

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

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Date: 25 October 2022

Language: English

Classification: Public

Public Redacted Version of Corrected Version of the Pre-Trial Brief on Behalf of Kadri Veseli, With Confidential Annexes 1-3 (dated 25 October 2022, F01052/COR)

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I. INTRODUCTION

1. The Veseli Defence ("Defence") files this Brief pursuant to Rule 95(5) of the Rules of Procedure and Evidence; and the Pre-Trial Judge's oral order of 20 May 2022.¹
2. The Defence rejects all criminal allegations that the SPO has made in respect of Mr Veseli. The Defence will not address, individually, each allegation in the SPO's Pre-Trial Brief: any statements with which the Defence does not expressly state its agreement are to be regarded as disputed.
3. At present, the Defence's view is that there is no case for Mr Veseli to answer. In addition to the matters addressed in this Pre-Trial Brief, the Veseli Defence reserves the right to make further submissions of law at the appropriate stage of the proceedings.

II. SUBMISSIONS

A. Joint Criminal Enterprise

4. The SPO alleges the existence of a common criminal purpose, namely "to gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be opponents."² They contend that its existence is proved by (i) the context in which the KLA and Provisional Government ("PGOK") was created; (ii) statements and conduct of the Accused; (iii) KLA policies as reflected in communiqués, orders and regulations; and (iv) the crimes themselves.³

¹ Transcript, 20 May 2022, p. 1324.

² F00999/A02, para. 32.

³ F00709/A02, paras 1-2, 6, 7.

i. Inferences From Circumstantial Evidence

5. Despite the order in which the SPO has chosen to list these points, the heart of the SPO case on Joint Criminal Enterprise (“JCE”) rests on the central proposition that the number (as well as the geographical and temporal distribution) of the individual crimes alleged in the Indictment lead to an inevitable inference that these crimes must have been committed pursuant to a criminal agreement made between members of the General Staff. On a proper analysis of the whole of the evidence served by the SPO, its case *depends* on this suggested inference. As the Trial Chamber will be well aware, an inference such as this, which rests on circumstantial evidence, is only permissible in a criminal trial if there is no other reasonable inference available on the whole of the evidence.⁴
6. It is obviously insufficient for the SPO to prove that crimes were committed by individual members of the KLA (or by groups of such individuals) who were (or may have been) operating at a local level for their own purposes. In order to succeed on this foundational element of its case, the SPO must therefore prove that the crimes alleged were committed pursuant to a centralised agreement, at General Staff level, which had the commission of crimes against civilians as its intended purpose (“JCE I”) or its natural and foreseeable consequence (“JCE III”).

ii. The Role of the General Staff

7. The Defence submits that there is simply no basis for the suggested inference that these alleged crimes were committed at the behest of the General Staff, or with its knowing acquiescence. The mere fact that an alleged crime was

⁴ Rule 140(3) provides: In respect of circumstantial evidence, the standard of proof beyond reasonable doubt is only satisfied if the inference from that evidence is the only reasonable one that could be drawn from the evidence presented. If the evidence allows for other reasonable conclusion(s) to be drawn, the standard of proof beyond reasonable doubt is not satisfied.

committed by a KLA volunteer (or volunteers) is obviously insufficient for this purpose.

8. The Defence submits that in attempting to discharge its burden of proving joint criminal enterprise, the SPO has misunderstood or mischaracterised the role of the General Staff within the emerging KLA. It wrongly describes the KLA as a 'top-down' organisation, that was operationally controlled by the General Staff at all relevant times.⁵ It is necessary for the SPO to make this allegation because, in the absence of any probative direct evidence, its case cannot otherwise succeed.
9. However, two Trial Chambers of the ICTY have held, on much the same evidence, that the 'General Staff' (so-called) was comprised of a disparate group of individuals who had no defined headquarters;⁶ did not all know each other;⁷ did not all communicate with each other;⁸ seldom if ever met and were not always present in Kosovo.⁹ In short, this body was not operating as a General Staff in any conventional sense of the term.¹⁰
10. In the absence of any direct evidence of a joint criminal purpose adopted by the General Staff, the SPO's case again depends on inference from circumstantial evidence as the basis for alleging General Staff operational control. However, on this aspect of its case, the SPO lacks even the foundational evidence from which such inference is *capable* of being drawn.

⁵ See, e.g., F00709/A02, paras 1, 77, 97, 111-114, 125, 156-166. See also, F00999/A02, paras 32, 39.

⁶ ICTY, *Prosecutor v. Limaj*, IT-03-66-T, [Judgement](#), 30 November 2005, paras 132-134; ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84bis-T, [Retrial Judgement](#), 29 November 2012, paras 50, 63-65.

⁷ *Haradinaj*, [Retrial Judgement](#), para. 18. See also, *Limaj*, IT-03-66-T, [Transcript](#), 10 February 2005, p. 3306

⁸ *Haradinaj*, [Retrial Judgement](#), para. 18.

⁹ *Haradinaj*, [Retrial Judgement](#), para. 18.

¹⁰ *Haradinaj*, [Retrial Judgement](#), paras 20-21. See also, *Limaj*, [Trial Judgement](#), paras 132-134; See also, ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, [Judgement](#), 3 April 2008, paras 68-69.

11. All the evidence is to the effect that the General Staff *did not* exercise effective operational control over any KLA units on the ground, and this has been reflected in previous findings of the ICTY.¹¹ Such military organisation as may have emerged during the conflict was at all times essentially local. KLA fighters were volunteers, locally recruited and organised, and they planned and carried out their own military operations, answerable to a local commander, or zone commander, operating independently of the General Staff.
12. This case concerns events taking place in the midst of an asymmetrical armed conflict, conducted in rural Kosovo, where the KLA's fighting force was comprised of farmers, students and others, with no military background or training. Those volunteer fighters were collectively responding to a campaign of crimes against humanity by Serbian forces in Kosovo. Assumptions based on command relationships in conventional armed forces of a nation State, do not hold true for the relationship between the so-called General Staff, the locally self-appointed commanders, and the individual alleged perpetrators on the ground. Rudimentary efforts to organise the Albanian civilian population into a popular armed resistance were being carried out as the war was already underway. Titles, ranks and functions were adopted which bore no relation to realities on the ground.¹²
13. Prior to April 1999, there is no evidence of the people who called themselves the 'General Staff' issuing military orders envisaging the commission of crimes, or receiving regular reports from locally organised zone commanders. Much less is there any evidence that the General Staff ordered or authorised the commission of crimes. The KLA volunteers on the ground, and their local

¹¹ See, *Haradinaj*, [Trial Judgement](#), para. 68; *Haradinaj*, IT-04-84-T, [Exhibit P328](#), para. 8; *Haradinaj*, [Retrial Judgement](#), para. 21; *Limaj*, IT-03-66-T, [Transcript of Jakup Krasniqi](#), 14 January 2005, pp. 2037-2038; See also, *Limaj*, [Trial Judgement](#), para. 217.

¹² IT-04-84 P00141.E, p. 8.

commanders, were forced by the circumstances of the conflict to operate independently of the General Staff. The General Staff was a focal point for the international community and the media, intentionally creating the impression that the KLA was more organised than, in reality, it was.

14. Thus, the Trial Chamber in the first *Haradinaj* trial observed in its judgement that the General Staff was “hardly involved” in the development of the KLA in the Dukagjin Zone, and accepted that during 1998 there was no vertical hierarchy, certainly above zone commander level, but rather an essentially horizontal command structure within the KLA.¹³ The *Haradinaj* Retrial Chamber noted and accepted the expert evidence of Colonel John Crosland, the UK military attaché to Belgrade, who was present in Kosovo during the conflict, and who described the term ‘General Staff’ as a misnomer:

The Chamber heard from John Crosland that, while the KLA was organised, to call the body at the top of it ‘the General Staff’ was misleading. He did not think that the General Staff had effective control over the KLA.¹⁴

15. [REDACTED] Bislim Zyrapi, [REDACTED]. In his testimony in *Haradinaj*, Mr Zyrapi explained the situation in these terms:

In normal armies, the General Staff would have the possibility to contact troops and the commanders. But this was an army that was still a fledgling army, under development. So there wasn’t a possibility to do all those things.¹⁵

16. Mr Veseli left the General Staff towards the beginning of April 1999 in circumstances described below. The Defence has identified one operational instruction issued to the Pashtrik Zone command at about the time of Mr Veseli departure of the General Staff.¹⁶ The order, dated 1 April 1999, is of an obviously defensive character. The Veseli Defence has been unable to identify any other instruction of a military character among the evidence served or disclosed by

¹³ *Haradinaj*, [Trial Judgement](#), para. 68.

¹⁴ *Haradinaj*, [Retrial Judgement](#), para. 21, citing transcripts from Limaj and Haradinaj’s Trial Chambers.

¹⁵ ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, [Transcript](#), 24 April 2007, p. 3293.

¹⁶ IT-05-87.1 P00452.E; ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-T, [Trial Judgement](#), 23 February 2011, paras 713-714, 2027.

the SPO, before or after this date. Moreover, there is nothing in the terms of this instruction that suggests any common criminal purpose.

17. The order was issued in response to a Serbian offensive that commenced on the morning of 1 April 1999. As established in the *Dorđević* Judgement, Serbian forces “killed men in the village, threatened the people, set houses on fire, killed livestock and demanded money.”¹⁷ Approximately 70% of the village was destroyed and thousands of people were displaced from the surrounding villages.¹⁸ Significantly, the evidence from *Dorđević* establishes that the order was not followed, civilians did not evacuate and the KLA did not fire on Serbian forces.¹⁹ It, thus, takes the SPO’s case no further.
18. In the absence of direct evidence linking a pattern of crimes to members of the General Staff, and/or to the Accused, it is impossible to establish an evidential foundation for the core inference that the SPO seeks to draw. As the ICTY Trial Chamber found in *Limaj*,²⁰ whilst there may have been a general practice or policy in operation in some parts of Kosovo to target those assisting the enemy forces, (and who may, therefore, have been directly participating in hostilities), this could not lead to a conclusion that all crimes against civilians committed by members of the KLA were part of a single JCE, still less that they had been authorised at the level of the General Staff. This was because the command structures were insufficient, and lacked the capacity to exercise effective control:

In the guise of giving effect to this policy, a number of Kosovo Albanian civilians may have been abducted for other reasons, such as personal revenge of individual KLA members and other motives. The KLA did not have the resources or the command structure to adequately control the implementation of this policy by its forces at the time relevant to the Indictment, and the Chamber accepts that individual cases of abduction, for reasons not within the collaborator policy, were carried out by rogue elements of the KLA... [T]here were also instances of abduction undertaken by local

¹⁷ *Dorđević*, [Trial Judgement](#), para. 723.

¹⁸ *Dorđević*, [Trial Judgement](#), paras 713, 726.

¹⁹ *Dorđević*, [Trial Judgement](#), para. 716.

²⁰ *Limaj*, [Trial Judgement](#), paras 216-217.

elements of the KLA, who were acting independently of any central KLA control because, at the relevant time, the KLA had only limited capacity to exert effective control.²¹

19. The Trial Chamber in *Limaj* described the KLA as a “non-state actor with extremely limited resources, personnel and organisation”,²² that was “most aptly described, at the time relevant to the Indictment, as a guerrilla force engaged in limited combat with superior, conventional military forces”.²³ The military context identified as relevant by the Trial Chamber in that case was that Serbian armed forces were committing atrocities including “the razing of villages and the expulsion of civilians from villages, and which caused considerable and widespread civilian suffering”.²⁴ It also recalled that “the Serbian authorities armed civilians, and elements of the Serbian forces sometimes dressed in civilian clothing for covert action.”²⁵ Either could be legitimate military targets.
20. All of these factors are of course relevant in assessing the full circumstances of any particular crime alleged in the Indictment, and in determining whether the perpetrator was acting on instructions, as part of a common criminal purpose, or simply responding unlawfully to an existential threat *in extremis*.
21. There is no evidence of common motive among the alleged perpetrators of the disparate crimes alleged in the Indictment; no evidence that the crimes were connected with one another; no evidence that the perpetrators were motivated by a common criminal purpose; and no evidence that they acted pursuant to a criminal purpose, shared and promoted by the General Staff, or by Mr Veseli himself.

