not to eat at all than get beaten up. On the night when Z. hit him, the Defendant came to the canteen where the witness was having dinner and said "you have 2 or 3 minutes to eat". The witness was not able to eat anything, but just took some bread with him and left the soup.
228. On 23 May 1999 they were put in a bus and brought to the border of Albania.
229. Witness **SR**<sup>42</sup> also recalled the beating received from the Defendant Z.V..
230. He stated that upon entering Smrekovnica/Smerkovnicë prison everything was taken from him: 16.500 Deutsche Marks and an amount of Serbian Dinars worth 800 DM and his wrist watch. For three days long he did not get food or drinks.
231. One of the next days, when the prisoners were allowed to dine in the cafeteria, Z.V. pulled the witness out and told him to stretch his hands. Z.V. hit him with a baton on his hands, his head and his legs. After that the witness was called for interrogation and was hit on the back of his head.
232. The Witness testified how the Defendant beat up several prisoners, amongst whom villagers from Bare.
233. Furthermore, the witness related the events of the beatings of brothers BM and SM. The witness eye-witnessed the event and stated that Z.V. participated in their beatings.
234. Z.V. beat S.G. too and he also made a father and son beat each other, namely MM (father) and FM (son).

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<sup>42</sup> SR, hearing minutes of 6 December 2017, pages 5 to 24.

235. The Witness further added that the Defendant would play national Serbian music and wore a blue police uniform, with the insignia “milicija”. He was so tall his trousers looked short on him.

236. Witness **R.A.**<sup>43</sup> testified that he was in Smrekovnica/Smerkovnicë for 29 days after his arrival on 2 may.

237. Z.V. hit him 150 times with a broomstick and took 2.000 DM from him. The Witness also saw through the window how Z.V. beat three other men.

238. They used to have two minutes to eat in the cafeteria in prison. He wore a black police uniform.

### Analysis

- *The recognition of Z.V.*

239. Several Witnesses testified before the Trial Panel as to their familiarity with the Defendant, therefore corroborating the fact that they could identify him once at Smrekovnica/Smerkovnicë prison.

240. Two groups have to be distinguished. The group of Witnesses originally from Vuhtrri who had prior knowledge of Z.V., and the group of Witnesses from Bare, who did not know the Defendant but were told his names by the Witnesses from Vushtrri.

#### *Witnesses from Vushtrri*

241. The witnesses reported how Z.V. worked in the municipal Court in Vushtrri and they also knew him from other occasions.

242. Witness **SK** stated that, as a matter of fact, he had seen Z.V. for the first time while he was working at the municipal Court. Subsequently, he recounted the time when Z.V. removed him from a bus and ordered him to run away. Besides that, the Witness was seeing Z.V. around the town of Vushtrri and in 1999 he would always see him in uniform.

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<sup>43</sup> R.A., hearing minutes of 6 December 2017, pages 25 to 45.

243. Witness **S.G.** confirmed that Z.V. worked in the Court house, office number 6, and he added that he met him many times around the town of Vushtrri.
244. Witness **Sa.G.** knew Z.. Before moving to the Court, Z. used to carry out construction works in the “Kosova Vushtrri” company. The brother of the witness worked there as well. The witness also saw him in the Court house.
245. Witness **MU** also stated that he knew Z.V. worked in the Court house, office number 6, and he had met him there three or four times for stamping documents.
246. Witness **BM** also affirmed that the Defendant used to work in the Courthouse, although he only knew him by the name of Z.. The Witness substantiated that when he used to have traffic tickets issued against him, he would go to Z.’s office in the Court since he was the one who had the relevant documentation.
247. Witness **FP** also related how he knew the Defendant from appearance and that he was working in the Court house, where he would see him going inside and out of the Court, sometimes smoking in front of the Court. The Witness added that Z.V. used to play basketball with the youth close to the school.
248. Witness **GH** told the Trial Panel that he knew the Defendant only by the name of Z. and that he would come several times to the petrol station where the Witness was working and that he would see him several times in Vushtrri before the war. He then added that the Defendant would always be dressed in civilian clothes.
249. Witness **SB** stated that he knows the Defendant under the name “Z.” and that he worked in the Court. He would meet him in the Court when he had to take a document for a case in the Court.
250. Witness **SR** knew Z.V. from the market in Vushtrri and because he needed to have a work permit, that needed to be stamped in the Court of Vushtrri in office number 6, where Z. worked. The witness knows that Z.V. used to live in the street “D.e K.”.
251. Witness **R.A.** stated that he had seen the Defendant twice in the Court house in Vushtrri.
252. Furthermore, the fact that Z.V. worked at the Court in Vushtrri is a fact proven by the Defendant himself who confirmed he worked in the Court<sup>44</sup>.

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<sup>44</sup> See *supra* 25.

*Witnesses from Bare village*

253. Witness **AO** stated that everybody in the TV hall knew the Defendant and they would call him Z.. He was wearing a blue police uniform; he was 180, 185 up to 2 meters tall, black hair, and slimmer. He was around 30, 35 years old.
254. After being beaten and returned inside the prison building, witness **IF** was told by other men that the police officer who beat him was called Z. and that they knew him because they were from Vushtrri and Z. used to work in the Court of Vushtrri.
255. Witness **BF** testified that he heard the name of the Defendant Z.V. for the first time in the morning of 3 May 1999, when he left the hangar of the agricultural cooperation where he spent the night. A woman, who used to work at the Court, recognized Z.V. and told the witness.
256. Witness **DF** stated that he did not know Z.V. prior to these events, but he heard his name from other prisoners who knew him. He described him as a big guy, 1,90 to 2 meters, well built, dark hair, age 27-29 years old.
257. Witness **SO** also said that he did not know Z. previously, but other prisoners told him the name of “Z.”.
258. Witnesses **BF** and **DF** additionally recognized the Witness from a photo line-up.

