

**UNITED  
NATIONS**

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International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
former Yugoslavia since 1991

Case No. IT-05-87-A

Date: 19 April 2010

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**IN THE APPEALS CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Andréia Vaz  
Judge Theodor Meron

**Registrar:** Mr. John Hocking

**THE PROSECUTOR**

v.

**NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

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**PUBLIC**

**NOTICE OF FILING OF PUBLIC REDACTED VERSION  
OF REFILED PROSECUTION RESPONSE TO APPEAL OF  
SRETEN LUKIĆ**

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**The Office of the Prosecutor:**

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Mr. Branko Lukić and Mr. Dragan Ivetić for Sreten Lukić

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

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**v.**

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NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

**PUBLIC**

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SRETEN LUKIĆ**

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1. The Prosecution hereby files the public redacted version of its Refiled Prosecution Response to Appeal of Sreten Lukić.

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**Peter Kremer, QC**  
**Chief of Appeals Division**

Dated this 19<sup>th</sup> April 2010  
At The Hague, The Netherlands

**UNITED  
NATIONS**

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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No. IT-05-87-A
	Date: 2 February 2010

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**Before:** Judge Liu Daqun, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Andréia Vaz  
Judge Theodor Meron

**Registrar:** Mr. John Hocking

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**NIKOLA ŠAINOVIĆ  
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VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

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**PUBLIC REDACTED**

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SRETEN LUKIĆ**

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## TABLE OF CONTENTS

<b>I. OVERVIEW</b> .....	<b>9</b>
<b>II. LUKIĆ HAD ADEQUATE TIME AND FACILITIES TO PREPARE AND PRESENT HIS DEFENCE IN THE CONTEXT OF A JOINT TRIAL (GROUND A)</b> .....	<b>15</b>
A. OVERVIEW.....	15
B. THE CHAMBER PROPERLY GRANTED JOINDER (GROUND A(1)).....	17
1. Lukić fails to show that the Chamber erred in granting joinder.....	18
2. The Chamber’s decisions following joinder were reasonable.....	18
(a) The Chamber reasonably rejected Lukić’s motions to delay before the Chamber set a start date for trial.....	19
(b) The Chamber reasonably rejected Lukić’s motion to delay once a start date for trial was set.....	19
(i) Lukić does not demonstrate prejudice from the 10 July 2006 commencement of trial.....	22
3. Joinder did not prejudice Lukić.....	22
C. LUKIĆ HAD ADEQUATE TIME AND FACILITIES TO PREPARE HIS DEFENCE (GROUND A(2)) .	24
1. Failure to assign co-counsel until May 2006 was the result of the Lukić Defence team’s own arrangements.....	24
2. Lukić has not identified any prejudice stemming from the Chamber’s Rule 54bis Decision.....	25
3. Any belated access to the <i>Milošević</i> case materials was the result of the Lukić Defence’s own shortcomings.....	26
D. LUKIĆ WAS ABLE TO CHALLENGE THE PROSECUTION’S CASE AND PRESENT HIS OWN CASE (GROUND A(3)).....	28
1. The Chamber did not enforce Lukić’s right to an expeditious trial to his detriment ...	28
2. Lukić had sufficient time to cross-examine witnesses against him.....	30
3. The Chamber’s decision to sit longer hours did not prejudice Lukić.....	32
4. Delaying the beginning of the Defence cases while maintaining briefing deadlines allowed Lukić adequate time to prepare his defence.....	33
5. The Chamber allocated Lukić sufficient time within which to present his defence case.....	34
6. The Chamber’s method of keeping time was appropriate.....	36
7. Lukić had adequate time and facilities available to him for the translation of documents.....	36
E. LUKIĆ FAILS TO DEMONSTRATE THAT HE WAS UNABLE TO INVESTIGATE IN KOSOVO (GROUND A(4)).....	39
<b>III. THE CHAMBER PROPERLY DENIED DOCUMENTS LUKIĆ TENDERED FROM THE BAR TABLE (GROUND B)</b> .....	<b>40</b>
A. THE CHAMBER PROPERLY EXCLUDED THE “MAP EXTRACTS OF ANTI-TERRORIST ACTIONS”.....	40
B. THE CHAMBER PROPERLY EXCLUDED DOCUMENTS PRINTED FROM THE MUP WEBSITE....	41
C. THE CHAMBER PROPERLY EXCLUDED “[D]OCUMENTS UNDERLYING 6D614”.....	41
<b>IV. GROUND C</b> .....	<b>42</b>