²¹ *Limaj*, [Trial Judgement](#), paras 216-217.

²² *Limaj*, [Trial Judgement](#), para. 191.

²³ *Limaj*, [Trial Judgement](#), para. 195.

²⁴ *Limaj*, [Trial Judgement](#), para. 193.

²⁵ *Limaj*, [Trial Judgement](#), para. 199.

iii. *Command, Control and Communication*

22. As in any war crimes prosecution that depends on inferences the prosecutor seeks to draw from circumstantial evidence, context is everything. Whilst the individual members of what became the General Staff had been trying to organise for some years before the Indictment Period, it was only when Serbian forces commenced the military attacks on the civilian population of Kosovo in early 1998, at Qirez, Likoshan, Prekaz and Glogjan (in central and western Kosovo), that the KLA began to attract popular support among villages seeking to arm and defend themselves against further such attacks.
23. The ability of the KLA leadership to establish command structures, and even lines of communication, was severely compromised by the intensive Serbian military operations throughout the Indictment Period. Until then, Serbian forces controlled virtually all the major towns and cities, as well as all the main roads. The emergence of rudimentary defence structures in the Kosovo countryside in 1998, and the attempts of those involved to establish some local organisation over the volunteer fighters in their region, is put into its proper context in Section D below.
24. At this point, it is sufficient to note that KLA command and communications capacities were rudimentary in the extreme, and were severely compromised by the intensive military operations of the combined Serbian forces. In *Limaj*, the Trial Chamber noted that the KLA sometimes relied on “gunshots” to send messages.²⁶ Even the SPO concedes that the KLA communications relied on an elaborate courier system.²⁷
25. Despite the findings of the ICTY, the SPO seeks to make the case that the General Staff operated as a top-down structure that emphasised hierarchy and

²⁶ *Limaj*, [Trial Judgement](#), para. 124.

²⁷ F00709/A02, paras 128, 134.

command.²⁸ This is not supported by the evidence. The SPO places particular emphasis on a set of disciplinary regulations that are said to “[REDACTED]”²⁹ and submits that these regulations gave the Accused “[REDACTED].”³⁰ However, the SPO witness relied upon to produce and explain the regulations directly contradicts the inference the SPO is inviting the Trial Chamber to draw from this document.³¹ His evidence is that the document was aspirational, and points out that the KLA was “[REDACTED]”.³² When asked in terms as to whether he would agree “[REDACTED]”, he responded, “[REDACTED].”³³ He then developed his answer stating: “[REDACTED].”³⁴

iv. KLA Communiqués, Orders and Regulations

26. The SPO argues that KLA policies, as reflected in various communiqués and political declarations, orders, rules and regulations, constitute evidence of a common criminal purpose.³⁵

1. Communiqués

27. With respect to the communiqués and declarations, the Defence submits that these are not evidence upon which the Trial Chamber can safely rely to draw any inference of shared criminal purpose among the Accused, and other members of the General Staff. They are certainly not evidence of any shared intention attributable to Mr Veseli.

²⁸ F00709/A02, para. 109.

²⁹ F00709/A02, para. 109.

³⁰ F00709/A02, para. 109.

³¹ 082894-TR-ET Part 2 RED, pp. 6-13.

³² 082894-TR-ET Part 2 RED, p. 6.

³³ 082894-TR-ET Part 2 RED, p. 8.

³⁴ 082894-TR-ET Part 2 RED, p. 8.

³⁵ F00709/A02, para. 6.

28. A distinction must be drawn between communiqués issued prior to the appointment of Jakup Krasniqi as KLA spokesperson in June 1998, and those issued after that time:
- a. In the former category, the vast majority pre-date the armed conflict, and there is no evidential connection to any of the Accused in this case. The authors and manner of compilation are unknown; key details such as location, target, perpetrator and manner of attack, are ambiguous; and some contain obvious falsehoods;³⁶
 - b. With respect to the communiqués and other statements issued *after* Mr Krasniqi's appointment, none describe specific attacks on alleged collaborators.³⁷ General statements aimed at deterring collaboration and threatening retribution, are not evidence of a common criminal purpose. They are more consistent with an attempt to dissuade citizens of Kosovo from actively collaborating with the enemy. Two separate ICTY Trial Chambers have accepted that the same collection of communiqués and statements formed part of a propaganda campaign, and were not evidence of establishing a joint criminal enterprise on the part of the KLA leadership.³⁸

29. In *Haradinaj*, the Trial Chamber explicitly found that these documents were propaganda rather than policy, and rejected the communiqués as evidence of a common criminal purpose:

³⁶ *C.f.*, IT-04-84 P00953.E (Communiqué 40): KLA report that it had shot down a Cessna Airplane; ICTY, *Prosecution v. Haradinaj et al.*, [Transcript of Zoran Stijović](#), 8 October 2007, p. 8984; See also the Trial Chamber's findings to that effect in *Haradinaj*, [Retrial Judgement](#), para. 635.

³⁷ The Defence submits that any unsigned 'statements' or 'communiqués' that are not attributable to at least one of the Accused (or any other alleged Joint Criminal Members) cannot be used to draw any inferences at all about a common criminal purpose.

³⁸ *Haradinaj*, [Trial Judgement](#), para. 472; *Haradinaj*, [Retrial Judgement](#), para. 630. See also, ICTY, *Prosecution v. Haradinaj et al.*, [Transcript of Jakup Krasniqi](#), 30 May 2007, p. 5060; *Limaj*, [Trial Judgement](#), para. 216.

[T]he KLA communiqués were part of the KLA ‘propaganda campaign’. The Chamber recalls the evidence of Jakup Krasniqi that the repetitive theme of retaliation against collaborators in many KLA communiqués should be interpreted in the context of the KLA’s ‘propaganda campaign’ which aimed at preventing civilians from serving ‘the Serbian regime’.³⁹

30. Finally, the Defence emphasises that these communiqués include condemnations of attacks on Serbian civilians, and of violence against any civilians held captive.⁴⁰ This mirrors the distinction drawn above between those who were believed to be directly participating in hostilities by contributing to the enemy war effort (who may be legitimate military targets under international humanitarian law), and those who were civilians entitled to concomitant humanitarian protection.

2. Rules, Regulations and Contemporary Documents

31. Likewise, the KLA Rules and Regulations, and other contemporary documents, do not reflect any common criminal purpose. The Defence notes that many of these documents (including the KLA Rules and Regulations, and other manuals), were specifically considered by three separate Trial Chambers of the ICTY.⁴¹ All three declined to find that they were evidence of a common criminal purpose on the part of KLA leadership.
32. The Defence points out that the SPO’s allegations are based on documents and orders that are mostly unsigned; are unsubstantiated by other testimonial evidence; and contain language that has been taken out of context. For example, the SPO relies on the KLA Rules and Regulations as reflecting the KLA’s policy towards perceived opponents.⁴²

³⁹ *Haradinaj*, [Retrial Judgement](#), para. 635. See also, *Haradinaj*, [Trial Judgement](#), paras 472, 478.

⁴⁰ *Haradinaj*, [Trial Judgement](#), para. 69, referring to KLA Political Statement No. 2, 29 April 1998, p. 1; See, IT-04-84 P00328, para. 6 and Annex 12, p. U0162145 (PDF, p. 53).

⁴¹ *Haradinaj*, [Trial Judgement](#), paras 472, 475; *Haradinaj*, [Retrial Judgement](#), paras 636-637. See also *Limaj*, [Trial Judgement](#), paras 116, 669; (confirmed in *Limaj*, [Appeal Judgement](#), paras 99, 103).

⁴² U000-0445-U000-0461-ET, p. 28.

v. The Statements and Conduct of the Accused

33. The SPO relies on the statements and conduct of the Accused as one of the elements said to prove the existence of a joint criminal enterprise. The Defence can only answer at this stage in relation to his own alleged statements and conduct. This is most conveniently addressed as part of the requirement that the SPO must prove that the individual Accused was a party to the criminal agreement and that he made a “significant contribution” to the common purpose either by procuring, or by giving assistance to, the execution of the crimes forming part of the common criminal purpose or objective.

1. Conduct of the Accused

34. There is no evidence that Mr Veseli committed any criminal act during the Indictment Period. The SPO has formally confirmed that he is not alleged to have directly participated in any of the crimes alleged on this Indictment.⁴³ Nor has the SPO served evidence that he aided or abetted any such crime.

Mr Veseli’s Role on the General Staff

35. There is limited evidence in the SPO’s case concerning Mr Veseli’s role in the General Staff. There is no evidence that he attended regular meetings, and no evidence that he was a recipient of regular reports from the General Staff. There is no evidence that any unit or personnel was assigned to Mr Veseli’s command, and there are no orders signed by Mr Veseli, or issued in his name.

36. The SPO has alleged that Mr Veseli was “actively involved in and demonstrated [...] control over essential political and operational activities.”⁴⁴ It lists eight *indicia* in support of this proposition.⁴⁵ Yet, none of the suggested

⁴³ F00354, Prosecution Response to Veseli Defence Submissions on Detention Review with Confidential Annex 1, 17 June 2021, para. 11; IA008/F00003, [Response to Veseli Defence Appeal of July 2021 Detention Decision with Confidential Annex 1](#), 26 July 2021, para. 10. See also, F00709/A02, para. 112.

⁴⁴ F00709/A02, para. 111.

⁴⁵ F00709/A02, para. 111.

indicia advance the inference that Mr Veseli was party to (or played a significant role in the implementation of) any common criminal purpose.

37. The SPO's case against Mr Veseli boils down to the contested allegation that he oversaw a centralised military intelligence directorate that operated as an organ of the General Staff, and which – according to the SPO – must have been directly complicit in the commission of the crimes listed in the Indictment. The SPO alleges, without evidence, that this 'structure' was responsible for targeting collaborators at the local level. This allegation is denied. There is no evidence establishing that Mr Veseli had effective control over any operational military intelligence structure exercising *internal* functions within Kosovo, and no evidence that he played any role in 'targeting' anyone. His role was primarily concerned with external liaison, and developing relationships with intelligence services of NATO member States. The Trial Chamber will be fully familiar with the conventional distinction between internal and external intelligence functions.
38. As noted previously, in the Spring of 1998, villages began to organise themselves independently. Following the establishment of local operational zones, local internal "intelligence units" were allegedly set up.⁴⁶ There is no evidence that these local groups or individuals – to the extent that they are shown to have existed – were connected with (or reported to) any central military intelligence structure of the so-called General Staff. Indeed, the evidence points to the opposite conclusion.⁴⁷ To the extent that such local intelligence appointments are shown to have existed at a local level in Kosovo, they operated independently, reporting (if at all) to local or zone commanders,

⁴⁶ Formation of Dukagjini Regional Staff 23 June 1998 minutes; *See* IT-04-84 P00141.E, p. 8.

⁴⁷ 056292-TR-ET Part 3 RED, pp. 5, 14, 25-26; 056292-TR-ET Part 11 RED, p. 6; 077596-TR-ET Part 3 RED, p. 29; 077596-TR-ET Part 4 RED, p. 12; 077601-TR-ET Part 1, p. 23.

and there is no evidence that any such group or individual had any communication or connection with Mr Veseli.