*Conclusion*

259. The recognition of the perpetrator done by the Witnesses is based on strong grounds and, considering also the undisputed facts elaborated above, for this reason it was considered by the Trial panel as reliable and conclusive.

- *Beatings and measures of intimidation perpetrated by the Defendant against the victims*

260. Based on the above elaborated evidence, the Trial Panel found established that the Defendant perpetrated severe beatings and acts of physical maltreatment against BF, S.G., Sa.G., MU, FP, BM, SM, SH, AO, IF, DF and SO, SR and R.A..

261. Furthermore, the Defendant inflicted mental suffering through the instigation of fear and terror on all above mentioned victims, as well as on SK, GH and SB.



262. The Witnesses recalled the events either as being direct victims or as eye-witnesses. They were consistent, precise and corroborated each other concerning the general events surrounding their detention, the beatings carried out by the Defendant as well as the climate of intimidation and terror they were subjected to not only in the canteen but in general throughout their detention.
263. The Witnesses even corroborated each other when it came to the modalities employed by the Defendant in carrying out the beatings (if hands were removed he would then hit them on their heads or shoulders) and also concerning characteristic details surrounding the ongoing beatings, namely the fact that the Defendant would play nationalist songs while perpetrating the acts and together with other guards he would drink alcohol and grill meat. All these details were consistently reported by majority of witnesses.
264. The description of the location where the events took place also corroborates to a conclusive level. All witnesses talked about their staying in the TV hall and such TV hall was clearly referred to and marked by several witnesses on **exhibits 5 and 6**.
265. All witnesses, then, testified as to how the beatings occurred outside this TV hall, near the stairs of the entrance of the hall, and they could see such beatings through the windows of the TV hall.
266. The Trial Panel also found the Witnesses' statements fair in their recounts and with no intent or motive to falsely incriminate. As a matter of fact, several witnesses stated that they were beaten only once by the Defendant.
267. Indeed the Trial Panel observed some discrepancies and some exaggerations in some of the testimonies, namely the discrepancies in the statements of the Musa brothers concerning their fight, and the overstatement given by Witness R.A. in his recollection of the received beatings.
268. However, the Trial Panel firstly considered these discrepancies not so fundamental as to doubt the culpability of the Defendant. As a matter of fact, SM testified as to the presence of a taller police officer in the group of officers that forced him to fight with his brother. Furthermore, the statement of BM was corroborated by other eye-witnesses, like DF and SR.
269. The Trial Panel, therefore, apart from not considering these discrepancies as eroding the incrimination of the Defendant on this point, framed them as part of the unavoidable discrepancies deriving from the lapse of time.
270. Concerning a possible amplification of events in the statement of witness R.A., also in this case the Trial Panel considered that the elements of overemphasis depicted in the witness's statement do not discredit the incrimination of the Defendant in any way and they can be linked to an obvious emotional status still carried by the witness. As a

matter of fact, aside from these seemingly exaggerations, the witness's statement corroborates and is corroborated by the other witnesses' statements.

- ***Conclusion on Count III***

271. The Trial Panel, therefore, found proven that the Defendant Z.V. beat structurally BF, S.G., Sa.G., MU, FP, BM, SM, SH, AO, IF, DF and SO, SR and R.A., and subjected all of them as well as SK, SB and GH to measures of fear, intimidation and terror.

272. At the same time, no elements emerged during the course of the Trial indicating the level of involvement, if any, of the Defendant in the operations that led to the detention of the victims at Smrekovnica/Smerkovicë prison.

273. As such, the Trial Panel could not find proven that the Defendant Z.V. participated in the unlawful detention of large numbers of the ethnic Albanian civilian population, at the Smrekovnica/Smerkovicë /Smerkovicë Prison.

## **F. LEGAL QUALIFICATION**

274. The Trial Panel had to assess whether the facts found proven amount to "War crimes against the civilian population" committed in co-perpetration, provided for and punished by Article 142 read together with Article 22 of the CCSFRY, and currently criminalized under Article 152, 153 and 31 of the CCK.

### **- Elements of War Crimes**

275. In order for a war crime have been committed, the following elements must be proven:

- (a) the existence of an armed conflict**
- (b) the so-called nexus**
- (c) the status of the victims, alia the protected persons**
- (d) existing provisions of international humanitarian law and the gravity or seriousness of the violation**
- (e) the individual criminal responsibility**

- ***Existence of a non-international armed conflict***

276. In relation to the existence of an armed conflict in the above mentioned period, the Court takes as judicial notice the findings of the Trial Chambers of the ICTY, as accepted and recognized jurisprudence, as well as the jurisprudence of domestic Courts.

277. The test for determining the existence of an armed conflict was set out by the Appeals Chamber in the *Tadić* Jurisdiction Decision:

*“[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there<sup>45</sup>.*

278. Therefore, it has to be determined whether (i) the armed violence is protracted, (ii) its intensity and (iii) whether the parties to the conflict were organized.