<b>V. THE CHAMBER PROPERLY RELIED ON PROSECUTION EVIDENCE (GROUND D) .....</b>	<b>43</b>
A. THE CHAMBER APPROACHED THE EVIDENCE PROPERLY .....	44
B. CHALLENGES RELATING TO PRE-CONFLICT PERSECUTION OF ALBANIANS ARE IRRELEVANT.....	45
C. THE CHAMBER DID NOT ERR WITH REGARD TO MUP UNIFORMS AND INSIGNIA .....	45
D. THE CHAMBER DID NOT ERR IN ASSESSING PARAMILITARY ACTIVITIES .....	47
1. The Chamber properly relied upon Vasiljević, Gajić and Cvetić .....	48
(a) Vasiljević.....	48
(b) Gajić .....	49
(c) Cvetić.....	49
2. Paramilitaries were present in Kosovo.....	50
E. THE CHAMBER DID NOT ERR IN ITS RELIANCE UPON THE EVIDENCE OF FOREIGN OBSERVERS .....	51
F. THE CHAMBER DID NOT ERR IN ITS ASSESSMENT OF THE JOINT COMMAND .....	53
<b>VI. THE CHAMBER PROPERLY ADMITTED AND RELIED UPON LUKIĆ’S INTERVIEW WITH THE PROSECUTION (GROUND F).....</b>	<b>55</b>
A. THE CHAMBER CORRECTLY ADMITTED LUKIĆ’S INTERVIEW INTO EVIDENCE.....	55
1. Overview .....	55
2. Lukić fails to establish any error by the Chamber in admitting his Interview .....	56
(a) The transcript of Lukić’s Interview was not “late disclosed” .....	56
(b) Lukić had an opportunity to correct alleged translation deficiencies.....	57
(c) Lukić does not substantiate his claim of “gross” translation errors and demonstrates no impact on the Chamber’s findings .....	58
B. THE CHAMBER CORRECTLY RELIED ON LUKIĆ’S INTERVIEW .....	58
1. Overview .....	58
2. The Chamber made no error regarding Lukić’s position as Head of the MUP Staff... ..	58
3. The Chamber made no error regarding Lukić’s knowledge of the criminal plan .....	59
4. The Chamber made no error in its conclusions regarding the Joint Command .....	60
<b>VII. LUKIĆ FAILS TO DEMONSTRATE BIAS (GROUND G) .....</b>	<b>62</b>
A. OVERVIEW .....	62
B. JUDGE BONOMOY ACTED PROPERLY TO MANAGE THE PROCEEDINGS .....	62
C. NONE OF THE CHAMBER’S FINDINGS THAT LUKIĆ CHALLENGES DISCLOSES BIAS.....	64
<b>VIII. THE CHAMBER PROPERLY FOUND THAT A JCE EXISTED AND THAT LUKIĆ WAS A MEMBER (GROUNDS H, I, O) .....</b>	<b>66</b>
A. OVERVIEW .....	66
B. SUMMARY DISMISSAL OF ARGUMENTS BASED ON A MISUNDERSTANDING OF THE LAW .....	67
C. THE EXISTENCE OF A COMMON PURPOSE.....	68
1. The nature of the common purpose.....	70
2. The Chamber properly rejected alternative explanations for the displacement of the Kosovo Albanians.....	72
(a) NATO Bombing .....	72
(b) KLA activities .....	74
3. The Chamber reasonably relied on the pattern of crimes in spring of 1999 to establish the common purpose.....	75
4. The Chamber reasonably relied on the seizure of identity documents.....	76

5. The Chamber reasonably relied on the process of arming of non-Albanians and disarming of Kosovo Albanians .....	78
(a) Arming of non-Albanians .....	78
(b) Disarming of Kosovo Albanians .....	80
6. The Chamber relied appropriately on the context of events in 1998 and 1999.....	80
D. MENS REA .....	82
1. Overview .....	82
2. The Chamber applied the proper legal standard for mens rea.....	84
3. Lukić was aware of the crimes .....	85
4. Lukić intended the crimes .....	87
E. SIGNIFICANT CONTRIBUTION TO THE CRIMES .....	89
1. Overview .....	89
2. JCE does not require effective control .....	91
3. Lukić was the <i>de facto</i> commander of the MUP in Kosovo .....	92
4. Lukić took part in the planning and co-ordinating process.....	93
<b>IX. GROUND J.....</b>	<b>94</b>
<b>X. GROUNDS L AND M.....</b>	<b>94</b>
<b>XI. THE CHAMBER PROPERLY FOUND LUKIĆ’S PARTICIPATION IN THE JOINT COMMAND (GROUND N).....</b>	<b>95</b>
A. OVERVIEW .....	95
B. THE JOINT COMMAND DID NOT REPLACE THE MUP AND VJ CHAINS OF COMMAND.....	98
1. The Chamber reasonably relied on the testimony of Cvetić .....	100
2. The Chamber’s findings regarding Stojanović and Đaković did not shift the Prosecution’s burden .....	100
3. Lukić fails to substantiate his argument that the term “JC” was also used when a document was issued by the VJ without MUP participation.....	101
4. The Chamber properly found that FRY and Serbian officials chose to solve “KLA problem” through criminal acts .....	101
5. Lukić was not convicted of crimes committed in 1998.....	102
6. Lukić fails to demonstrate any contradiction in the Chamber’s findings regarding the decision to implement the third stage of the Plan.....	103
7. Lukić fails to demonstrate any error in the Chamber’s findings regarding command of the joint operation in the sector of the Slup/Sllup and Vokša/Voksh villages ....	103
C. THE VJ AND THE MUP CO-ORDINATED THEIR ACTIONS BEFORE EACH ANTI-TERRORIST OPERATION IN 1998 AND IN 1999 .....	104
1. The MUP Staff, with Lukić at its head, controlled the actions of the PJP in Kosovo	107
2. Lukić fails to substantiate his challenges to the Chamber’s findings regarding the <i>Grom 3</i> and <i>Grom 4</i> directives. ....	108
3. Lukić fails to demonstrate the Chamber “misquoted” minutes of MUP Staff meetings.....	108
D. CONCLUSION .....	109
<b>XII. THE CHAMBER PROPERLY REJECTED SIMONVIĆ’S EVIDENCE ON MUP STRUCTURE (GROUND K).....</b>	<b>111</b>