39. References in contemporary documents to “KLA intelligence” prior to November 1998 must be read in this context. They either refer to these local intelligence appointments or are otherwise purely aspirational statements of intent, such as the KLA Rules and Regulations.
40. November 1998 marked the first steps towards the formation of a centralised intelligence function, and Kadri Veseli was nominated as the person to take this forward. However, the SPO has entirely misunderstood the purpose and functions of Mr Veseli’s appointment. It had nothing to do with internal intelligence within Kosovo, liaison on intelligence with any KLA volunteer locally appointed to an intelligence function, seeking out collaborators, or with any aspect of KLA internal discipline. Mr Veseli’s role as head of this nascent department was strictly confined to *external* intelligence liaison, namely liaison outside Kosovo with the intelligence agencies of certain NATO member States.
41. This is why Mr Veseli left Kosovo at end of November 1998, almost as soon he had been allocated this responsibility. He spent the next three and a half months outside Kosovo, working closely with intelligence services of certain NATO member States, and did not return at all until very shortly before the NATO bombing campaign began in March 1999.⁴⁸ At that point, he left the KLA General Staff, and began work on the formation of a civilian intelligence service (SHIK) which could continue this international intelligence liaison in the context of what had by then become an international armed conflict. The establishment of SHIK, as a part of the provisional government was publicly announced at the very beginning of April 1999.

⁴⁸ To the extent that the SPO interview with [REDACTED] suggests otherwise, his recollection is mistaken.

42. The SPO has conflated internal and external intelligence functions, and accordingly has based its case against Mr Veseli on the mistaken assumption that he had a superior-subordinate relationship with local KLA intelligence operating inside Kosovo in the context of the internal armed conflict. That is not the case. The reason there is no evidence demonstrating the existence of any such relationship is that this was not Mr Veseli's function. This is overwhelmingly obvious when it is recognised that Mr Veseli left Kosovo as soon as he was appointed to this role, and did not return until NATO was ready to launch its military intervention, at which point Mr Veseli left the KLA General Staff. Thus, for the entire period of his appointment as head of intelligence, he was outside Kosovo liaising with the intelligence services of certain NATO states.
43. Consistent with the essentially external nature of his role, there is no evidence that Mr Veseli exercised any command or supervision over any individual or group that may have been given internal intelligence functions by local or zone commanders. That is because he had no such role. During Mr Veseli's time on the General Staff, there never was a central intelligence office, no fixed phones, no staff, no administrative support, no reports, no 'assets' in the war theatre, and no capacity for internal intelligence operations. Indeed, as noted above, it did not even have the benefit of Mr Veseli's presence in Kosovo.
44. Without staff or resources, the operational capacity to develop a centralised internal military intelligence unit within Kosovo, during Mr Veseli's extended period of absence, was negligible or nil. There was no centralised *internal* military intelligence unit operating within Kosovo as part of the KLA General Staff, at any time during the Indictment period.
45. That is why there are no records of any meetings related to intelligence attended by Kadri Veseli; there are no intelligence-related orders signed by Mr

Veseli; there is no evidence that Mr Veseli ever communicated with the Zone Commanders on intelligence matters, or with any local intelligence structures they may have established;⁴⁹ there is no evidence that any intelligence-related reporting arrangements were in operation at General Staff level during the Indictment period; and there is no evidence that any intelligence HQ was ever set up. In short, the evidence does not establish the effective operation of any central military intelligence structure, commanding or liaising with local intelligence within Kosovo, during the Indictment period.

46. The SPO relies on certain documents which are said to show the involvement of “KLA intelligence” in “[REDACTED].”⁵⁰ However, a careful examination of these documents reveals that the majority are unsigned; at least some were provided to the SPO by Serbian intelligence (which is notorious for the fabrication of evidence);⁵¹ and some have previously been found unreliable by EULEX courts, on the ground they lacked probative value.⁵² Moreover, these documents do not, even on their face, establish the existence of a *centralised* and operationally functional internal military intelligence service (as distinct from local intelligence structures with no operational connection to Mr Veseli or the General Staff).
47. The SPO makes a number of references to SHIK, the civilian intelligence service of Kosovo, formalised after the cessation of hostilities, under the arrangements

⁴⁹ At its highest, the evidence will show that a centralised reporting structure existed on paper but could never be implemented due to conditions on the ground.

⁵⁰ F00709/A02, para. 161.

⁵¹ [REDACTED]. The Defence notes that two of the individuals mentioned in the document gave clear evidence to the SPO that the signatures contained in the document were not theirs and that the document emanated from Serbian intelligence. The SPO chose not to rely on these witnesses and their evidence is now Rule 103 (the third individual mentioned is deceased and gave no evidence concerning this document). Additionally, the first two pages of the document are in Serbian Cyrillic text indicating the document emanates from Serbia. See also, 077601-TR-ET Part 4, pp. 1-2; 077596-TR-ET Part 4, p. 28.

⁵² District Court of Peja/Pec, P.nr. 67/09, *Prosecutor v. Gjelosh Krasniqi*, [Judgement](#), 29 April 2009; U001-7363-U001-7363-ET. See also, SITF00023797-00024370, p. SITF00023890.

for provisional self-government.⁵³ The Defence case is that in early April 1999, shortly after his return to Kosovo, Mr Veseli left his role as a member of the General Staff, and began preparations for the establishment of a civilian intelligence service, in anticipation of an independent civilian government in Kosovo.

48. The Trial Chamber will note that he was thus based outside Kosovo for most of the time he is alleged to have been running a centralised internal military intelligence service on behalf of the General Staff. Specifically, he was outside Kosovo for most of the time between (a) being given the paper designation as head of intelligence for the General Staff in November 1998, and (b) leaving the General Staff in April 1999 in order to prepare for the establishment of a civilian intelligence service. This is consistent with the external nature of his intelligence activities prior to April 1999.
49. The SPO has served no evidence concerning the operational activities of SHIK, and makes no allegation that crimes in the Indictment are attributable to SHIK. The Defence denies that the individuals listed as SHIK members by the SPO were part of that structure *during the Indictment Period*. The Defence observes that the sources cited for this proposition post-date both the armed conflict, and the Indictment period. They are not probative evidence of SHIK's personnel or structure *during* the Indictment Period.

Military Police

50. For the avoidance of doubt, there is no allegation (and no evidence) that Mr Veseli contributed to the establishment of any KLA military police unit, or that he ever had authority or control over any such structure. During 1998, villages formed their own local police units. With the establishment of operational

⁵³ See, for example, F00709/A02, paras 147, 162, 164-166.

zones, some were designated as military police by zone commanders. The character, make-up and operation of KLA military police varied significantly depending on the area and the personalities involved. As noted by the *Haradinaj* chamber:

The Chamber recalls further that it received evidence suggesting that the objectives of the KLA military police were to ensure that the population fled the village; to monitor persons entering and exiting villages; to prevent the commission of forbidden acts; and to enforce discipline within KLA.⁵⁴

51. Consistent with Defence submissions that no central internal military intelligence unit of the General Staff was ever operational within Kosovo (only *ad hoc* local intelligence reporting to local or zone commanders), there is no evidence that Mr Veseli had any connection or communication with local military police personnel. There are no joint meetings that he is said to have attended; there are no reports that he is said to have received from the military police; there are no orders that he is said to have given or signed that mention the military police. In sum, there is no evidence that he had any intelligence-related interaction with KLA military police.
52. If, as the SPO suggests, Mr Veseli was operating as the head of a centralised internal military intelligence unit of the General Staff, operative in Kosovo between November 1998 and March/April 1999, one might reasonably expect to find evidence of him liaising with KLA military police units in Kosovo. However, as noted above, Mr Veseli was not in Kosovo during this period, and there was no centralised internal military intelligence unit of the General Staff in operation at that time. Mr Veseli's functions outside Kosovo were concerned with the liaison of external intelligence. All internal intelligence units operated on a purely local level, answerable to local or zone commanders.

⁵⁴ *Haradinaj*, [Retrial Judgement](#), para. 636.

Alleged Direct Participation

53. There are five instances in the evidence relied on by the SPO as evidence of direct presence or participation:

- a. The first is entirely redacted in the Indictment and the SPO's Pre-Trial Brief. The Defence cannot respond to this allegation;
- b. The second allegation is that, on or around 24 June 1998, Kadri Veseli and Hashim Thaçi met with two prominent LDK members [REDACTED] he was unsure whether Mr Veseli was even present that day.⁵⁵ On the face of this evidence, there is nothing for the Defence to respond to;
- c. Third, the SPO alleges that, in July 1998, Mr Veseli was co-ordinating operations on the ground in the immediate aftermath of intense fighting in Rahovec,⁵⁶ and was present in Malishevë at a meeting with [REDACTED] W02144, on [REDACTED] July 1998.⁵⁷ As to this:
 - i. There is no evidence that Mr Veseli was coordinating events on the ground following the fighting of Rahovec, as alleged by the SPO;
 - ii. With respect to the allegation that Mr Veseli was in Malishevë on [REDACTED] July 1998, there is no evidence that Mr Veseli ever saw, heard or otherwise witnessed, or became aware of, any alleged crimes that may have occurred in the vicinity. Nor is there any allegation or evidence that Mr Veseli was

⁵⁵ 061426-ET Part 3, p. 5.

⁵⁶ F00999/A02, para. 44; F00709/A02, paras 17, 381.

⁵⁷ F00709/A02, para. 382. *See also*, 075993-076009, pp. 6-8.

otherwise in any way in command of KLA fighters in and around Malishevë at that time;

iii. The evidence of W02144 is that he met with Mr Veseli twice in July 1998.⁵⁸ He confirms that he never raised specific alleged crimes to Mr Veseli. Whereas in the first meeting, the issue of detentions did not arise at all, in the second meeting he raised the issue only in general terms. This was because, as he explains, “[REDACTED].”⁵⁹

d. The fourth allegation relates to Mr Veseli’s alleged presence in Kleçkë in March 1999. There is no evidence that he had any involvement with, or knowledge of, individuals being detained in Kleçkë:

i. The sole evidence relating to Mr Veseli’s presence in Kleçkë comes from Witness [REDACTED], who is now [REDACTED].⁶⁰ The evidence of that witness was not relied upon in the EULEX *Arben Krasniqi et al.* trial. The Court in that case described him as “a convincing, manipulative liar.”⁶¹ The Court went on to list in detail numerous lies he told in his evidence and ultimately concluded that, “[t]he inconsistencies and contradictions found by the court are not discrepancies that might be the product of an honest but imperfect

⁵⁸ The evidence is unclear on the dates of these meetings or, indeed, if there was just one meeting or two. F00709/A02, para. 382. *See*, U008-1323-U008-1333, paras 8-9, 24; *and see* 075993-076009, paras 20-25.

⁵⁹ 075993-076009, para. 27.

⁶⁰ F00709/A02, para. 505 and associated Fn. 2021.

⁶¹ Basic Court of Prishtinë, Prosecution v. AK et al., P 766/12, [Judgment](#), 17 September 2013, p. 129.

recollection, observation or reconstruction of the events about which he gave evidence”;⁶²

- ii. The SPO now seeks to adduce his witness statements through Rule 155.⁶³ Given that the witness is unavailable for cross-examination, the Defence opposes its admission as proof of acts or conduct of the Accused. In any event, because this evidence is uncorroborated, it cannot sustain a finding of guilt;⁶⁴
 - iii. In any event, even if admitted and taken at their highest, [REDACTED] statements do not implicate Mr Veseli in any criminal wrongdoing.⁶⁵
- e. Lastly, the SPO alleges that Mr Veseli directly participated in the illegal detention and mistreatment of individuals in Kukës in May 1999, and personally interrogated a prisoner there.⁶⁶ As to this:
- i. The sole evidence supporting this allegation comes from Witness W01448, who is deceased and unable to further clarify his statement. As with [REDACTED], the SPO proposes to tender the statement through Rule 155, which the Defence opposes for the same reason;⁶⁷
 - ii. In any case, the testimony is of no probative value. In prior statements, the witness claimed personally to know Kadri Veseli from childhood. However, he misidentified Mr Veseli’s

⁶² [Case P 766/12](#), p. 130.