279. In the *Limaj case*<sup>46</sup>, the ICTY Trial Chamber firstly assessed that:

*“Serbian forces involved in Kosovo in 1998 included substantial forces of the Army of Yugoslavia (“VJ”) and the Serbian Ministry of Internal Affairs (“MUP”),<sup>321</sup> i.e. the police, and, therefore, constituted “governmental authorities” within the meaning of the Tadic test”*

280. Moving then to analyze the organizational structure of the KLA and while detailing the development of the KLA and KLA units’ establishment, the Chamber assessed that there was a General Staff of the KLA which would define and appoint the different operational zones and that:

*“..from late May to late August 1998 the territory of Kosovo was divided by the [Kosovo Liberation Army] KLA into seven zones: Drenica, Dukagjin, Pastrik, Shala, Llap, Nerodime, and Karadak. Each zone had a commander and covered the territory of several municipalities. The level of organization and development in each zone was fluid and developing and not all zones had the same level of organization and development, since this was significantly influenced by the existence and extent of the KLA’s presence in each zone before April 1998”<sup>47</sup>.*

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<sup>45</sup> *Prosecutor vs. Dusko Tadic* aka “Dule”, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para 70.

<sup>46</sup> *Prosecutor vs. Fatmir Limaj et al.*, case No. IT-03-66-T, of 30 November 2005, para 93.

<sup>47</sup> *Ibid*, para 95.

281. The Chamber then found a growing formality and effectiveness of the organizational structure of the KLA by mid May 1998, and of the progress of the General Staff towards ensuring that the KLA functioned as a disciplined and coordinated military force<sup>48</sup>.

282. Furthermore, the Chamber also assessed how by July 1998 the KLA had become accepted by international representatives, and within Kosovo, as a key party involved in political negotiations to resolve the Kosovo crisis:

*“This discloses and confirms that by that time the KLA had achieved a level of organizational stability and effectiveness<sup>49</sup>”.*

283. Reversing then to the intensity of the conflict, the Chamber was satisfied that, because of the intensity of the clashes and the ability of the KLA to engage in such clashes:

*“before the end of May 1998 an armed conflict existed in Kosovo between the Serbian forces and the KLA”<sup>50</sup>.*

284. The Trial Chamber in the Haradinaj case<sup>51</sup> further substantiated and found that an armed conflict existed in Kosovo **from and including 22 April 1998 onwards.**

285. The armed conflict terminated on **20 June 1999<sup>52</sup>**, when the Nato Secretary General officially terminated the air strike campaign.

286. The Supreme Court Decision of 21 July 2005 in *Latif Gashi et al.* also found that between August 1998 and mid-June 1999 the organizational structure of the KLA satisfied the requirements under Common Article 3 of the Geneva conventions and Additional Protocol II.<sup>53</sup>

287. The Trial Panel found established that the time frame during which the civilians were subjected to inhumane treatment by the Accused Z.V. run between 03 May 1999 and beginning of June 1999. The events, therefore, occurred during the existence of the internal armed conflict in Kosovo.

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<sup>48</sup> *Ibid*, para 117.

<sup>49</sup> *Ibid*, para 129.

<sup>50</sup> *Ibid*, para 171.

<sup>51</sup> *Prosecutor vs. Ramush Haradinaj et al.*, case No IT-04-84-T, of 03 April 2008, para 100.

<sup>52</sup> See the Supreme Court Judgment in the *Lekaj* case, as well as UNMIK regulation 2006/50.

<sup>53</sup> Supreme Court Decision in *Latif Gashi et al.*, 21 July 2005, page 10, English version.

- *The nexus*

288. The Trial Panel followed the concept observed by the ICTY in relation to the necessity of a nexus between the accused's action and the armed conflict, in order to classify a criminal act committed during the armed conflict as a war crime.

289. In the Tadic case, the ICTY Appeals Chamber expressed the opinion that:

*“There must be an obvious link between the criminal act and the armed conflict...It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.”*<sup>54</sup>

290. A more detailed explanation on this issue was presented by the ICTY Appeals Chamber in the *Kunarac* case:

*“What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent **upon the environment** – the armed conflict – in which it is committed. It need not have been planned or supported by some form of plan or policy. The armed conflict need not have been causal to the commission of the crime, **but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.** Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict [ . . . ]”*<sup>55</sup>;

291. The Trial Panel has assessed that the actions that were carried out by the Accused at Smrekovnica/Smerkovnicë prison against the Albanian civilian victims were explicitly linked to the situation generated by the ongoing armed conflict.

292. The separation of hundreds of men of military age from women, children and elder that took place at the agricultural cooperative on 03 May and the later transfer of the selected men to Smrekovnica/Smerkovnicë was clearly part of a military action carried out by the Serbian forces against the Albanian civilian population.

293. The Defendant, who normally worked as a court clerk in the Court in Vuhsttri, had been enrolled as a Serbian police reservist during the period of the armed conflict, and then employed as a Prison guard at Smrekovnica/Smerkovnicë prison during the critical time.

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<sup>54</sup> See *Supra* number 45, para 70.

<sup>55</sup> *Prosecutor V. D. Kunarac, R. Kovac e Z. Vukovic*, Appeal Chamber, Judgment of 12 June 2002, para 58 and 59.

294. The ongoing conflict disabled any activity of governmental protection and guarantees including those that should have been afforded by state-run law enforcement institutions, which instead took a position of enemy and persecutor of the Albanian civilian population. Civilians were deprived of any form of legal protection against arbitrary and offensive acts.

295. The Accused acted within this environment, while enjoying a temporary impunity.

296. The Trial Panel, hence, found an obvious link between the actions carried out by the Defendant and the armed conflict.

- *Status of victims – protected persons*

297. In order to be protected under International Humanitarian Law, victims must be considered as protected persons. Common Article 3 to the Geneva Conventions defines protected persons as those taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause.

298. Article 4 of the Additional Protocol II to the Geneva conventions also extends the protection under IHL to all persons who do not take a direct part or who have ceased to take part in hostilities.