<b>XIII. THE CHAMBER PROPERLY FOUND LUKIĆ COMMANDED MUP FORCES VJA THE MUP STAFF (GROUND P).....</b>	<b>112</b>
A. OVERVIEW .....	112
1. As Head of the MUP Staff for Kosovo, Lukić made a significant contribution to the JCE.....	112
(a) As Head of the MUP Staff, Lukić exercised <i>de jure</i> powers over MUP personnel in Kosovo .....	113
(b) Lukić was <i>de facto</i> commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999, including the regular police in the SUPs, PJP, and SAJ units .....	113
(c) Lukić was the bridge between the policy-planners in Belgrade and those on the ground in Kosovo.....	115
(d) Lukić was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans. ....	117
2. Lukić’s acts and role as Head of the MUP Staff show he shared the criminal intent with his fellow JCE members .....	118
B. LUKIĆ’S CHALLENGES TO THE CHAMBER FINDINGS REGARDING LUKIĆ’S ROLE AND RESPONSIBILITY AND THAT OF THE MUP STAFF FAIL TO MEET THE STANDARD OF REVIEW .....	120
1. Lukić’s role and responsibilities – not his title or rank – established his criminal liability .....	121
2. The Chamber’s reliance on Đaković and Cvetić was reasonable .....	122
3. The Chamber properly found that the MUP Staff played a central role in planning, organising, controlling, and directing the work of the various MUP units, as well as coordinating and planning joint operations with the VJ.....	123
(a) The Chamber reasonably concluded the MUP Staff had a central role in planning joint operations.....	124
(b) The Chamber properly found that the MUP Staff planned/organized, managed RJB units.....	125
(c) Lukić had significant authority over the SUPs and PJP in Kosovo in 1999.....	128
(d) The Chamber properly concluded SUPs reported regularly to the MUP Staff. ....	129
4. The Chamber properly assessed Lukić’s role and authority .....	130
(a) Lukić chaired meetings.....	130
(b) Lukić issued numerous dispatches on behalf of the MUP Staff, containing tasks and instructions for the SUPs and PJP and SAJ units.....	131
(c) The Chamber gave the report and testimony of Professor Simonović their proper weight.....	131
(d) The Chamber properly concluded that Lukić was a “ <i>de facto</i> ” commander of MUP forces in Kosovo .....	132
(e) The Chamber’s findings regarding the lack of MUP combat orders in evidence are reasonable.....	133
(f) Lukić fails to demonstrate error in the Chamber’s reliance on Lukić’s letter of promotion.....	133
5. Lukić acted as a bridge between the policy makers in Belgrade and those in Kosovo.....	134
(a) Lukić fails to substantiate his claim that he could not have been the bridge between policy planners and the PJP.....	134
(b) Lukić acted as a bridge between Belgrade and Kosovo even though he did not participate in developing the Plan for Combating Terrorism.....	135

(c) Lukić fails to explain how “[t]he Chamber misquoted the Decision to Establish the MUP Staff” .....	137
(d) Lukić fails to demonstrate any “incorrect conclusions” regarding his role in reporting to the MUP .....	137
(e) The Chamber properly attributed MUP Staff reports to Lukić .....	137
(f) Lukić fails to demonstrate error in the Chamber’s findings regarding reports of the number of refugees leaving for Albania.....	138
(g) Lukić fails to demonstrate any error in the Chamber’s interpretation of evidence relating to the 28 July 1998 meeting.....	138
6. The Chamber reasonably found that Lukić was “directly involved in the planning process”.....	139
7. Lukić’s attendance at key meetings prove elements of his intent and his contribution to the JCE.....	139
(a) A meeting of the Joint Command was held on 1 June 1999 .....	142
8. As Head of the MUP Staff in Kosovo, Lukić had certain disciplinary authority.....	142
9. Lukić was informed of MUP/VJ crimes in 1998 and in 1999.....	144
(a) The Chamber’s reliance on Joint Command Notes in establishing Lukić’s knowledge of VJ/MUP misdeeds in 1998 was reasonable .....	145
(b) Lukić’s regular meetings with members of international organisations in 1998 informed him about crimes .....	147
(c) The Chamber’s findings that Lukić demanded and received reports from the field in 1999.....	149
(i) Lukić fails to demonstrate—based on one alleged example—that reporting from the SUPs to the MUP Staff was incomplete .....	149
(ii) The fact that the competent authorities allegedly took the measures envisaged by the law is irrelevant.....	150
(iii) Lukić fails to demonstrate how the Chamber’s alleged factual errors regarding Exh.P1092 have any impact on the Judgement.....	150
(iv) Lukić fails to explain how the Chamber “misquoted” a 24 March 1999 dispatch.....	151
(v) Lukić fails to demonstrate error in the Chamber’s reliance on Lukić’s report of 10 April 1999 .....	151
(vi) Lukić fails to demonstrate the Chamber erred in relying on the 3 April 1999 report he sent to Belgrade. ....	152
(vii) Lukić fails to demonstrate how the Chamber’s alleged misquote of his interview had any effect on the Judgement.....	152
(viii) The Chamber properly relied on the 4 May 1999 meeting to show Lukić had knowledge of MUP crimes in 1999 .....	153
(ix) Lukić fails to substantiate a number of arguments with references to the record or the Judgment .....	153
(x) Lukić fails to explain the impact of the alleged error on the judgement.....	154
C. CONCLUSION.....	155
<b>XIV. THE CHAMBER PROPERLY ASSESSED THE LAW AND EVIDENCE</b>	
<b>RELEVANT TO THE CRIME BASE (GROUND Q) .....</b>	<b>156</b>
A. OVERVIEW .....	156
B. LUKIĆ’S CLAIMS SHOULD BE SUMMARILY DISMISSED FOR THEIR GENERAL DEFECTS .....	156
C. LUKIĆ’S SPECIFIC CHALLENGES ARE ENTIRELY WITHOUT MERIT.....	157
1. No “impermissible inference” was drawn as to “crime base locations” (Q.1).....	157
(a) Victims were not lawfully killed in combat with the KLA .....	158
(b) Victims were not killed by NATO .....	158