⁶³ F00948/A02, p. 8, No. 303.

⁶⁴ Rule 140(4).

⁶⁵ 051032-051055 RED, pp. 051039-051040. [REDACTED].

⁶⁶ F00999/A02, paras 49, 120; F00709/A02, para. 560.

⁶⁷ F00948/A02, p. 1, No. 40; *See also* Rule 140(4)(a); Fn. 66, above.

home village, placing it in an entirely separate region of Kosovo.⁶⁸ He also claimed to [REDACTED] Mr Veseli's father.⁶⁹ Mr Veseli's father, however, was [REDACTED] years older than the witness;⁷⁰

iii. [REDACTED], the witness testified that in his previous statements he had confused Kadri Veseli with an entirely different Veseli family, and he did not, in fact, know Kadri Veseli at all.⁷¹ Since that was the basis for his identification in the first place, it renders his statements worthless as evidence in the present case. The Defence will submit that in the absence of direct corroboration, his evidence should be excluded.

2. Statements of the Accused

54. There are no contemporaneous statements attributable to Kadri Veseli in the evidence. The only contemporary document that bears his signature is a statement of intent to work together with the Government Forces of the Republic of Kosovo in a common effort towards the liberation of Kosovo.⁷² The document is dated 2 November 1998, and is plainly not evidence supporting a common criminal purpose, or a significant contribution to such a purpose.
55. The SPO seeks to rely upon a book written *after* the conflict by a journalist called Baton Haxhiu, which purports to be a "dialogue" with Mr Veseli. A very similar

⁶⁸ The witness describes [REDACTED] (*see* SITF00013852-00013885 RED, p. 9), while Mr Veseli [REDACTED] (*see* F00341/A02, Veseli Defence Submissions on Detention Review, Annex B, 7 June 2021).

⁶⁹ SITF00013736-SITF00013800 RED p. SITF00013763.

⁷⁰ Mr Veseli's [REDACTED] (*see* F00341/A01, Veseli Defence Submissions on Detention Review, Annex A, 7 June 2021), while [REDACTED] (*see e.g.* SITF00013852-00013885 RED, pp. SITF00013852-SITF00013853).

⁷¹ SITF00016140-00016220 RED, p. SITF00016148.

⁷² 061168-061168-ET.

book written by Bardh Hamzaj, described as a “dialogue with Ramush Haradinaj” was not admitted into evidence by the ICTY Trial Chamber in the *Haradinaj* trial because the content was of “low probative value”. The Chamber knew “little about the statements’ context, when they were made, for which purpose and whether... Ramush Haradinaj approved the text. They might have been given for propagandistic purposes, to mislead, or to tell the truth”.⁷³ In the absence of evidence addressing these issues, the same objections apply to the Haxhiu book tendered by the SPO in the present case, and to other such books and publications.

B. Command Responsibility⁷⁴

56. The Defence recalls that three main elements must be established for command responsibility to arise: (i) existence of a superior-subordinate relationship; (ii) the superior must have known or have had reason to know that his identifiable subordinate was about to commit a crime or that he had previously done so; and (iii) the superior must have failed to take the necessary and reasonable measures available to him in the circumstances as they existed at the time to prevent his subordinate’s criminal conduct, or punish him for that conduct after the event.⁷⁵
57. In *Bemba*, the Appeals Chamber of the ICC noted that “a commander cannot be blamed for not having done something he or she had no power to do” and correctly found that an assessment of whether a commander took all “necessary

⁷³ ICTY, *Prosecutor v. Haradinaj*, IT-04-84-T, [Decision on Prosecution's Motion to Tender Documents on its Rule 65ter Exhibit List](#), 30 November 2007, paras 6-7.

⁷⁴ F00709/A02, paras 709-713.

⁷⁵ *Hadžihasanović*, [Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility](#), paras 18, 31.

and reasonable measures” will require consideration of what measures were at his or her disposal in the circumstances as they existed at the time.⁷⁶

58. Likewise, an assessment of whether a commander took all “necessary and reasonable measures” must be based on considerations of the precise crimes the commander knew (or should have known) about, at the relevant time.⁷⁷ In assessing reasonableness, the Court is required to consider other parameters, such as the operational realities on the ground at the time faced by the commander.⁷⁸ It is for the SPO to prove that the commander did not take specific and concrete measures that were available to him or her, and which a reasonably diligent commander in comparable circumstances would have taken.⁷⁹
59. Both the Rome Statute and the ICTY case-law emphasise that the relationship of superior-subordinate is premised on a relationship of ‘effective control’. As the ICC pointed out in *Bemba*, it is “impossible for senior commanders to control hundreds or thousands of individual troops effectively”.⁸⁰ Thus command responsibility incorporates the key protection for an Accused that

⁷⁶ ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08A, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”](#), 8 June 2018, paras 1, 167-168. See also ICTY, *Prosecutor v. Orić*, IT-03-68-T, [Judgment](#), 30 June 2006, para. 329; ICTY, *Prosecutor v. Mucić et al. (“Čelebići”)*, IT-96-21-T, [Judgment](#), 16 November 1998, para. 395; ICTY, *Prosecutor v. Krnojelac*, IT-97-25-T, [Judgment](#), 15 March 2002, para. 95; ICTY, *Prosecutor v. Strugar*, IT-01-42-T, [Judgment](#), 31 January 2005, para. 374; ICTY, *Prosecutor v. Halilović*, IT-01-48-T, [Judgment](#), 16 November 2005, paras 73-74; ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-T, [Judgment](#), 25 June 1999, para. 81; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, [Judgment](#), 11 July 2013, para. 587; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, [Judgment](#), 30 January 2015, paras 1928-1929.

⁷⁷ *Bemba*, [Appeal Judgement](#), para. 168. See also *Orić*, [Trial Judgement](#), para. 330; *Karadžić*, [Trial Judgement](#), para. 588; *Čelebići*, [Trial Judgement](#), para. 394; *Krnojelac*, [Trial Judgement](#), para. 94; *Halilović*, [Trial Judgement](#), paras 73-74.

⁷⁸ *Bemba*, [Appeal Judgement](#), para. 170. For evidence of State Practice, see Australia, Inspector General of the Australian Defence Force, [Afghanistan Inquiry Report](#) (“Brereton Report”), 2020, p. 31, para. 28.

⁷⁹ *Bemba*, [Appeal Judgement](#), para. 170.

⁸⁰ ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-3636-Anx2, [Appeal Judgement, Separate opinion Judge Christine Van den Wyngaert and Judge Howard Morrison](#), 8 June 2018, para. 33.

“commanders can only be held accountable for the crimes of those they are commanding directly and whose conduct they can actually monitor”.⁸¹

60. The evidence concerning the degree of effective organisation of the KLA, cited above, does not allow for a conviction based on the principle of command responsibility on the facts of this case. In the *Limaj* and *Haradinaj* cases, the Office of the Prosecutor, recognising the evidential obstacles, did not even charge command responsibility as a mode of liability.
61. Turning to the SPO Pre-Trial Brief, the Defence submits that there is no evidence capable of establishing that Mr Veseli exercised direct and effective control over the perpetrators of any of the crimes alleged in the Indictment (because he did not). Nor does the evidence establish that he had either formal or *de facto* authority over “zone, brigade and unit commanders, members of the General Staff directorates, staff commands at the zone level, and police and intelligence units (again, because he did not).⁸² Additionally, there is no evidence capable of establishing that Mr Veseli knew or had reason to know, based on the information available to him at the relevant time, that any identifiable KLA member(s) were about to commit the crimes charged in the Indictment, or had previously committed any such crime (because he did not). That was simply not his function, or the role that he played in relation to essentially external intelligence matters.

C. Crimes Against Humanity⁸³

62. There is no evidence capable of supporting a finding by the Trial Chamber of a widespread or systematic attack by the KLA against a civilian population. Both

⁸¹ *Bemba*, [Separate Opinion Judge Christine Van den Wyngaert and Judge Howard Morrison](#), para. 33.

⁸² F00709/A02, para. 711.

⁸³ F00709/A02, paras 702-707.

the ICTY *Limaj* and *Haradinaj* Chambers have dismissed the existence of any policy by the KLA to target any “civilian population”, however defined.⁸⁴

63. Moreover, international witnesses who were on the ground during the relevant events, undermine the assertion that the KLA was engaged in crimes against humanity. [REDACTED] Susanne Ringgaard Pedersen stated that “she could not discern a broad policy to target individuals”.⁸⁵ Likewise, Peter Bouckaert, who worked at HRW [REDACTED], stated that “he never saw anything issued by the KLA which constituted an order to its members to target innocent civilians or to loot or destroy Serbian property”.⁸⁶
64. The *Limaj* Trial Chamber had before it many of the incidents that are currently charged by the SPO on the present Indictment.⁸⁷ There, it found that “the evidence demonstrated the existence of a ‘course of conduct’ that indicated that there was a military ‘attack’”,⁸⁸ but that it was clear that such military attack was not directed against a civilian population.⁸⁹ Even if it were accepted that civilians were abducted by the KLA, according to the *Limaj* Trial Chamber, “in the context of the population of Kosovo as a whole the abductions were relatively few in number and could not be said to amount to a ‘widespread’ occurrence”.⁹⁰
65. With regard to “pattern and methodology”,⁹¹ the *Limaj* Trial Chamber noted that, while some abducted Serbians were mistreated or murdered, others were released.⁹² This indicated that there was a process of decision by the KLA

⁸⁴ *Limaj*, [Trial Judgement](#), para. 191, 217-219, 228; *Haradinaj*, [Trial Judgement](#), paras 114, 122.

⁸⁵ *Limaj*, [Trial Judgement](#), para. 215.

⁸⁶ *Limaj*, [Trial Judgement](#), para. 215.

⁸⁷ *C.f.*, *Limaj*, [Trial Judgement](#), paras 202-203, 209; *Limaj*, [Prosecution’s Final Brief](#), paras 264-292; F00999/A02, paras 22, 38, 44, 63-65, 67, 97, 100-101.

⁸⁸ *Limaj*, [Trial Judgement](#), para. 204.

⁸⁹ Despite this being a legal requirement, the SPO Pre-Trial Brief is notably silent on this issue.

⁹⁰ *Limaj*, [Trial Judgement](#), para. 210.

⁹¹ F00709/A02, para. 704.

⁹² *Limaj*, [Trial Judgement](#), para. 225.

fighters involved in those abductions. Whatever the basis, “the existence of a process of decision which affected the consequences of KLA abduction tells with some force against the existence and perpetration of a general KLA strategy of abduction of the Serbian civilian population of Kosovo.”⁹³ It therefore concluded that in most cases, people “were singled out as individuals because of their suspected or known connection with, or acts of collaboration with, Serbian authorities - and not because they were members of a general population against which an attack was directed by the KLA.”⁹⁴

66. In *Haradinaj*, a broader case than *Limaj* involving 37 counts said to have occurred at multiple locations across the Dukagjin Zone, the Trial Chamber confirmed the findings on this issue, as established in *Limaj*. The evidence indicated to the Trial Chamber that the “victims may have been targeted primarily for reasons pertaining to them individually rather than them being members of the targeted civilian population”,⁹⁵ and that the “ill-treatment, forcible transfer, and killings of Serbian and Roma civilians, as well as Kosovar Albanian civilians perceived to be collaborators or perceived as not supporting the KLA (whether taking these groups separately or as a whole), was not on a scale or frequency that would allow for a conclusion that there was an attack against a civilian population.”⁹⁶

67. There is no evidence that Mr Veseli knew or ought to have known about the alleged crimes in advance.⁹⁷ The SPO allegation that the crimes were common knowledge inside and outside Kosovo, and that Mr Veseli was part of, and used, communication networks that would have apprised him of these events involves speculation, not inevitable inference. It does not provide a sufficient

⁹³ *Limaj*, [Trial Judgement](#), para. 225.