299. The ICTY Trial Chamber in the *Halilovic case* found that:

*“it is the specific situation of the victim at the moment the crime was committed that must be taken into account in determining his or her protection under Common Article.”*<sup>56</sup>

300. The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.

301. And again, in the case of *Galic*, the ICTY Trial Chamber has substantiated how:

*“[f]or the mens rea recognized by Additional Protocol I to be proven, the Prosecution must show that the perpetrator was aware or should have been aware of the civilian status of the persons attacked. In case of doubt as to the status of a person, that person shall be considered to be a civilian. However, in such cases, the Prosecution must show that in the given circumstances a reasonable person could not have believed that the individual he or she attacked was a combatant”*<sup>57</sup>.

302. In the case at hand, all victims were civilians, and there is no indication of any of the witnesses or injured parties having taken a direct (AP2 Art. 4) or active part (Art. 3 Common) in the hostilities.

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<sup>56</sup> *Prosecutor v Sefer Halilovic*, Judgment of 16 November 2005, III.A.2.

<sup>57</sup> *Prosecutor vs. Stanislav Galic*, Judgment of 05 December 2003, para 55.

303. The Trial Chambers in the *Tadic* case stated how:

*“...active participation in hostilities’ has been defined by the delegates as “acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces”<sup>58</sup>.*

304. The Trial Chamber further took note of the ICRC Commentaries, where it is stated that:

*“to restrict [the concept of participating directly in hostilities] to combat and to active military operations would be too narrow, while extending it to the entire war effort would be too broad.. [and that] ... in modern warfare the whole population participates in the war effort to some extent, albeit indirectly..[but] ....**active participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place.**”<sup>59</sup>.*

305. Witnesses have testified as to how they were not members of KLA. Witness Sh.G. stated that he offered medical assistance to both civilians and KLA members and that, as such, he had to be formally a member of KLA. However, he only acted in his capacity as general practitioner. When providing medical assistance he would wear a white gown.

306. Witnesses BM, DF,SR, SO, Sa.G. and BF all recalled how, upon arrival at Smrekovnica/Smerkovnicë prison, they were interrogated and accused of being KLA members to which they all firmly denied. They were then obliged to sign against their will a declaration alleging that they were terrorists. It could, therefore, be objectively established from the modality of the detention that it was a renowned fact within the prison that the detainees were civilians and not member of the KLA, and that they were not actively involved in the hostilities at the relevant time.

307. The Witnesses affirmed how they always wore civilian clothes and never hold any weapons and this was also stated by the victims during their interrogations upon arrival at Smrekovnica/Smerkovnicë prison.

308. S.G. further testified as to how the Defendant told the witness that he knew that the witness was not a member of KLA, but that he had provided KLA with ‘some help’.

309. The Trial Panel could then infer from the adduced evidence that the Defendant was well aware that the victims were civilians.

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<sup>58</sup> See *Supra* number 45, para. 616.

<sup>59</sup> ICRC Commentary to Additional Protocol I, para. 1679.

- *In violation of rules of international law effective at the time of war, armed conflict or occupation – definition of prohibited acts- and gravity/seriousness of violations of international humanitarian law*

310. For a conduct to amount to a war crime, it must be proven that the violation constitutes a breach of a rule of international humanitarian law, either customary in nature or regulated under treaty provisions and requirements.

311. The first regulation of international humanitarian law that dealt specifically with humanitarian protection in situations of non-international armed conflict was Article 3 common to the four Geneva Conventions adopted on 12 August 1949:

*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

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

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

*(b) Taking of hostages;*

*(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;*

*(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”*

312. Furthermore, in order for a violation of Commons Article 3 to be established, the violation must be “serious”, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim.

313. The ICTY trial Chamber in *Kunarac* case also referred to the fact that:

*“It is well established in the jurisprudence of the Tribunal that common Article 3 as set out in the Geneva Conventions has acquired the status of customary international law,.. ..and in particular, the provision of serious violations is indeed regarded as being part of customary international law, and serious violations thereof would at once satisfy the four requirements mentioned above”<sup>60</sup>.*

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<sup>60</sup> See *supra* number 55, para 68.



314. The catalogue of acts that should be prohibited was complemented by Article 4 Paragraph 2 of the Additional Protocol II which partially repeated the wording of common Article 3. It recommended penalization of the following acts:

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

*(b) collective punishments;*

*(c) taking of hostages;*

*(d) acts of terrorism;*

*(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;*

*(f) slavery and the slave trade in all their forms;*

*(g) pillage;*

*(h) threats to commit any of the foregoing acts.”*

315. The Geneva Conventions of August 1949, with their common Article 3, were ratified by the Federal People’s Republic of Yugoslavia on 15 September 1950. On 26 December 1978 the Additional Protocol II to the four Geneva conventions was ratified by the Republic under its new name, i.e. as the Socialist Federal Republic of Yugoslavia.<sup>61</sup>

316. The treaty provisions were transcribed domestically into the body of the CCSFRY.

317. Article 142 of the CCSFRY 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 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

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<sup>61</sup> Međunarodni ugovori at 1083 (International contracts at 1083).

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 penalty”.

318. The amendment of Article 142 of the CCSFRY that entered into force on 30 August 1990 widened the scope of criminalization of acts against civilians. Besides numerous crimes against a civilian population, it also criminalized as a war crime an attack against individual civilians or persons unable to fight, which resulted in the death, grave bodily injuries or serious damaging of people’s health.<sup>62</sup>

319. Thereby, aside from the customary nature of the provisions under Common Article 3, the relevant treaty provisions had been ratified at the time of commission of the criminal offences.