(c) Lukić was on notice of murders taking place .....	159
(d) The Chamber did not err regarding the concealment of bodies .....	159
2. No “improper reliance” was made upon the OMPF List of Missing Persons (Q.2) ..	159
(a) The Chamber treated Exhibits P2454, P2798 properly .....	160
3. Proof of death was properly ascertained (Q.3–4).....	161
4. The Chamber did not err in entering findings for “unscheduled” victims (Q.5) .....	162
<b>XV. GROUNDS R, S AND T.....</b>	<b>164</b>
<b>XVI. LUKIĆ IS CRIMINALLY RESPONSIBLE FOR CRIMES COMMITTED IN PRIZREN MUNICIPALITY (GROUND U) .....</b>	<b>165</b>
A. OVERVIEW .....	165
B. THE CHAMBER DID NOT ERR IN FINDING MUP/VJ FORCES AND LUKIĆ RESPONSIBLE FOR THE CRIMES IN PRIZREN .....	165
1. Lukić fails to show that the Chamber erred in its evaluation of evidence .....	166
(a) The Chamber reasonably concluded that the mass displacement of Kosovo Albanian civilians was caused by MUP and VJ activity, not KLA presence in Prizren .....	166
(i) The Chamber reasonably concluded the KLA did not cause mass displacement....	167
(b) The Chamber reasonably concluded that NATO bombings did not cause the mass displacement of Kosovo Albanian civilians from Prizren municipality .....	168
2. The Chamber reasonably concluded that Lukić was responsible for crimes committed in Prizren municipality .....	169
C. CONCLUSION.....	170
<b>XVII. GROUNDS V, W, X, Y, Z, AA, BB, CC, DD, EE AND FF .....</b>	<b>170</b>
<b>XVIII. LUKIĆ IS CRIMINALLY RESPONSIBLE FOR CRIMES COMMITTED IN GNJILANE/GJILAN MUNICIPALITY (GROUND GG) .....</b>	<b>171</b>
A. OVERVIEW .....	171
B. THE CHAMBER DID NOT ERR IN FINDING MUP/VJ FORCES AND LUKIĆ RESPONSIBLE FOR THE CRIMES IN GNJILANE/GJILAN MUNICIPALITY .....	172
1. The Chamber reasonably concluded that NATO bombings did not cause the mass displacement of Kosovo Albanian civilians from Prilepnica//Përlepnicë .....	173
2. The Chamber reasonably concluded that Lukić was responsible for the forcible displacement of Kosovo Albanian civilians from Žegra/Zhegra.....	174
C. CONCLUSION.....	175
<b>XIX. GROUNDS HH, II AND JJ.....</b>	<b>176</b>
<b>XX. LUKIĆ’S SENTENCE WAS NOT MANIFESTLY EXCESSIVE: IT WAS TOO LENIENT (GROUND KK).....</b>	<b>177</b>
A. OVERVIEW .....	177
B. THE CHAMBER PROPERLY CONSIDERED THE SENTENCING PRACTICES OF THE FORMER YUGOSLAVIA .....	177
C. THE CHAMBER PROPERLY CONSIDERED MITIGATING FACTORS .....	178
1. The complexity of the situation in Kosovo during the NATO Bombing .....	178
2. Efforts to Promote Justice .....	179
3. Health Condition .....	179
4. Purported Surrender to the Tribunal.....	179

5. Abuse of Authority as an Aggravating Factor.....	180
<b>XXI. CONCLUSION.....</b>	<b>181</b>
<b>XXII. DECLARATION PURSUANT TO RULE 112 .....</b>	<b>182</b>
<b>XXIII. GLOSSARY.....</b>	<b>183</b>

## I. OVERVIEW

1. Sreten Lukić, a high-ranking police officer, intended and implemented the unlawful forcible displacement of around 700,000 Kosovo Albanians, within and outside of Kosovo, in order to ensure continued control over the province by the FRY and Serbian authorities. In addition he committed the crimes of murder and destruction of religious property. He achieved all this through his participation in a JCE. He was directly involved in the planning process through which the JCE was put into effect, and acted as a bridge between the policy-planners in Belgrade (including Milošević and Đorđević) and those on the ground in Kosovo.<sup>1</sup> As Head of the MUP Staff for Kosovo between June 1998 and July 1999, and as *de facto* commander of all MUP forces in Kosovo, Lukić was involved in planning, organising and controlling MUP units in the province.<sup>2</sup> As a member of the Joint Command he worked closely with the leadership of the VJ, and had a senior and central role in co-ordinating the actions of the armed forces of the MUP and the VJ.<sup>3</sup> Together with Pavković, the commander of the 3<sup>rd</sup> Army of the VJ, and Šainović the political co-ordinator of the VJ and MUP forces in Kosovo, Lukić was involved in the co-ordination of VJ and MUP activities whereby those forces were used to carry out the crimes charged in the indictment.<sup>4</sup>

2. Throughout his Appeal Brief, Lukić fundamentally misunderstands what he is required to show to overturn his convictions. In addition to raising unfounded arguments about the fairness of his trial,<sup>5</sup> he routinely points to other evidence, or interpretations of the evidence to establish his arguments without showing why no reasonable trial chamber could have reached the conclusions that this Chamber reached.<sup>6</sup> He seeks to re-argue his trial submissions concerning his position and functions within the MUP Staff and Joint Command, and whether there was a JCE.<sup>7</sup> He again argues for alternative explanations for the departure of so many Kosovo Albanians—blaming NATO and KLA actions. He advances again his position that the actions of the MUP were to combat terrorism, thus were legitimate, and that in any event he only acted lawfully unaware of VJ/MUP crimes. In addition he frequently misunderstands or ignores the Chamber's findings, the evidence upon which they are based, and the legal requirements to establish JCE individual criminal responsibility.

<sup>1</sup> Judgement, Vol.III, paras.1130–1131.

<sup>2</sup> Judgement, Vol.III, paras.1050, 1131.

<sup>3</sup> Judgement, Vol.III, paras.1118, 1032.

<sup>4</sup> Judgement, Vol.III, para.1132.

<sup>5</sup> Lukić Brief, Grounds A, B, E, F, G and K.

<sup>6</sup> Lukić Brief, Grounds D, H, I, N, O, P, Q, U, GG, KK.