⁹⁴ *Limaj*, [Trial Judgement](#), para. 227.

⁹⁵ *Haradinaj*, [Trial Judgement](#), para. 114.

⁹⁶ *Haradinaj*, [Trial Judgement](#), para. 122.

⁹⁷ F00709/A02, para. 706.

evidential foundation for an allegation that he was party to a common purpose to commit crimes against humanity.⁹⁸

68. Given the chaotic nature of events on the ground, and the well-documented practice of Serbian authorities to manipulate evidence, and stage false flag operations, it would have been reasonable for any observer to have doubted the veracity of publicised claims about crimes committed by the KLA.⁹⁹
69. Even the OSCE, in their report "*As Seen as Told*" cited the Panda Bar incident as an example of KLA killings of Serbian civilians.¹⁰⁰ However, as the Defence explained in its Rule 103 Motion, this attack was a false flag operation orchestrated by the Serbian RDB intended to incriminate the KLA.¹⁰¹
70. There has even been some reporting of a similar Serbian false flag operation to assassinate Senator Dick Marty during the pre-trial stage of the current proceedings, aimed at deceiving the Trial Chamber into believing that he had been assassinated by the KLA. Mr Marty himself has been quoted in the media expressing his concern at this development.¹⁰²
71. In the context of the non-international armed conflict in Kosovo, with the deceptions and manipulations perpetrated in the media and elsewhere by the Serbian intelligence service, it would have been entirely reasonable for Mr Veseli to doubt the accuracy or veracity of media and other reports, given the Serbian policy of media control and the deliberate spreading of faked

⁹⁸ F00709/A02, paras 706-707.

⁹⁹ *Dorđević*, [Trial Judgement](#), paras. 143, 415, 851, 1954, 2035, 2084, 2091, 2095, 2102.

¹⁰⁰ SITF00075075-00075417.

¹⁰¹ F00877/COR, Corrected Version of Joint Defence Motion for Disclosure Pursuant to Rule 103, With Public Annexes 1-3 and Confidential Annex 4, (F00877, dated 12 July 2022), 21 July 2022, paras 34-37.

¹⁰² See, Anne-Frédérique Widmann, [Menacé de mort, Dick Marty vit sous haute protection depuis seize mois](#), 11 April 2022, *Mise au Point*.

propaganda. The monitoring of internal KLA discipline was simply no part of Mr Veseli's responsibilities.

D. The Chronology of Events

72. In its Pre-Trial Brief, the SPO alleges, as its first submission in support of the existence of the alleged JCE on the "context in which" the KLA and the PGOK were "created and developed."¹⁰³ The SPO provides no citation for this allegation and does not develop this point in its submissions.¹⁰⁴
73. The Veseli Defence agrees that context is critical. This section of the Veseli Pre-Trial Brief sets out the context in full, addressing both the emergence of the KLA and Mr Veseli's role within it, and the military context in which those events occurred – namely the implementation of a planned and bloody campaign of crimes against humanity by the Serbian forces in Kosovo.
74. It should be unnecessary to state, but the Veseli Defence is categorically not relying on the evidence of Serbian military atrocities as any kind of justification for, or relative comparison with, the crimes charged in the present Indictment. The events below are set out chronologically and situate key events in the emergence and structure of the KLA, placing them into their proper factual context. As will be obvious, the nature and extent of the Serbian attacks on civilian targets, as well as on KLA targets, had a direct bearing on the KLA ability to organise, and of the relationship between the General Staff and KLA fighters on the ground.

¹⁰³ F00709/A02, para. 6.

¹⁰⁴ It is noteworthy that even in the section of the SPO's Pre-Trial Brief which purports to describe the emergence of the KLA, the SPO does not make a single allegation of any criminality associated thereto.

75. The overall picture is also obviously critical in assessing the inferences which the SPO is asking the Trial Chamber to draw from the number (and the temporal and geographical distribution) of the crimes in the Indictment.
76. A full understanding of the progress and chronology of the conflict is also critical to a proper understanding of Mr Veseli's role within the KLA, and thus to his defence.

i. Early Background

77. The context in which the KLA was originally formed is set out in the judgement of the ICTY Trial Chamber in *Limaj*:

Between 1994 and 1997 the situation in Kosovo continued to deteriorate. Kosovo Albanians continued to be fired from political, economic and educational institutions. Student demonstrations were held. Individuals involved in political life were taken to police stations for questioning or "informative talks". Kosovo Albanians were being arrested in large numbers. It is said they were often mistreated by the police. Many were charged with illegal possession of arms. Thousands of people left Kosovo. The exclusion of the Kosovo question from the Dayton Peace Agreement in 1995 further galvanised the more radical political movements.¹⁰⁵

ii. Serbian Battle Order

78. The formally enlisted Serbian troops operating in Kosovo from early 1998 comprised the *Vojska Jugoslavije* (VJ) (the Serbian army); and the *Ministarstvo Unutrasnjih Poslova* (MUP) (the Serbian police and security forces). The MUP consisted of heavily armed uniformed officers and special forces: the *Jedinica a Specijalne Operacije* (JSO), the *Specijalna Antiteroristička Jedinica* (SAJ) and the *Posebne Jedinice Policije* (PJP).
79. Serbian paramilitary formations operating in Kosovo, with the knowledge and express consent of the Serbian military command, included "Arkan's Tigers", the "Seseljenci" or "White Eagles", "the Scorpions", "the Pauk Spiders", and "Frenki's Boys".¹⁰⁶ These units had previous combat experience, were highly

¹⁰⁵ *Limaj*, [Trial Judgement](#), para. 47.

¹⁰⁶ *Đorđević*, [Trial Judgement](#), paras 81, 204, 212, 551, 1012.

skilled at asymmetrical warfare, and had a well-documented track record of committing crimes against civilian populations in Croatia and Bosnia during the Balkan wars.¹⁰⁷ They had previously been deployed to commit some of the worst atrocities in the Balkans, in an attempt to maintain official deniability for the most serious crimes.

80. In addition to the combined Serbian military and paramilitary forces, the Serbian authorities took the decision to arm Serbian civilians living in Kosovo, and organised them into local “defence” units. By July 1998, 54,683 civilians had been armed with weapons, including long-guns, by the Serbian authorities, and operated as non-State armed groups.¹⁰⁸ These groups would attach to, or fight alongside, VJ and MUP units during military operations.¹⁰⁹ These civilians directly participated in hostilities (“DPH”), engaging the legal consequences that attach to DPH status under international humanitarian law.

iii. Overview of the Serbian Military Campaign in Kosovo

81. From the very beginning of the war in Kosovo, the combined FRY forces were deployed from the direction of Kosovo’s northern border with Serbia, in an approximate arc (or “horseshoe” formation). They conducted a series of offences against ethnic Albanian towns and villages, moving in an arc that spanned from the north-west of Kosovo to the east of the country. In general terms, these offensives followed a trajectory towards the south and south west of Kosovo, that was designed to instil terror in the ethnic Albanian population and drive it towards the borders with Albania, Macedonia and Montenegro.

¹⁰⁷ ICTY, *Prosecutor v. Vojislav Šešelj*, IT-03-67, [Judgement](#), 31 March 2016, paras 210; 216; 219; *Karadžić, Trial Judgement*, paras 232, 612, 624, 2198, 3325.

¹⁰⁸ *Dorđević, Trial Judgement*, paras 92, 95.

¹⁰⁹ *Dorđević, Trial Judgement*, para. 95.



82. Over a period of 15 months, more than 10,000 ethnic Albanian civilians were killed by Serbian forces, as a result of a campaign that included numerous massacres and thousands of attacks on the civilian population of predominantly Albanian towns and villages. Many more ethnic Albanians were gravely injured, and there is unequivocal evidence proving that torture, sexual assault and rape took place on a massive scale.
83. In the early stages of the conflict, President Milošević and his advisers were acutely aware of the need to strike a balance. On the one hand, the central objective of their plan was simply to attack and terrorise the ethnic Albanian civilian population living in the towns and villages that lay in their path. The ulterior purpose was to drive them across the borders into neighbouring States, and prevent their return.
84. On the other hand, it is clear that in the early stages of the war, they were acutely conscious of the need to proceed at a pace and level of intensity that they judged unlikely to provoke a NATO military intervention. From the

outset, they were operating in the shadow of an identified threat that NATO might take military action to protect the ethnic Albanian civilian population of Kosovo from the fate that befell the Bosnian Muslims in Sarajevo and Srebrenica.

85. That risk of NATO intervention became manifest in the immediate aftermath of the Serbian attack on the family of Adem Jashari on 5 March 1998, before the war officially began.¹¹⁰ On that day, Serbian security forces launched a brutal massacre in Prekaz. Paramilitary ground forces shot and killed many of the victims at close range, including women and children. More than 50 members of the Jashari family were summarily executed in this way. This shocking event had its intended effect of sending a ripple of terror through the ethnic Albanian population, particularly in the rural parts of central and Western Kosovo. However, it also roused a response from US Secretary of State, Madeleine Albright, who issued a statement in which she said: “We are not going to stand by and watch the Serbian authorities do in Kosovo what they can no longer get away with doing in Bosnia.”¹¹¹
86. This was a reference to the genocide of Bosnian Muslims in Srebrenica. Madeleine Albright was vowing that the threat of crimes against humanity or even genocide in Kosovo would not be allowed to materialise, without international military intervention.
87. Despite the threat of NATO intervention hanging over the FRY, the leadership nonetheless continued with their plan to commit crimes against defenceless civilians in order to encourage ethnic Albanians to flee the country across its southern borders. However, Serbian military strategy was to achieve the ethnic cleansing of Kosovo at a pace and level of intensity that would not afford

¹¹⁰ *Limaj*, [Trial Judgement](#), para. 46.

¹¹¹ Steven Erlanger, '[Albright Warns Serbs on Kosovo Violence](#),' New York Times, 8 March 1998.

NATO grounds for military intervention. US intelligence sources leaked to the British media indicated that during 1998 Milošević had calibrated the strategy that would balance these two imperatives at a progressive destruction rate of one village per day.