320. The ICTY jurisprudence established that a violation of international humanitarian law is serious if it constitutes:

*“a breach of a rule protecting important values, and the breach must involve grave consequences for the victim”.*<sup>63</sup>

321. Although specific on the elements of the acts of torture, the ICTY Trial Chamber in *Kvočka et al.* case<sup>64</sup> stated that:

*“Damage to physical or mental health will be taken into account in assessing the gravity of the harm inflicted. [A]buse amounting to torture need **not necessarily involve physical injury**, as mental harm is a prevalent form of inflicting torture. For instance, the **mental suffering** caused to an individual who is forced to watch severe mistreatment inflicted on a relative would rise to the level of gravity required under the crime of torture.”*

322. The Trial Chamber in the *Delalic, Mucić et al.* case ("Čelebići" camp case), thoroughly elaborated on what constitutes an ‘*atmosphere of terror*’. It stated that:

*“the detainees in the Čelebići prison-camp were continuously witnessing the most severe physical abuse being inflicted on defenseless victims. This evidence further demonstrates how **the detainees in crowded conditions of detention were obliged to helplessly observe the horrific injuries and suffering caused by this mistreatment.**”*<sup>65</sup>

323. And again:

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62 Službeni List SFRJ 38/90 (The official gazette of SFRY 38/90).

63 *Kunarac case, supra* number 55, para. 66.

64 *Prosecutor vs. Kvočka et al.*, Judgment of November 2, 2001, para. 149.

65 *Prosecutor vs. Delalic, Mucic et al.*, Judgment of 16 November 1998, para 1086.

“.... the detainees in the Čelebići prison-camp were exposed to **conditions in which they lived in constant anguish and fear of being subjected to physical abuse**. Through the frequent cruel and violent deeds committed in the prison-camp, aggravated by the random nature of these acts and the threats made by guards, the detainees were thus subjected to an immense psychological pressure which may accurately be characterized as **'an atmosphere of terror'**.”<sup>66</sup>

324. The ICTY Trial Chamber in the case of *Vasiljevic*, asserted that:

“..to assess the **seriousness of an act**, consideration must be given to all the factual circumstances. These circumstances may include the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim including age, sex and health, as well as the physical, mental and moral effects of the act upon the victim..... While there is no requirement that the suffering imposed by the act have long term effects on the victim, the fact that an act has had long term effects may be relevant to the determination of the seriousness of the act.”<sup>67</sup>

325. Specifically on the constitutive elements of outrages upon personal dignity, the ICTY Trial Chamber in the *Kunarac* case, while referring to what stated by the ICTY Trial Chamber in the case of *Aleksovski*, namely that:

“An outrage against personal dignity is an act which is animated by contempt for the human dignity of another person. The corollary is that the act **must cause serious humiliation or degradation to the victim**. It is not necessary for the act to directly harm the physical or mental well-being of the victim. It is enough that the act causes real and lasting suffering to the individual arising from the humiliation or ridicule”<sup>68</sup>,

326. it, however, affirmed that:

“**So long as the humiliation or degradation is real and serious, the Trial Chamber can see no reason why it would also have to be “lasting”**. In the view of the Trial Chamber, it is not open to regard the fact that a victim has recovered or is overcoming the effects of such an offence as indicating of itself that the relevant acts did not constitute an outrage upon personal dignity. Obviously, if the humiliation and suffering caused is only fleeting in nature, it may be difficult to accept that it is real and serious. However this does not suggest that any sort of minimum temporal requirement of the effects of an outrage upon personal dignity is an element of the offence”<sup>69</sup>.

327. The *mens rea* of inhumane acts is satisfied where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act

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<sup>66</sup> *Ibid*, para. 1091.

<sup>67</sup> *Prosecutor vs. Mitar Vasiljevic*, Judgment of 29 November 2002, para 235.

<sup>68</sup> *Prosecutor v Aleksovski*, Case No IT-95-14/1-T, Judgement of 25 June 1999, para. 49.

<sup>69</sup> See *supra* 55, para 501.

or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless thereto<sup>70</sup>.

328. As set out above, the Trial Panel has found proven that the Defendant Z.V. beat structurally several prisoners very severely during a prolonged period of time. The witnesses recounted the harshness of the beatings, the cruel modality in which the beatings were carried out (if the victims would lower their hand, they would then be beaten in their heads and/or shoulders), the number itself of received beatings.
329. The victims related how after the beatings their hands were swollen and they had to wrap their hands in socks that were soaked in water. Two witnesses also recalled how their hands and wrists were broken and many victims related that they still suffer from the consequences of these beatings nowadays, although, as highlighted in the above ICTY jurisprudence, this element would not be essential for the element of seriousness/gravity, but it only further substantiates the circumstances of the actions.
330. Aside from the physical aspect of the beatings, the Trial Panel took into consideration also the great mental suffering that the victims were subjected to and the way they were terrified of and terrorized by the Defendant. The modalities in which the Defendant perpetrated the beatings are indicative of the cruelty and of the inferred mental suffering.
331. Victims were beaten just outside the TV hall, where all detainees could see the ongoing actions. The beatings would be paired by behaviors aimed at further mentally impacting on the victims, namely while playing nationalist songs and grilling meat and drinking beers while the victims were detained in extremely severe conditions.
332. Furthermore, although several witnesses have stated being beaten only once, they did not know at that time if beatings would have occurred again and when. This combined with the fact that almost all witnesses were kept in detention for a prolonged period of time, amplified their fear and terror of if and when possible next beatings would occur.
333. As a matter of fact, all witnesses recounted how the Defendant was the cruelest of all the guards and how the level of terror continued and was recurrent during the meals time to a point that some victims would prefer skipping their meals then facing the Defendant. This is applicable also to those victims who were not subject of direct beatings, but who nevertheless suffered from this environment of terror.
334. On the line of what established by the ICTY Trial Chamber in the ‘*Čelebići camp*’ case, the Trial Panel assessed how the Defendant’s crimes were particularly serious in terms of the protected interests which he violated – namely the physical and mental integrity of the victims, the consequences for the victims (great physical and mental suffering that they still carry with them nowadays), the *modus operandi* through which the Defendant acted, and the reasons for which these crimes were committed, which was