<sup>7</sup> Lukić Brief, Grounds H, I, N, O and P.

3. Many of Lukić's arguments are repetitious and overlapping. In order to provide a focused response to his attack on the Chamber's findings about the JCE, and the basis for Lukić's individual criminal responsibility, the Prosecution responds to those grounds together.<sup>8</sup> In many places throughout his Brief it is difficult to discern the argument sustaining the error Lukić alleges. The Prosecution has attempted to identify such arguments often reforming them in an effort to articulate them understandably.

4. Many individual arguments warrant summary dismissal as they are so deficient as to lack any proper foundation.<sup>9</sup> The Appeals Chamber has identified a number of "categories of deficient submissions which are liable to be summarily dismissed."<sup>10</sup> The Prosecution has collected these summary dismissal categories below and refers to these categories throughout this Response by abbreviations. The Prosecution has attempted to respond to each argument as it understands it. Where it has not responded to a specific paragraph this is because it considers the point to be so obscure, contradictory, vague or otherwise deficient as not require a specific response other than to say it warrants summary dismissal on one or more grounds. The identified summary dismissal categories include:

- First Summary Dismissal category ("SD1"):

Where the Appeals Chamber considers that an appellant is challenging factual findings on which a conviction or sentence does not rely or making submissions that are clearly irrelevant to the Trial Chamber's factual findings, it will summarily dismiss that alleged error or argument [...]<sup>11</sup>

- Second Summary Dismissal category ("SD2"):

[A]n appellant is expected to identify the challenged factual finding and put forward its factual arguments with specific reference to the page number and paragraph number. Similarly, submissions which either misrepresent the Trial Chamber's factual findings or the evidence on which the Chamber relies, or ignore other relevant factual findings made by the Trial Chamber, will not be considered in detail. As a general rule, where an appellant's references to the Trial Judgement are missing, vague or incorrect, the Appeals Chamber will summarily dismiss that alleged error or argument [...]<sup>12</sup>

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<sup>8</sup> Lukić Brief, Grounds H, I and O.

<sup>9</sup> *Martić* AJ, para.14.

<sup>10</sup> *Martić* AJ, para.15.

<sup>11</sup> *Martić* AJ, para.17.

<sup>12</sup> *Martić* AJ, para.18 (footnote omitted). *See also* *Galić* AJ, para.78; Practice Direction, para.4(b)(ii) ("[A]n appellant shall file, in accordance with the Statute and Rules, an Appellant's Brief containing ...

- Third Summary Dismissal category (“SD3”):

Mere assertions that the Trial Chamber failed to give sufficient weight to certain evidence, or should have interpreted evidence in a particular manner, are liable to be summarily dismissed. Similarly, where an appellant merely seeks to substitute its own evaluation of the evidence for that of the Trial Chamber, such submissions may be dismissed without detailed reasoning. The same applies to claims that the Trial Chamber could not have inferred a certain conclusion from circumstantial evidence without further explanation [...]<sup>13</sup>

- Fourth Summary Dismissal category (“SD4”):

Submissions will be dismissed without detailed reasoning where an appellant makes factual claims or presents arguments that the Trial Chamber should have reached a particular conclusion without advancing any evidence in support. Indeed, an appellant is expected to provide the Appeals Chamber with an exact reference to the parts of the trial record invoked in support of its arguments. As a general rule, in instances where this is not done, the Appeals Chamber will summarily dismiss the alleged error or argument [...]<sup>14</sup>

- Fifth Summary Dismissal category (“SD5”):

Submissions will be dismissed without detailed reasoning where an appellant merely disputes the Trial Chamber’s reliance on one of several pieces of evidence to establish a certain fact, but fails to explain why the convictions should not stand on the basis of the remaining evidence. The Appeals Chamber will summarily dismiss mere assertions that the Trial Chamber’s finding was contrary to the testimony of a specific witness, or that the Trial Chamber should or should not have relied on the testimony of a specific witness, provided that the appellant does not show that an alleged error of fact occurred that occasioned a miscarriage of justice. Similarly, submissions will be dismissed without detailed reasoning where an appellant merely argues that the testimony of a witness is uncorroborated. Where the Appeals Chamber considers that an appellant makes such assertions without substantiating them, it will summarily dismiss that alleged error or argument [...]<sup>15</sup>

- Sixth Summary Dismissal category (“SD6”):

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(b) the arguments in support of each ground of appeal, including but not limited to; (ii) factual arguments and, if applicable, arguments in support of any objections as to whether a fact has been sufficiently proven or not, with precise reference to any relevant exhibit, transcript page, decision or paragraph number in the Judgement”).

<sup>13</sup> *Martić* AJ, para.19. *See also Galić* AJ, para.246.

<sup>14</sup> *Martić* AJ, para.20 (footnote omitted).

<sup>15</sup> *Martić* AJ, para.21.

Where the Appeals Chamber finds that an appellant merely asserts that the Trial Chamber failed to consider relevant evidence, without showing that an alleged error of fact occasioned a miscarriage of justice, it will summarily dismiss that alleged error or argument [...] <sup>16</sup>

- Seventh Summary Dismissal category (“SD7”):

Where the Appeals Chamber considers that [an appellant] [...] submits arguments or alleges errors that are clearly irrelevant to the Trial Chamber’s convictions or sentence [...] [or] submits arguments or alleges errors which, if true, would actually lend support to the finding he is attempting to challenge [...] it will summarily dismiss the alleged error or argument on that basis. <sup>17</sup>

[When an appellant] submits arguments or makes allegations that are contrary to common sense [...] the Appeals Chamber [...] will summarily dismiss them [...] <sup>18</sup>

- Eighth Summary Dismissal category (“SD8”):

Where the Appeals Chamber considers that [an appellant] fails to explain how the alleged factual error had an effect on the conclusions in the Trial Judgement, it will summarily dismiss that alleged error or argument. <sup>19</sup>

- Ninth Summary Dismissal category (“SD9”):

On appeal, a party may not merely repeat arguments that did not succeed at trial, unless the party can demonstrate that the Trial Chamber’s rejection of them constituted such an error as to warrant the intervention of the Appeals Chamber. <sup>20</sup>

- Tenth Summary Dismissal category (“SD10”):

Any challenge to the findings must indicate in what respects the Trial Chamber’s assessment of the evidence was incorrect; if an appellant merely challenges the findings without making such an indication, he will have failed to discharge the burden incumbent upon him. On a number of occasions, Galić claims that a finding of the Trial Chamber was incorrect

<sup>16</sup> *Strugar* AJ, para.24.