88. The pattern of military operations was relatively consistent. The combined Serbian forces would surround a town or village, sealing off the entry and exit points. An exit corridor would sometimes be left open to drive inhabitants who fled in a pre-planned direction. The VJ would then commence bombardment with heavy artillery from a distance, causing high levels of civilian casualties. When the Serbian forces judged the time was right, they would send in paramilitary ground troops, typically the JSO or PJP, working together with irregular paramilitaries who were notoriously brutal. These so-called “mopping-up operations” were characterised by random killings, often at close range, of defenceless civilians of all kinds, including women, children and the elderly. Rapes and acts of torture were so frequent that the ICTY concluded they were part of the common design. They followed a consistent pattern and were a deliberate part of Serbia’s military strategy.¹¹²
89. These ground operations were inevitably accompanied by widespread acts of wanton damage, arson and looting. Towns and villages were destroyed, homes

¹¹² Đorđević, [Trial Judgement](#), para. 2027: “The Chamber has found that this occurred in the following towns and villages: on 24 March 1999 in the village of Kotlina/Kotlinë, Kačanik/Kacanik municipality, on 25 March in the villages of Bela Crkva/Bellacërkë, Mala Kruša/Krushë-e-Vogel and Celina/Celinë in Orahovac/Rahovec municipality, in the village of Pirane/Piranë, Prizren municipality, in Leocina/Lecinë and the nearby village of Izbica/Izbicë, Srbica/Skenderaj municipality and in the town of Đakovica/Gjakove. The same pattern continued in the following days, on 26 March 1999, in Landovica/Landovicë, Prizren municipality and Turicevac/Turiquec, Srbica/Skenderaj municipality, on 27 March 1999 in the town of Peć/Pejë, on 28 March 1999 in the village of Beleg, Dečani/Decan municipality, on 31 March 1999 in Pusto Selo/Pastasellë, Orahovac/Rahovec municipality, on 1 April in Belanica/Bellanicë, Suva Reka/Suharekë municipality, on 6 April in Sojevo/Sojevë, Uroševac/Ferizaj municipality, on 8 April 1999 in Nosalje/Nosalë, Gnjilane/Gjilan municipality and Mirosavlje/Mirosalë, Uroševac/Ferizaj municipality, on 12 April in Kladernica/Klladernicë, Srbica Skenderaj municipality, on 14 May 1999 in Cuška/Qyshk, 6986 Peć/Pejë municipality, on 15 or 16 May, in Dobra Luka/Dobërllukë, Vuçitër/Vushtrri municipality”.

were looted and set on fire, crops were systematically burned and livestock destroyed, so that areas with an ethnic Albanian population would become totally uninhabitable. This was done with the evident intention of driving the population out of their homes, and making it impossible for them ever to return. Contemporary records show that Serbian forces had orders to “raze to the ground” villages and whole regions that had a predominantly ethnic Albanian population. Sites of cultural, religious and educational significance to the ethnic Albanian population of Kosovo were also deliberately targeted.

90. As the *Dorđević* Chamber recalled:

In some of these villages, after initial shelling and firing by the VJ, Serbian forces, in several cases specifically identified as forces of the MUP, then approached the population, typically would separate the men from the women and children, would order the women and children to leave to go to Albania, and would then kill the men, typically having first divided them in smaller groups and taken them to isolated locations ...the Chamber observes that the large number of bodies of Kosovo Albanians found in mass graves in Serbia, including large numbers of bodies not the subject of the charges of murder in the present Indictment, indicates that events of the same nature as those referred to in this and the previous paragraph were not limited to the locations alleged in the Indictment.¹¹³

91. As a result, more than 50% of the ethnic Albanian population either became refugees or were internally displaced (“IDPs”). More than a million people were forced out of the country altogether, in accordance with the Serbian military objective. Many were driven to take refuge in the hostile mountainous terrain in the border region between Kosovo and Albania.

92. As the conflict progressed, Serbian forces organised trains for the systematic transportation of ethnic Albanian civilians, in ever-increasing numbers, towards the borders with Macedonia, Albania and Montenegro. However,

¹¹³ *Dorđević*, [Trial Judgement](#), para. 2028: “The Chamber has found that this occurred on 25 March in Bela Crkva/Bellacërkë, Orahovac/Rahovec, on 26 March 1999 in Mala Kruša/Krushë-e-Vogël, Orahovac/Rahovec, on 28 March in Izbica/Izbicë, Srbica/Skenderaj municipality, on 31 March in Pusto Selo/Pastasellë, and on 14 May in the village of Cuška/Qyshk, Peć/Pejë municipality. Forensic reports accepted by the Chamber reveal that in 2001, 744 bodies were exhumed in Serbia from mass grave sites at the Batajnica SAJ Centre near Belgrade, 61 from Petrovo Selo SAJ Centre, and 84 from Lake Perucac.”

hundreds of thousands of people were forced, sometimes at gunpoint, to make their way through conflict zones, either on foot or in convoys of vehicles, leaving their homes and most of their possessions behind them. Individuals who became separated were often shot by Serbian sniper fire, as a means of keeping the refugees in line. It was common for entire columns of refugees to be deliberately targeted by Serbian forces.

93. The Serbian military also implemented a carefully orchestrated and systematic operation to deprive refugees of their personal identification documents, and vehicle registration information, in order to render it impossible for them to return (a process known as 'identity cleansing'). At the same time, land title deeds were seized or destroyed, and efforts were made to destroy official birth records ('archival cleansing'). These combined practices were self-evidently aimed at eliminating all official traces of the ethnic Albanian population of Kosovo.
94. Massacres and other acts of random slaughter occurred more or less consistently throughout the 15-month war. However, it is clear from a close consideration of the pattern of attacks, and the number of civilian casualties, that there were three major "peaks", when Serbian attacks against ethnic Albanians intensified. The first two occurred during the Serbian Spring and Summer offensives of 1998. The third occurred in the weeks following the start of the NATO bombing campaign on 24 March 1999.
95. At the end of March 1999, and during the months of April and May, there was an intensification of attacks which can only be understood as a response to the NATO bombing campaign. When the evidence is viewed in the round, the only reasonable inference is that this was intended to result in the extermination of the ethnic Albanian civilian population that was still remaining in Kosovo at the time.

96. The inevitable conclusion from all the available evidence is that the intention behind the Serbian military planning had changed. Prior to the NATO intervention, the central objective **was** to drive the Kosovo Albanians out of the country by force. But immediately after the first NATO bombing raids, it mutated into a plan to exterminate all those who remained.
97. In the immediate circle surrounding Milošević, one of the most extreme voices was Vojislav Šešelj (leader of the Serbian Radical Party and Vice-President of the Serbian Government of National Unity). One of the paramilitary groups fighting in Kosovo bore his name (the “*Seseljevci*” or “White Eagles”). Šešelj was a key advocate of the forcible removal of all Albanians from Kosovo, and went on to oppose both the negotiated ceasefire in June 1999 and the final withdrawal of Serbian forces. In one public speech, Šešelj went further, and specifically advocated the extermination of all Kosovo Albanians that remained in Kosovo at the time of the NATO intervention.¹¹⁴

iv. The Emergence of KLA Defence Groups

98. During the Spring and Summer of 1998, the KLA was very much a fledgling organisation.¹¹⁵ It grew out of village defences that came together spontaneously to defend the civilian population from Serbian military action. There is clear and consistent evidence available to the Trial Chamber that the KLA lacked clear, effective, or vertical lines of command throughout the conflict.
99. Beginning in early March 1998, the KLA experienced a surge of support as a direct response to the massacres in Likoshan, Qirez and Prekaz.¹¹⁶ Serbian joint

¹¹⁴ *Dorđević*, [Trial Judgement](#), para. 2024.

¹¹⁵ *Limaj*, [Trial Judgement](#), paras 45, 53-65, 123-124. See also, ICTY, *Prosecutor v. Milutinovic et al.*, IT-05-87-T, [Judgement](#), 26 February 2009, paras 795, 822, 824, 840 886, 894; ICTY, *Prosecutor v. Dorđević*, IT-05-87-A, [Appeal Judgement](#), 27 January 2014, paras 107, 189, 307; *Dorđević*, [Trial Judgement](#), paras 1615-1616, 1701-1704.

¹¹⁶ See *Dorđević*, [Trial Judgement](#), para. 272.

forces, in three separate attacks carried out over the course of one week, which left 83 Kosovo Albanians dead – among them at least 24 women and children.¹¹⁷

100. Combined Serbian forces mounted a similar operation just over two weeks later in western Kosovo, when they attempted to massacre the family of KLA local commander Ramush Haradinaj at the family compound in Glllogjan on 24 March 1998. The Haradinaj family and their associates succeeded in repelling the Serbian attack and escaped. The *Haradinaj* Trial Chamber described the reaction to that attack among the Albanian rural population of western Kosovo:

[S]mall groups of men began to organise themselves in their own villages... They gathered to protect their villages and made decisions as to the necessary defensive positions... [T]he gathering of small groups of men in the villages was not centrally organised; it was done at the initiative of the villages... Villagers also organised rosters to keep watch, dig trenches and build fortifications to protect the village. A “village commander” was also chosen; the village commander was usually elected from within the village. A large number of villages did not have anybody with prior military experience living in the village, and the villagers then decided on a farmer, village leader or elder to be in charge of the military defence.¹¹⁸

101. From approximately May 1998, clusters of these village defences began to coalesce together and to elect locals as commanders.¹¹⁹ These groupings operated independently of each other.¹²⁰ The early efforts to organise them into a unified force came up against the determination of Serbian military and paramilitary forces to prevent this from happening. The overwhelming and indiscriminate use of force by Serbian military and paramilitary units was intended to (and did) severely degrade the KLA’s ability to organise village units into a coherent fighting force:

- a.* Serbian forces maintained control of virtually all the main towns in Kosovo throughout the armed conflict, namely Prishtinë, Ferizaj, Gjilan, Podujevo, Mitrovicë, Pejë, Gjakovë, Deçan, Klinë and Prizren.

¹¹⁷ *Limaj*, [Trial Judgement](#), paras 49-52.

¹¹⁸ *Haradinaj*, [Retrial Judgement](#), paras 43-47.

¹¹⁹ *Limaj*, [Trial Judgement](#), paras 57-58; *Haradinaj*, [Retrial Judgement](#), paras 83-84.

¹²⁰ *Haradinaj*, [Trial Judgement](#), para. 66.

The KLA was forced to operate in remote rural and mountainous terrain, which was difficult to access and traverse, usually with minimal or no infrastructure, and sometimes with no electricity;

- b. Serbian forces controlled and intensively patrolled the main roads throughout most of the Indictment Period. They would establish checkpoints, carry out ambushes, and lay landmines in areas adjacent to the main roads. Travelling along these roads was effectively impossible for KLA fighters, and even crossing them could be extremely dangerous. In this way, the main roads throughout Kosovo severed KLA clusters from one another, and made its co-ordination, communication and travel extremely difficult.
- c. During the KLA's emergence in 1998, volunteers often outnumbered available weapons, requiring them to be shared during armed engagements. Weapons and supplies could be sourced in Albania, but the trip across the mountainous region of western Kosovo was itself extremely dangerous. Journeys had to be made clandestinely, at night, and on foot, in order to avoid VJ forces that were intensively patrolling the border crossings. Villagers organised small groups to travel across the mountains, seeking out guides and assistance from more organised areas in western Kosovo, such as Glllogjan and Jabllanicë, where KLA members and sympathisers could be found who were familiar with ancient smuggling routes across the mountains.¹²¹

¹²¹ Haradinaj, [Retrial Judgement](#), para. 46.

d. Communication was extremely difficult. Radios and satellite phones existed but were rare and insecure.¹²² Couriers were forced to travel at night, avoid main roads and towns, and navigate extremely difficult mountainous terrain, all the while avoiding Serbian patrols, ambushes and landmines.¹²³

102. Due to the limited levels of military organisation, and the need to operate beneath the Serbian military radar, most 'offensive' KLA military operations during this time took the form of what Colonel Crosland described in the *Haradinaj* case as "shoot-and-scoot" tactics, rather than full armed engagements.¹²⁴

103. The Trial Panel in *Dorđević* found that even at the height of hostilities, Serbian forces in Kosovo outnumbered KLA volunteers by 7:1.¹²⁵

v. *The Formation of KLA Operational Zones*

104. The most developed KLA groupings began to form "operational zones", with local headsmen electing zone commanders and other positions from among their own number. They gave themselves military-sounding titles that bore no relation to reality.¹²⁶ During the early Summer of 1998, three operational zones

¹²² See e.g., [082154-TR-ET Part 1](#), pp. 13, 18; [082154-TR-ET Part 3](#), p. 9.