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<sup>70</sup> *Blagojevic and Jokic*, Judgment of 17 January 2005, para. 629-630.

no reason other than sheer ethnic hatred. Ethnic hatred that was highlighted also throughout the above mentioned *modus operandi*, whereby the Defendant would play nationalistic songs while carrying out the beatings and he would summon victims based on their region of belonging and he would be particularly cruel towards a certain group of people (namely those from Bare village) since there were allegations that a relative of the Defendant had been killed in that region.

335. The Trial Panel, therefore, classified these acts as serious violations of international humanitarian law in the way they amounted to outrages upon personal dignity, in particular as humiliating and degrading treatment, in the form of violations of bodily integrity or health and immense suffering.

- **Individual criminal responsibility**

336. Pursuant to Article 142 of the CCSFRY, the perpetrator must order or commit the act in question.

337. The Trial Panel assessed the subjective elements (so-called *mens rea*) of the Accused.

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

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

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

341. The Trial Panel has established how the Defendant has intentionally committed the actions described above. He intentionally targeted the victims and perpetrated against them the incriminating actions established above.

342. Furthermore, the Trial Panel also found established that the Defendant acted in co-perpetration.

343. Article 22 of the CCSFRY reads as follows:

*“If several persons jointly commit a criminal act by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act”.*

344. The Trial Panel has assessed how the Defendant could carry out all the incriminated actions thanks to the fact that all other inmates were guarded and he was never stopped by anyone. On the contrary, as testified by the Witnesses, on several occasions he was in the company of other guards while performing his actions.

345. The Trial Panel points out that it is not necessary that all co-perpetrators be at trial or even known. This conclusion is consistent with both domestic and international jurisprudence.

346. The Supreme Court of Kosovo states the following in the case of *Latif Gashi et al.*, whereby it assessed that:

*“It goes without saying that the lack of information on other co-perpetrators cannot lead to the result that a person ...will not be prosecuted and/or sentenced according to the law.”<sup>71</sup>*

347. A similar approach is followed by the Supreme Court of Kosovo in the case of *Bedri Krasniqi*.<sup>72</sup>

348. The Trial Chamber of the Special Court for Sierra Leone has also acknowledged that *it is sufficient to plead the identities of the perpetrators by reference to their category or group*<sup>73</sup>.

349. Finally, the Trial Panel considered the actions carried out by the Defendant as a single criminal offence under Article 142 CC SFRY.

350. In this regard, the Kosovo Court of Appeals found in the case against *Z. Kolić* that:

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

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<sup>71</sup> Supreme Court Decision in *Latif Gashi et al.*, case Ap. – Kz. No. 89/2010, 26 January 2011, p. 24, English version.

<sup>72</sup> Supreme Court Decision in *Bedri Krasniqi*, case Ap.- Kz. No. 153/2008, 12 January 2010, pp. 21 - 22, English version.

<sup>73</sup> See *Prosecutor v Fofana and Kondewa*, case no. SCSL-04-14-T, Judgment of 02 August 2007, para 38.

*titled War Crime against Civilian Population and throughout the norm the plural is used, e.g. “civilian population subject to killings, torture, inhuman treatment...taking hostages, illegal arrests...”*<sup>74</sup>

351. The Commentary to Article 142 of the CCSFRY provides that:<sup>75</sup>

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

352. The Trial Panel concurs with this interpretation of the continuation of crime, since the carried out beatings as well as all the intimidatory behaviors perpetrated by the Defendant against the victims were led by the same opportunity, they were carried out with the same intent and against the same target, namely the Albanian civilians detained at Smrekovnica/Smerkovicë.

## **Conclusion**

353. In light of all assessed above, the Trial Panel found established that the acts committed by the Defendant Z.V. amount to War Crimes against the Civilian Population as provided for and punished by Articles 22 and 142 of the CCSFRY, currently criminalized by Articles 31, 152 and 153 of the CCK, in violation of Article 3 common to the four Geneva Conventions of 12 August 1949 and of Articles 4, 5(1) and 13 of Protocol II of 8 June 1977, additional to the 1949 Geneva Conventions.

## **G. DETERMINATION OF PUNISHMENT**

354. When imposing the criminal sanction, the Court has to consider both the general purpose of punishment, namely to suppress socially dangerous activities by deterring others from committing similar criminal acts, and the specific purpose, that is to prevent the offender from re-offending.

355. According to Article 34 of the CCK: “The purposes of punishment are: 1) to prevent the perpetrator from committing criminal offences in the future and to rehabilitate

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<sup>74</sup> Appeal Judgment dated 25 September 2013, para. 87.

<sup>75</sup> Ljubiša Lazarević, Commentary of the Criminal Code of FRY 1995, 5<sup>th</sup> Edition; Savremena Administracija; Belgrade.

the perpetrator; and 2) to deter other persons from committing criminal offences”. Bearing this in mind, the Trial Panel decides as follows.