<sup>17</sup> *Brdanin* AJ, paras.26.

<sup>18</sup> *Brdanin* AJ, paras.30.

<sup>19</sup> *Brdanin* AJ, para.31.

<sup>20</sup> *Galić* AJ, paras.10 (footnote omitted). *See also Galić* AJ, para.303 (“Because this is not a trial *de novo*, Galić cannot simply repeat the same arguments that were made at trial without saying how the Trial Chamber erred: ‘an appeal is not an opportunity for the parties to reargue their cases’. In many instances, Galić’s argument on appeal is a mere repetition of an argument that was made and rejected at trial, and he has not demonstrated why no reasonable trier of fact could have rejected his arguments. For each one of these, the Appeals Chamber will dismiss the allegation without further discussion.”) (footnote omitted).

but fails to present any argument in support. Frequently, he says only that the finding was ‘erroneous’ or ‘clearly erroneous’ without giving any content to the allegation. These allegations will be dismissed without discussion.<sup>21</sup>

- Eleventh Summary Dismissal category (“SD11”):

[A]ny allegation[s] made by Galić that are based on new evidence – including factual allegations for which he does not give precise citations and that do not appear clearly in the Trial Judgement – will be dismissed without further discussion.<sup>22</sup>

- Twelfth Summary Dismissal category (“SD12”):

[T]he Appeals Chamber notes that those arguments go beyond the scope of the Defence Notice of Appeal and therefore the Appeals Chamber is not required to consider them.<sup>23</sup>

- Thirteenth Summary Dismissal category (“SD13”):

Galić’s substantial submissions in this part of his fifteenth ground of appeal are almost entirely redundant with those advanced in his seventeenth ground of appeal. Further, they suffer from such substantial defects in form that their consideration on the merits is either impossible or not required. Accordingly, these arguments are dismissed without analysis because they fail to meet the formal requirements of an appeal.<sup>24</sup>

- Fourteenth Summary Dismissal category (“SD14”):

[T]he Appeals Chamber may dismiss submissions as unfounded without providing detailed reasoning if a party’s submissions are obscure, contradictory, vague or suffer from other formal and obvious insufficiencies.<sup>25</sup>

It should be recalled that the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing and may dismiss arguments which are evidently unfounded without providing detailed reasoning.<sup>26</sup>

5. Despite the extraordinary length of his Appeal Brief, Lukić fails to explain or establish, in any respect, how the Chamber erred in fact or in law. He fails to show why no

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<sup>21</sup> Galić AJ, para.297 (footnote omitted).

<sup>22</sup> Galić AJ, paras.311.

<sup>23</sup> Galić AJ, para.78 (footnote omitted).

<sup>24</sup> Galić AJ, para.246.

<sup>25</sup> Martić AJ, para.14. See also Mrkšić AJ, para.17; Brdanin AJ, para.16; Orić AJ, para. 14; Limaj AJ, para.15; Blagojević AJ, para.11; Karera AJ, para.12.

reasonable trial chamber could have reached the factual findings this Chamber did, fails to establish any factual error leading to a miscarriage of justice, and fails to establish any legal error invalidating this lengthy and careful judgement. His allegations should be dismissed in their entirety.

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<sup>26</sup> *Mrkšić* AJ, para.18.

## II. LUKIĆ HAD ADEQUATE TIME AND FACILITIES TO PREPARE AND PRESENT HIS DEFENCE IN THE CONTEXT OF A JOINT TRIAL (GROUND A)

### A. Overview

6. Lukić had a fair trial. The Chamber ensured that Lukić had adequate time and facilities to prepare his defence prior to and during trial (Article 21(4)(b)). He was able to cross-examine witnesses, and to call his witnesses on his own behalf (Article 21(4)(c)).

7. The specific fair trial guarantees afforded to an accused under Article 21 are virtually identical to those set out in Article 6(3) of the ECHR. The ECtHR has said of those guarantees that:

their intrinsic aim is always to ensure, or contribute to ensuring, the fairness of the criminal proceedings as a whole. The guarantees [...] are therefore not an end in themselves, and they must accordingly be interpreted in the light of the function which they have in the overall context of the proceedings.<sup>27</sup>

8. In relation to these specific guarantees, looking at the proceedings as a whole, Lukić had a fair trial. In particular he:

- had over 15 months from the date of his initial appearance until the beginning of trial to prepare his defence;<sup>28</sup>
- filed a pre-trial brief contesting the Prosecution case;<sup>29</sup>
- had over 21 months from the beginning of trial to the close of his defence case to prepare his defence,<sup>30</sup> including several non-sitting breaks<sup>31</sup> during which he should have continued preparing;<sup>32</sup>

<sup>27</sup> *Mayzit v. Russia*, ECtHR, Application 63378/00, 20 January 2005, para.77.

<sup>28</sup> Lukić made his initial appearance on 6 April 2005 (Pre-Trial Work Plan, p.1); trial commenced on 10 July 2006 (Judgement, Vol.I, para.17).

<sup>29</sup> Lukić Pre-Trial Brief.