¹²³ See, *Limaj*, [Trial Judgement](#), para. 124: "The evidence is clear that at least until near the end of 1998 the KLA was not adequately equipped with communications equipment, either for linking headquarters with units or between units. For this reason, and because of security, much communication was by means of messenger. There were some radio transmitters, however, and some units came to use two way radios and mobile phones, often provided by individual members. Others relied on basic means, such as gun shots, as a means of communication."; *Haradinaj*, [Retrial Judgement](#), para. 50: "[c]ommunication was poor as villages, such as Isniq/Istinić, only had hand-held radios of poor quality".

¹²⁴ See, [IT-04-84bis P00008](#), p. 2943.

¹²⁵ *Dorđević*, [Trial Judgement](#), para. 2061.

¹²⁶ See IT-04-84 P00141.E, p. 8.

were created.¹²⁷ The zones were self-organised.¹²⁸ There is no evidence of an effective central military command structure above zone commander level during this period.¹²⁹ Most villages across Kosovo fell outside the three newly formed zones, and lacked even a regional structure with which to co-ordinate.

105. There are no General Staff orders directed at village or even regional staffs during this period.¹³⁰ Indeed, the character, structure and leadership of local KLA groups varied significantly from area to area.¹³¹ In some cases, neighbouring villages formed KLA units which refused to co-operate with one another due to historic local disputes or personal conflicts.

vi. Serbian Summer Offensive

106. A concentrated Serbian 'Summer offensive' further thwarted efforts of the KLA to organise; reduced the ability of local KLA commanders and volunteers to move and communicate; and frustrated any ambition among the members of the General Staff to establish an organised central command.
107. The Serbian Joint Command was established by Federal Order, signed by President Slobodan Milošević in June 1998 for the explicit purpose of responding to the "terrorist" threat in Kosovo and coordinating the activities of the VJ and the MUP during the summer offensive. Thereafter, it met at least two to three times per week, depending on the flux of information and combat activities. Regular attendees included the Deputy Prime Minister of Serbia, the head of the Serbian Army's Priština Corp Nebojša Pavković; the head of the

¹²⁷ One in the Llap region which encompassed the area North of Prishtinë and bordered Serbia, one in the Drenica region encompassing the villages in central Kosovo North of the main road between Pejë and Prishtinë and one in the Dukagjin region in Western Kosovo.

¹²⁸ *Limaj*, [Trial Judgement](#), paras 57-58; *Haradinaj*, [Retrial Judgement](#), paras 83-84; *Haradinaj*, [Trial Judgement](#), para. 66.

¹²⁹ 082894-TR-ET Part 2, pp. 4-8. *See also*, 082894-TR-ET Part 2, pp. 24-25.

¹³⁰ As far as the Defence is aware the first order is dated 29 June 1998.

¹³¹ *Haradinaj*, [Retrial Judgement](#), paras 46-48. *Limaj*, [Trial Judgement](#), para. 56.

MUP staff of Kosovo, Šreten Lukić, the head of the RJB Vlastimir Đorđević and the assistant head of the RDB David Gajić. Members of the Joint Command received daily reports concerning the situation on the ground from seven dedicated police structures (“SUPs”) that were assigned in Kosovo and obligated by law to make reports.

108. There is clear evidence that the decisions of the Joint Command were carried directly into effect on the ground. On the basis of its decisions, operational orders were issued by the relevant department. These orders were then distributed to VJ and MUP units, following which they were implemented. For example:

- a. During a meeting of the Joint Command on 7 August 1998, Vlastimir Đorđević stated that he had decided to eliminate “terrorist” forces in Glogjan;¹³²
- b. On 10 August 1998, a VJ Order was issued by the Priština Corps entitled “Decision on the joint engagement of MUP and VJ forces” that ordered the combined Serbian forces to “smash the terrorist stronghold” in Glogjan. The order detailed precisely what units would engage and what role they would play;
- c. Later in August 1998, a British military attaché observed the aftermath of the offensive noting: “elements of the VJ, the SAJ, the JSO, and the PJP, still torching, burning, and firing into houses... Hours of indiscriminate shelling by Serbian forces of villages in the area of Glogjan and the nearby village of Prilep, had been bulldozed flat”.¹³³

¹³² *Milutinović*, [Trial Judgement](#), para. 1078.

¹³³ *Đorđević*, [Trial Judgement](#), para. 327. See also D00069.E BBC video Jeremy Cooke Reports from the Kosovo Frontlines 14 August 1998.

109. Similarly:

- a. At the Joint Command meeting of 26 September 1998, it was reported that “the operation which took place in the area of Gornje Obrinje had been completed”;
- b. The *Dorđević* Trial Chamber found that this operation had in fact been carried out by Serbian security forces who entered the village of Gornje Obrinje and summarily executed and mutilated 21 members of the Delijaj family including six women and five children.¹³⁴

110. A non-exhaustive list of Serbian attacks carried out during the Summer offensive of 1998 establishes that:

- a. On 11 and 12 May 1998, villages in the Gjakovë area were attacked by Serbian forces. Civilians were murdered, livestock was slaughtered, crops were burned and homes and entire villages were set ablaze. Serbian special forces and paramilitaries were involved in these attacks;¹³⁵
- b. Also during May 1998, combined Serbian forces entered villages around Rahovec, Malishevë, and Komoran where they killed civilians, burnt their houses to the ground, and destroyed their crops;¹³⁶
- c. In June 1998, villages across the Drenicë region were indiscriminately shelled by the VJ forces, with the result that “some 40,000 people fled

¹³⁴ *Dorđević*, [Trial Judgement](#), para. 248.

¹³⁵ *Dorđević*, [Trial Judgement](#), para. 282.

¹³⁶ *Dorđević*, [Trial Judgement](#), para. 285.

from the region and moved to municipalities in Vushtrri and Mitrovice”,¹³⁷

- d. In June and July 1998, MUP/PJP forces carried out a devastating series of operations against civilian targets in the area of the Prilep, Junik and Babaloq in Decan municipality.¹³⁸ On 13 July 1998, Colonel John Crosland witnessed the aftermath of those operations describing the “wanton damage” he observed:

Each successive visit to the Dečani/Peć area highlights continuing damage being inflicted by MUP/JSO forces randomly shooting up homes/houses/businesses and pilfering contents.¹³⁹

Colonel Crosland recorded that the majority of villages in regions around Prilep and Irznj, including Junik, had been “razed” during the Spring and early Summer of 1998.¹⁴⁰

111. Between 18 and 21 July 1998, Serbian forces launched a direct attack on the town of Rahovec. At the time, this was the largest and most intense Serbian military assault of the conflict. A PJP unit was sent to Rahovec in order to “liberate” the town. Co-ordinated PJP, SAJ, and VJ units also took part in the operation. A unit of the VJ was stationed outside Rahovec, holding the town under “encirclement”.¹⁴¹ According to a local human rights organisation operating on the ground at time, 150 Albanians from the surrounding area were killed, including the most prominent religious leader in the area, and a group of unarmed civilians taking shelter in the masjid.¹⁴²

¹³⁷ *Dorđević*, [Trial Judgement](#), para. 302.

¹³⁸ *Dorđević*, [Trial Judgement](#), paras 303-304.

¹³⁹ *Haradinaj*, [Retrial Judgement](#), para. 285; IT-04-84bis D00076.

¹⁴⁰ *Milutinović*, [Trial Judgement](#), para. 862.

¹⁴¹ *Dorđević*, [Trial Judgement](#), para. 312.

¹⁴² Council for the Defence of Human Rights and Freedoms in Prishtina, [Report on the violation of human rights and freedoms in Kosova in the course of 1998](#), Prishtina, 22 January 1999.

112. Contrary to the claims of the SPO, there was no co-ordination of events in the aftermath of the Serbian attacks in and around Rahovec, due to the extreme, unjustified and wholly disproportionate use of force carried out by Serbian formations in the town and the surrounding villages.¹⁴³ There is clear evidence that the fighting in Rahovec was not pre-planned on the part of the KLA, but reactive. The immediate aftermath was characterised by widespread destruction, carnage and chaos caused by the “scorched earth” tactics that characterised Serbian summer offensive across all of Kosovo.
113. At the end of July 1998, an international observer who visited the area recorded “wanton damage” around Malishevë that had been caused by the Serbian attacks:
- Every village adjacent to both avenues into Mališevo had suffered severe damage. Houses [were] still burning, businesses and garages deliberately vandalised... [E]very village from Lapušnik/Llapushnik westwards had suffered deliberate damage by cannon and HMG [heavy machine gun] fire.¹⁴⁴
114. As a result of the Serbian attacks on Rahovec and Malishevë, approximately 80,000 people were driven out of their homes. Of these, about 30,000 were IDP’s, sheltering outside in the Pagarusha valley, and an additional 50,000 were refugees who had fled across the borders to Montenegro and Albania.¹⁴⁵
115. By the end of September 1998, the KLA’s operational capacity had been effectively destroyed and its main strongholds had been routed. The combined Serbian forces had effectively defeated the KLA.¹⁴⁶ Any rudimentary organisational structures the KLA had managed to achieve on a local level during the Spring and early Summer of 1998 had been effectively disrupted, displaced and destroyed by the end of September 1998.¹⁴⁷ The twin objectives

¹⁴³ *Haradinaj*, [Retrial Judgement](#), paras 283-300; *Limaj*, [Trial Judgement](#), paras 78-81.

¹⁴⁴ *Milutinović*, [Trial Judgement](#), para. 892.

¹⁴⁵ *Milutinović*, IT-05-87, [Transcript of John Crosland](#), 7 February 2007, pp. 9809 – 9810; *Dorđević*, [Trial Judgement](#), para. 323.

¹⁴⁶ *Milutinović*, [Trial Judgement](#), paras 135-136.

¹⁴⁷ *Dorđević*, [Trial Judgement](#), para. 250.

of the Serbian campaign were to drive ethnic Albanians out of their homes and out of the country, and to rout the KLA. Both objectives were substantially achieved.

vii. The Entry of FARK Forces

116. During the Summer of 1998, whilst the Serbian Summer offensive was taking place, an armed contingent, the Government Forces of the Republic of Kosovo (FARK), entered Kosovo via the Dukagjin Zone, of which Ramush Haradinaj was the Zone commander. There was some initial conflict between FARK and the KLA, until the two groups reached an agreement to join forces in a common effort to defeat the enemy. Many members of FARK within the Dukagjin Zone were then absorbed into the local KLA. There is some evidence suggesting that pockets of friction may have continued after this time.

The November 1998 Reorganisation of the KLA.