356. Considering the entry into force of the new Criminal Code of the Republic of Kosovo as of 01 January 2013 (CCK), and in light of the principle of peremptory applicability of *lex mitior*<sup>76</sup>, the Trial Panel had to *in concreto* consider what law would be more favourable for the Defendant when calculating the sentence.

357. As stated by the European Court of Human Rights (ECtHR), *lex mitior* is the one which is more favourable to the Defendant, taking into account his or her characteristic, the nature of the offence and the circumstances in which the offence was committed<sup>77</sup>. Therefore, the *lex mitior* has to be found *in concreto*<sup>78</sup>.

### *Calculation of punishment under the CCSFRY*

358. The CCSFRY was applicable on the date of the commission of the criminal offence and was retained in force by Section 1 Paragraph 1.3 of the UNMIK Regulation 1999/24 of 12 December 1999.

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

*“The law applicable in Kosovo shall be:*

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

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

360. This regulation was amended on 27 October 2000 by UNMIK Regulation No. 2000/59, whereby capital punishment was abolished and replaced with a maximum punishment of 40 years imprisonment, as per Paragraphs (1.5) and (1.6).

361. The criminal offence of “War crime against the civilian population” is criminalized under Article 142 of the CCSFRY and, in light of what stated above, would carry a minimum punishment of five years of imprisonment and a maximum of forty years (in place of the death penalty).

362. However, Article 38 Paragraph (2) of the CCSFRY provides that the Court may impose a punishment of imprisonment for a term of twenty years for criminal acts eligible for the death penalty (as later become forty years of imprisonment).

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<sup>76</sup> See case of *Scoppola v Italy no.2*, no. 10249/03, ECHR.

<sup>77</sup> See case of *Scoppola v Italy (no. 2)*, no. 10249/03, para. 109, 17 September 2009; *Maktouf and Damjanovic v Bosnia and Herzegovina*, separate opinions, page 43.

<sup>78</sup> See above, *Maktouf and Damjanovic v Bosnia and Herzegovina*, page 44.



363. Concerning the general rule of punishment of imprisonment, Article 38 Paragraph (1) of the CCSFRY states that “[t]he punishment of imprisonment may not be shorter than 15 days or longer than 15 years”.
364. In the case at hand, the Panel would only consider the category of punishment of imprisonment between 5 and 15 years.
365. The applicable sentencing range is, therefore, *from 5 to 15 years of imprisonment*.

**Calculation of punishment under the previous Criminal Code of Kosovo (previous CCK)**

366. The previous CCK entered into force in 2004. With regard to the same criminal offence, Article 120 of the previous CCK also foresaw a punishment of not less than five years or long-term imprisonment.
367. Article 45 Paragraph (1) of the previous CCK states that “The punishment of imprisonment may not be shorter than 15 days or more than 20 years”.
368. The Panel, as pointed out above, would only consider the punishment of imprisonment.
369. The applicable sentencing range would, therefore, be from *5 to 20 years of imprisonment*.

**Calculation of punishment under the Criminal Code of the Republic of Kosovo (CCK)**

370. The CCK entered into force on 01 January 2013. With regard to the same criminal offence, Article 152 of the CCK also foresees a punishment of not less than five years or long-term imprisonment.
371. Article 45 Paragraph (1) of the CCK states that “The punishment of imprisonment may not be shorter than 30 days or more than 25 years”.
372. The Panel, as pointed out above, would only consider the punishment by imprisonment.
373. The applicable sentencing range would, therefore, be from *5 to 25 years of imprisonment*.

**Lex mitior**

374. The Trial Panel considered that the most favourable outcome for the Defendant would be *in concreto* reached by applying the CCSFRY.
375. The Court shall determine the punishment for a criminal offence within the limits provided for by law for such a criminal offence, taking into consideration the purpose of the punishment, all mitigating and aggravating circumstances and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the past conduct and personal circumstances of the perpetrator, his or her behaviour after committing the criminal offence and all the concrete circumstances in which the act was committed. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender.
376. As aggravating circumstances, the Trial Panel considered the number of victims, the fact that the Defendant's actions comprised of several separated acts, the fact that the victims were subjected to these acts during a prolonged period of time, and the fact that terror was inflicted permanently and also on people who were not subject of beatings.
377. As mitigating circumstances, the Trial Panel took into account the absence of criminal record and the fact that the Defendant carried out a decent professional life.
378. Considering the above noted mitigating and aggravating circumstances, the Trial Panel sentenced the Defendant to *six (6) years and six (6) months of imprisonment* for the criminal act of "War crime against the civilian population" in accordance with Article 142 in conjunction with Article 22 of the CCSFRY, in its wording as entered into force on 1 July 1977 that was retained in force by Section 1 Paragraph 1.3 of the UNMIK Regulation 1999/24 of 12 December 1999.
379. The time served in detention on remand since the Accused initial arrest on 10 March 2016 is to be included in the punishment of imprisonment pursuant to Article 50 Paragraph (1) and (3) of the CCSFRY.

**H. COSTS OF PROCEEDINGS**

380. Pursuant to Article 453 Paragraph 4 of the CPC, the cost of the criminal proceedings shall be partially reimbursed by the Defendant in a scheduled amount of Euro 300, while any remaining cost of the criminal proceedings shall be paid from the budgetary resources.