<sup>30</sup> Trial began on 10 July 2006 (Judgement, Vol.I, para.17); Lukić's presentation of evidence ended on 21 April 2008 (Judgement, Vol.I, para.30).

<sup>31</sup> *E.g.* Order on Close of Prosecution Case, para.4, fn.7 (identifying extended recesses since the commencement of trial); Judgement, Vol.I, paras.25, 28 (noting that the first Defence case started almost 3 months after the conclusion of Rule 98*bis* proceedings); T.20340 (open) (one month adjournment); Decision on Remaining Defence Time, para.9(c) (10 days' adjournment); T.26025

- exercised his right to cross-examine almost 100 of the Prosecution *viva voce* witnesses,<sup>33</sup> and almost half of approximately 77 *viva voce* witnesses called by the other Accused;
- made detailed submissions at the Rule 98*bis* stage challenging the sufficiency of the Prosecution evidence against him;<sup>34</sup>
- over two and a half months,<sup>35</sup> presented some 40 witnesses in support of his case—including Rule 92*ter* witnesses—and had hundreds of exhibits admitted into evidence, including having them admitted from the bar table;
- filed a detailed final trial brief reiterating his case and making arguments on the law and the evidence;<sup>36</sup>
- was represented throughout the proceedings;<sup>37</sup>

9. In order to succeed under this ground of appeal, Lukić must show that: (1) provisions of the Statute and/or the Rules were violated, and (2) the violation caused him such prejudice or “unfairness” as to amount to an error of law invalidating the judgement.<sup>38</sup>

10. As part of this ground, Lukić challenges decisions issued by the Chamber in the exercise of its discretion to manage trial proceedings, including decisions on (1) joinder (ground A.1); (2) the time and facilities afforded to an accused to prepare his defence (ground A.2); and (3) the time for examination and cross-examination of witnesses (ground A.3). The Prosecution will address each in turn, except insofar as arguments relating to decisions under (2) also arise in sub-grounds A.1 and A.3.

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(open) (fortnight’s adjournment); Judgement, Vol.I, para.31 (noting a six-week adjournment); T.26767 (open) (five-week adjournment).

<sup>32</sup> Order on Close of Prosecution Case, para.4; Decision on Postponing Trial Schedule, para.3.

<sup>33</sup> Judgement, Vol.I, para.21 (recording 117 Prosecution witnesses overall).

<sup>34</sup> T.12541–12569 (open).

<sup>35</sup> Judgement, Vol.I, fn.29. *See also* Decision on Remaining Defence Time, para.9(b). Lukić’s case ran from 7 February 2008 (T.21840 (open)) to 21 April 2008 (Judgement, Vol.I, para.30).

<sup>36</sup> Lukić Closing Brief.

<sup>37</sup> *See* Registrar’s Decision 1 (assigning Mr. Koppe as duty counsel for the purpose of Lukić’s initial appearance); Registrar’s Decision 2 (assigning Mr. Scudder as lead counsel); Registrar’s Decision 3 (replacing Mr. Scudder with Mr. Lukić as lead counsel); Registrar’s Decision 4 (assigning Mr. Ivetić as co-counsel).

<sup>38</sup> *Kordić* AJ, para.119.

11. Decisions under (1), (2) and (3) are discretionary decisions by the Chamber.<sup>39</sup> As a result, Lukić must show that these decisions were the result of a legal or factual error, or were so unfair or unreasonable as to constitute an abuse of the Chamber's discretion, and that they caused him prejudice.<sup>40</sup> Lukić fails to show or identify any specific prejudice caused by those decisions.<sup>41</sup> In particular, Lukić fails to show that he was unable to cross-examine witnesses, identify witnesses to be called during his case, properly examine those witnesses, or prepare and present his closing submissions. Further, he fails to show how any of these matters, even if proved, invalidates the judgement.

### **B. The Chamber properly granted joinder (Ground A(1))**

12. Under this ground, Lukić argues that the Chamber erred by joining his trial to that of the other accused and by starting this joint trial on 10 July 2006, despite Lukić's repeated requests for additional time to prepare. He argues these decisions caused him prejudice because they prevented him from preparing properly for cross-examination, curtailed his witness list, and prevented him from adducing sufficient evidence in mitigation.<sup>42</sup>

13. The Appeals Chamber should reject Lukić's challenges. A Trial Chamber is in the best position to determine whether the accused has been given adequate time and facilities to prepare a defence, having supervised the proceedings from their inception.<sup>43</sup> What constitutes "adequate time and facilities" must be assessed in relation to the proceedings as a whole, and will depend on the circumstances of the case.<sup>44</sup>

14. In protecting Lukić's right to adequate time and facilities, the Chamber had regard to the entirety of the proceedings. He had 3 years between the date of his initial appearance and the close of his case during which to prepare his defence.<sup>45</sup>

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<sup>39</sup> *Krajišnik* AJ, para.81; *Pandurević* Joinder AD, paras.7–8; *Stanišić* Joinder TD, para.25; *Prlić* AD, p.3.

<sup>40</sup> *Krajišnik* AJ, para.81.

<sup>41</sup> *E.g. Krajišnik* AJ, para.104.

<sup>42</sup> Lukić Brief, paras.21–33.

<sup>43</sup> *Krajišnik* Adjournment AD, para.65.

<sup>44</sup> *See Karadžić* Trial Commencement AD, para.24; *Krajišnik* AJ, para.80; *Nahimana* AJ, para.220; *Krajišnik* Adjournment AD, para.23.

<sup>45</sup> *See* fns.28, 35 above.