117. In the second half of November 1998, efforts were made to regroup, and increase the level of organisation of the KLA. Departments and units were envisaged as a means of effecting better co-ordination. These nascent structures were given ambitious titles such as the Directorate of Military Police and a Military Court. In practice, the General Staff had no existing infrastructure, and no administrative support to rely upon in developing structures that existed on paper into effective operational units.
118. As explained at paragraph 40 *et. seq.* above, Mr Veseli had been appointed in November 1998 to lead intelligence co-ordination outside Kosovo with the intelligence services of certain NATO member States, and promptly left Kosovo in order to do this. He carried out this function outside Kosovo until NATO was ready to intervene in March 1999, and then returned, at which point he left the KLA General Staff in order to set up SHIK, as part of the arrangements for

the proposed PGOK that were formally announced at the beginning of April 1999, in order to continue this liaison.

viii. The Reçak Massacre

119. The sequence of events leading up to the third “peak” period in Serbian military attacks against ethnic Albanian civilians began with the Reçak massacre on 15 January 1999. Serbian forces, including the JSO, launched a merciless execution-style attack on the unarmed civilians in the village, killing 45 people. International news media were present and covered the massacre in detail. These shocking reports were internationally broadcast, and alerted the outside world to what was happening in Kosovo. This led to a wave of international outrage, and increasing concern for the fate facing that part of the ethnic Albanian population that was still trapped inside Kosovo.

ix. Mounting Tension With NATO

120. The Director of the OSCE observer mission visited the site of the Reçak massacre the next day. He denounced the atrocity, forcefully blaming the Serbian paramilitary police for the slaughter of innocent civilians. The Prosecutor of the ICTY, Louise Arbour, also attempted to carry out a site visit soon afterwards, but was denied access by the Serbian authorities.
121. Four days later, as a direct result of the Reçak attack, and the consequent shift in international public opinion, Madeleine Albright succeeded in negotiating US Government backing for military intervention. It was clear to all parties that NATO was gearing up to intervene, and that the Reçak massacre was the turning point. Presumably aware of the sudden change in mood, Milošević made a desperate attempt to retrieve the situation. At a meeting on 19 January 1999 with NATO Supreme Commander Wesley Clark, he made the absurd claim that the Reçak massacre had been staged by the KLA.

x. *The Rambouillet Peace Talks*

122. On 6 February 1999, in a last-ditch attempt to stave off a full-scale international armed conflict, the parties convened at Rambouillet in France for mediated talks. However, the international negotiators assessed the Serbian delegation to be lacking in sincerity from the outset. Milošević failed to attend, and his negotiating team prevaricated, procrastinated and dissembled. Even while they were stalling the process, the Serbian military commanders used the cover of the talks to regroup for a fresh offensive. On 19 March 1999, Serbia began substantial troop movements on the border. The following day those forces launched a major new offensive in central and northern parts of Kosovo.
123. Kadri Veseli was not part of the KLA delegation at Rambouillet. He was present but, consistent with his role, he remained outside the castle where the talks were taking place, in order to conduct parallel and complimentary real-time discussions with the intelligence services of certain NATO member States.
124. The SPO suggests in its Pre-Trial Brief that the context in which the PGOK was created and developed is a factor supporting its case that the a JCE was in existence.¹⁴⁸ That is a surprising submission, and it is notable that they do not attempt to explain or justify it. The PGOK was created pursuant to collaborative discussions between all Kosovo Albanian delegates, including the LDK, at Rambouillet.¹⁴⁹ Its existence was formally announced at the beginning of April, a little over a week after the NATO bombing campaign had begun. The formation of PGOK had been discussed prior to its announcement, with the representatives of certain NATO states, and was set up as an appropriate civilian authority to navigate Kosovo's *de facto* independence after the war.

¹⁴⁸ F00709/A02, para. 6.

¹⁴⁹ *Dorđević*, [Trial Judgement](#), para. 418.

xi. The Days Before the NATO Bombing Campaign Began

125. Aware of the increasing likelihood of a NATO military intervention, the OSCE withdrew its observation monitors from Kosovo on 20 March 1999. It appeared that NATO intervention was imminent.

126. Against the background of these heightened tensions, the Vice President of the FRY, Vojislav Šešelj publicly announced that if NATO were to bomb Serbian military targets, “*the Albanians of Kosovo will be no more*”.¹⁵⁰

xii. The Serbian Response to the NATO Intervention

127. NATO began its military intervention on 24 March 1999.

128. This statement was seemingly intended to deter NATO from action by threatening that overwhelming retribution would follow. Šešelj said in terms that this retribution would lead to the extermination of the Albanian civilian population NATO was seeking to protect. He plainly intended his remarks to be understood as warning to NATO. The Serbian response would render any NATO intervention counter-productive. Instead of saving the ethnic Albanian civilian population that remained in Kosovo, it would result in their complete destruction. The very people NATO aimed to protect would be “*no more*”.

xiii. The Closure of the Borders

129. The evidence on the ground shows that a serious attempt was in fact made to carry this threat into effect once the NATO air campaign got underway on 24 March 1999. Serbian forces began to implement a policy of closing the country’s borders, cutting off all means of escape for the ethnic Albanians that had been driven in that direction by the Serbian offensive against them. The internally displaced Kosovo Albanians were then targeted for extermination.

¹⁵⁰ Đorđević, [Trial Judgement](#), para. 2024.

130. By the first week of April 1999, the borders with Albania and Macedonia had been effectively sealed, converting the 'horseshoe formation' into a complete encirclement. The Albanian civilians who remained in their villages, were those least able to leave their homes, and so inevitably included many elderly and infirm people, as well families with very young children, who found it more difficult to uproot themselves.
131. The implication of the border closure for these people was obvious to informed observers at the time. Since the remaining refugees could no longer flee the country, they were facing destruction. The closure of the borders at this point had no conceivable legitimate military objective. There was no threat of land invasion. The object and effect of these border closures was to prevent the evacuation of the remaining refugees to a place of safety, and to expose them to the ravages of armed conflict. Taken in conjunction with the simultaneous campaign of crimes against humanity that the ICTY found to be in operation at that very moment in time, the closure of the borders had the most obvious implications.
132. In contemporary reporting, the *Times* of London described the closure of the borders as a "sinister development", saying that there was now "no such thing as safety in Kosovo for a people *marked for destruction* solely because of their racial identity". The KSC is fully entitled to rely on contemporary reporting as evidence that those observing the conflict could not see any legitimate military purpose behind this manoeuvre. Those reporting these events concluded *at the time* that the only reasonable influence was an intention to bring about the extermination of the refugees.

xiv. Serbian Campaign of Crimes Against Humanity

133. The ICTY has found as a fact that during this period, the violence and terror directed towards the ethnic Albanian population intensified, with an

exponential increase in the intensity of military and paramilitary attacks on Albanian towns and villages by Serbian forces who murdered, tortured, abused, raped, and robbed civilians.

134. As the *Dorđević* Trial Chamber concluded, Serbian authorities unleashed a campaign against the Albanian civilian population that was so ferocious it amounted to an agreement to commit widescale crimes against humanity. The Trial Chamber concluded that the Serbian authorities planned this criminal campaign with deliberation, even making plans for the exhumation of mass graves containing the remains of Albanian citizens that had been murdered by Serbian forces, and transporting them to Serbia, in a ghoulish attempt at covering up their crimes:

By March 1999, the attitude expressed even publicly or to international representatives by senior political leaders of the FRY and Serbia towards the fate of the ethnic Albanian population in Kosovo was one of disregard of the crimes being committed against them by VJ and MUP forces or open threats of violent hostility in the event of NATO action. This was not, therefore... a plan “fulfilled through winks, nods, and whispers in the corridors”; this was a plan that was “very obvious” even to international observers on the ground at the relevant time. Not only were crimes intended as a means to implement the common purpose, but the concealment of evidence of such crimes - the bodies of hundreds of Kosovo Albanian civilians - was also planned and carried out by JCE members and forces used by them.¹⁵¹

135. The ICTY has conclusively held that the military and paramilitary forces of the FRY deliberately and with official authorisation carried out a campaign of crimes against humanity – a widespread and systematic armed attack on the ethnic Albanian civilian population of Kosovo, with the aim of driving that ethnic group out of the territory of Kosovo and preventing their return, in order to render the territory ethnically homogenous. This was to be achieved through the widespread commission of crimes against humanity, war crimes and other humanitarian law violations.

¹⁵¹ *Dorđević*, [Trial Judgement](#), para. 2026.

136. The *Milutinović* Trial chamber characterised this period as “the systematic terrorisation of Kosovo Albanian civilians... their removal from their homes, and the looting and deliberate destruction of their property.”¹⁵² The Trial Chamber pointed out the consequences of the widespread and systematic violence perpetrated by Serbian forces:

It was the deliberate actions of [Serbian forces] during this campaign that caused the departure of at least 700,000 Kosovo Albanians from Kosovo in the short period of time between the end of March and beginning of June 1999.¹⁵³

xv. The Impact on KLA Operational Capacity

137. The KLA’s ability to move, communicate and operate in Kosovo during this time was, quite obviously, severely compromised by the exponential increase in the intensity of the Serbian military actions in Kosovo, and the dramatic escalation in its ethnic cleansing campaign. The KLA volunteers were also severely impacted as individuals by the chaos and suffering created by the escalating refugee crisis. The KLA remained an army of volunteers made up of fighters from the regions of Kosovo that were under attack. The refugees and civilians suffering due to the Serbian campaign were also the families, neighbours and friends of the KLA volunteers.

xvi. The Aftermath

138. The armed conflict in Kosovo (both international and non-international) came to an end with the signing of the Kumanovo Agreement on 10 June 1999. By that time, more than 800,000 Kosovo Albanian civilians (that is, almost half of the population of Kosovo) had been displaced during the first half of the year as a consequence of the fighting.¹⁵⁴ Once Serbian forces withdrew, civilians immediately flooded back into the country.

¹⁵² *Milutinović*, [Trial Judgement](#), para 1178.

¹⁵³ *Milutinović*, [Trial Judgement](#), para. 1178.

¹⁵⁴ *Đorđević*, [Trial Judgement](#), para. 2009.

139. The population returned to razed villages and destroyed homes and businesses. KFOR and the KLA both struggled to impose order on the situation, and the evidence suggests that another spate of violence ensued. Some of the Serbs who remained in Kosovo undoubtedly fell victim to retributive and opportunistic acts of violence, perpetrated by Albanians (who may or may not have been KLA fighters). However, these events occurred in the immediate aftermath of the Serbian ethnic cleansing campaign and in the absence of effective law and order or official State structures. That is not to excuse these acts, but simply to emphasise the fact that there is no evidence that they were committed pursuant to a plan or policy adopted by members of KLA General Staff.

III. CONCLUSION

140. The Appeals Chamber has emphasised that JCE is "not an open-ended concept that permits convictions based on guilt by association".¹⁵⁵ An accused must do "far more than merely associate with criminal persons".¹⁵⁶ He must possess "the intent to commit a crime", have "joined with others to achieve this goal", and make "a significant contribution to the crime's commission".¹⁵⁷ As the Trial Chamber noted in the *Krajišnik* case:

It is the interaction or cooperation among persons – their joint actions – in addition to their common objective, that makes those persons a group. The persons in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for the crimes committed through the JCE.¹⁵⁸

141. In the present case, there is simply no evidence that Kadri Veseli, acting together with his co-accused, or with others named as members of the alleged JCE, agreed to pursue a course of criminal conduct. Specifically, the evidence

¹⁵⁵ *Brđanin*, [Appeal Judgement](#), para. 428. See also, ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, [Appeal Judgement](#), 29 November 2017, Volume II, para. 2781.

¹⁵⁶ *Popović et al.*, [Appeal Judgement](#), para. 1672. *Brđanin*, [Appeal Judgement](#), para. 431.

¹⁵⁷ *Brđanin*, [Appeal Judgement](#), para. 431.

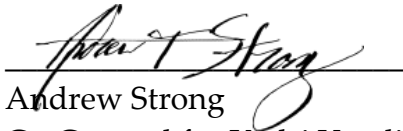
¹⁵⁸ ICTY, *Prosecutor v. Krajišnik*, IT-00-39-T, [Trial Judgement](#), 27 September 2006, para. 884.

fails to show that a common criminal purpose existed; that Mr Veseli was a party to it; or that he contributed significantly (at all) to its implementation, or to any form of criminality during the Indictment Period. Nor is there any evidence that he acted at any relevant time with criminal intent.

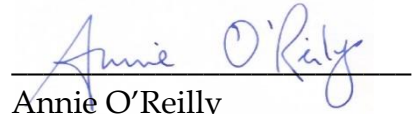
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