## I. PROPERTY CLAIM

381. Based on Article 218 Paragraphs (1) and (3) in conjunction with Article 460 Paragraph (3) of the CPC, the declarations of damage from the injured parties shall – *inter alia* – describe the person who caused the damage, how the damage occurred, how the damage was caused by or whether it was a foreseeable result of the criminal offence.
382. Pursuant to Article 463 Paragraph (3) of the CPC, the Court shall instruct the injured party that he or she may pursue the property claim in civil litigation, if the Court renders a judgement acquitting the accused of the charge or rejecting the charge or if it renders a ruling to dismiss criminal proceedings.
383. Pursuant to Article 460 Paragraph (3) of the CPC, the person authorized to file the motion must state his or her claim specifically and submit evidence.

### Count I

384. As to Count I, the Court has acquitted the Defendant Z.V. of the charges. As a result, the following property claims related to Count I are rejected and the injured parties who filed these claims are instructed that they may pursue these claims in civil litigation:

- HA

4050 Euro cost of medical treatment and money in value of 100 DM.

- RM

15.000 DM and jewelry in gold worth 10.000 DM.

- LM

2.800 cost of medical treatment and 2.000 – 3.000 DM, the wedding ring of XM and a golden necklace.

- BA

4.700 Euro cost of medical treatment as a consequence of the injuries received.

- V (K) M

5.850 cost of medical treatment

- SG

9.000 Euro damages to the house, 3.000 Euro stolen financial means, 2.000 Euro stolen jewelry, 2.400 Euro stolen car, 1.200 Euro killed cattle and poultry.

- B.A.

Over 10.000 Euro cost of medical treatment, 50.000 Euro for loss of house and adjacent premises, 5.000 Euro for the loss of cattle, 2.000 Euro of taken money, 3.000 for the loss of jewelry and 1.000 for the loss of clothes and food.

- NG

8.500 Euro for shelling and burning of his house, 3.850 Euro for robbery of financial means, 3.500 Euro for robbery of golden jewelry, 2.950 Euro for killing of life stock and poultry.

### Count II

385. As to count II, the Court has found the Defendant Z.V. guilty. The Court shall now assess each property claim related to that criminal offence.

386. The claim of AO, consisting of an amount of 450 Euro related to the cost of medical treatment, shall be dismissed, because the claim was not specified and no evidence was submitted, as required pursuant to Article 460 Paragraph (3) of the CPC.

387. The claim of MU, consisting of an amount of 1.650 Euro related to the cost of medical treatment and a loss of income of 18.000 Euro, shall be dismissed, because the claim was not specified and no evidence was submitted, as required pursuant to Article 460 Paragraph (3) of the CPC.

388. The claim of BF, consisting of an amount of 5.000 Euro related to the cost of medical treatment and compensation of 100.000 Euro for disappearance of entire wealth as a consequence of the war, shall be dismissed. Apart from the fact that the claim was not specified and no evidence was submitted as required pursuant to Article 460 Paragraph (3) of the CPC, the Defendant Z.V. was not charged with theft of money and/or personal belongings under Count III, as required pursuant to Article 218 Paragraph (1) of the CPC.

389. The claim of SR, consisting of an amount of 10.250 Euro related to the cost of medical treatment and an amount of 16.500 DM that was taken from him, as well as approximately 800 DM in Dinars and his wrist watch, as well as an amount of 9.500 DM that the Defendant allegedly took from him, as well as his vehicle that was taken by Serbian forces and was worth 5.000 DM, shall be dismissed. Apart from the fact that the claim was not specified and no evidence was submitted as required pursuant to Article 460 Paragraph (3) of the CPC, the Defendant Z.V. was not charged with theft of money and/or personal belongings under Count III, as required pursuant to Article 218 Paragraph (1) of the CPC.

390. The claim of BM, consisting of an amount of 800 DM related to the cost of medical treatment, theft of jewelry with a value of 3.000 DM as well as 900 DM in cash, 1.200 DM cost related to repair a destroyed tractor, 2.000 DM related to repair the truck at his house that was damaged, 9.000 DM to compensate five killed cows and 2 calves, 4.000 DM for a vehicle that was taken and 2.500 DM for necessary costs in Albania,

shall be dismissed. Apart from the fact that the claim was not specified and no evidence was submitted as required pursuant to Article 460 Paragraph (3) of the CPC, the Defendant Z.V. was not charged with theft of money and/or theft or destruction of personal belongings or the killing of cattle under Count III, as required pursuant to Article 218 Paragraph (1) of the CPC.

391. The claim of SM, consisting of an amount of 400 DM related to the cost of medical treatment, 13.100 Euro for an operation, and an amount of 850 Euro that the police took from him, shall be dismissed. Apart from the fact that the claim was not specified and no evidence was submitted as required pursuant to Article 460 Paragraph (3) of the CPC, the Defendant Z.V. was not charged with theft of money and/or personal belongings under Count III, as required pursuant to Article 218 Paragraph (1) of the CPC.
392. The claim of SB, consisting of an amount of 1.750 Euro related to the cost of medical treatment shall be dismissed, because the claim was not specified and no evidence was submitted, as required pursuant to Article 460 Paragraph (3) of the CPC.
393. The claim of R.A., consisting of an amount of 750 Euro related to the cost of medical treatment, shall be dismissed, because the claim was not specified and no evidence was submitted, as required pursuant to Article 460 Paragraph (3) of the CPC.

**Basic Court of Mitrovica**

**25 May 2018**

**Arnout Louter**

**Dariusz Sielicki**

**Radostin Petrov**

**Presiding Judge**

**Panel Member**

**Panel Member**

**Chiara Tagliani**

**Recording Officer**

LEGAL REMEDY: A Defendant, their legal counsel, the Prosecutor, an Injured Party or their Authorised Representative have 15 days from service of this judgment to appeal in accordance with Articles 380(1) and 381(1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388(1) of the CPC.