1. Lukić fails to show that the Chamber erred in granting joinder

15. The Chamber properly exercised its discretion in ruling that it was in the interests of justice for the Accused to be tried in a single trial.<sup>46</sup>

16. Lukić complains that the Chamber erred because of the difference in pre-trial preparation between him and three of his five co-accused (Milutinović, Šainović and Ojdanić).<sup>47</sup> Criticising the finding that there was “no indication that a joint trial could not start in December 2005 to January 2006,”<sup>48</sup> he fails to address the Chamber’s Joinder Decision as a whole.<sup>49</sup> He neither challenges the core findings that (1) the crimes charged against all the Accused were committed as part of the same transaction and (2) joinder was in the interests of judicial economy, nor (3) that “no basis has been identified for concluding that joinder would [...] prejudice the right of any of the Accused to a fair and expeditious trial”.<sup>50</sup> The Chamber expressly acknowledged Lukić’s grounds opposing joinder,<sup>51</sup> the same grounds he repeats on appeal.<sup>52</sup> Only once it made these findings did the Chamber conclude that a joint trial could begin in December 2005 to January 2006. The Chamber acted in accord with Rule 82(B) and the Tribunal’s jurisprudence.<sup>53</sup> Lukić shows no discernible error in the Chamber’s exercise of its discretion.<sup>54</sup> Moreover, he ignores the fact that he had more than a year from the Joinder Decision to the start of his trial during which to prepare. He thus fails to demonstrate any prejudice.

2. The Chamber’s decisions following joinder were reasonable

17. Decisions by the Chamber subsequent to the Joinder Decision did not infringe Lukić’s right to adequate time and facilities to prepare his defence.<sup>55</sup> Before and after the Chamber ordered the trial to commence on 10 July 2006, Lukić joined Pavković’s motions requesting a delay until mid-2007. The Chamber addressed the reasons underlying the requests.<sup>56</sup> Lukić

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<sup>46</sup> Joinder Decision, p.5.

<sup>47</sup> Lukić Brief, paras.10–28.

<sup>48</sup> Joinder Decision, p.5.

<sup>49</sup> Lukić Brief, para.13. *See also* para.35.

<sup>50</sup> Joinder Decision, p.4.

<sup>51</sup> *Contra* Lukić Brief, para.14.

<sup>52</sup> *Contra* Lukić Brief, paras.12(a)–(c), *with* Joinder Decision, p.3. *See also* Decision on Pavković First Motion, p.4.

<sup>53</sup> *See Stanišić* Joinder TD, para.26, citing *Gotovina* Joinder AD, para.17.

<sup>54</sup> *Contra* Lukić Brief, paras.13–14.

<sup>55</sup> *Contra* Lukić Brief, para.15.

<sup>56</sup> *Contra* Lukić Brief, para.16.

fails to identify how the Chamber made a discernible error resulting in prejudice by rejecting them.

(a) The Chamber reasonably rejected Lukić's motions to delay before the Chamber set a start date for trial

18. Lukić refers to the denial of Pavković's motion to set aside joinder or to sever him from the proceedings.<sup>57</sup> However, Lukić did not join this motion. Lukić cannot now argue on appeal that the Chamber erred in denying the motion with respect to him.<sup>58</sup> In any event, the Chamber's decision was reasonable.

19. In November 2005, Lukić joined Pavković's second motion requesting a delay in starting the trial until mid-2007 or, in the alternative, to sever them and try them in mid-2007 on the ground that they would not be trial-ready before then.<sup>59</sup> During the Rule 65ter Conference taking place before the Chamber rendered its decision on Pavković's second motion (and in subsequent orders), Lukić's concerns regarding provision of material from the *Slobodan Milošević* case were addressed.<sup>60</sup> His contrary submission is unsustainable and should be dismissed.<sup>61</sup> The Chamber reasonably rejected the application for delay or severance as premature because no trial date had yet been set, no pre-trial briefs had been filed, and no pre-trial conference had taken place.<sup>62</sup> Lukić fails to show that the Chamber committed a discernible error in this respect.

(b) The Chamber reasonably rejected Lukić's motion to delay once a start date for trial was set

20. On 31 March 2006, the Chamber identified 10 July 2006 as the start date for trial.<sup>63</sup> Subsequently, the Chamber issued a Pre-Trial Work Plan *inter alia* scheduling the Pre-Trial Conference for 7 July 2006.<sup>64</sup> The Chamber noted (1) the date of the initial appearance for each Accused; (2) that the Accused had all been represented by counsel for "varying, but

<sup>57</sup> Lukić Brief, para.15(a); Lukić Notice, p.4.

<sup>58</sup> Counsel for Lukić's expression of shared concern (T.88 (open)) cannot be understood as joining in Pavković's motion. The Decision on Pavković First Motion makes no reference to Lukić, nor are Pavković's complaints entirely applicable to him.

<sup>59</sup> Lukić Motion in Support of Pavković Second Motion, paras.5–9.

<sup>60</sup> [REDACTED] Decision on Pavković Second Motion, fn.7, citing to Order on Prosecution Submission (Chamber ordering Registry to grant Lukić access to closed session material from the *S.Milošević* case within 15 days).

<sup>61</sup> Lukić Brief, para.16.

<sup>62</sup> Decision on Pavković Second Motion, p.2.

<sup>63</sup> T.186 (open).

significant, amounts of time”; and (3) the “substantial progress” made “in principle towards bringing this case to trial.”<sup>65</sup> The Chamber rejected the Defence arguments objecting to the trial starting in 2006,<sup>66</sup> finding that the pre-trial phase was being “pro-actively managed”, and that the large volume of ongoing disclosure was characteristic of most proceedings and did not justify further delay.<sup>67</sup>

21. Lukić repeats his trial arguments without showing how the Chamber erred.<sup>68</sup> The Chamber was entitled to consider that its pro-active management of the pre-trial phase meant the trial could start as scheduled. Prior to issuing the Work Plan, the Pre-Trial Judge stated that “the intensity of management of the case will be such that there will be plenty of opportunity to reflect upon and submit about the developments in the case as they occur.”<sup>69</sup> The number of Rule 65ter Conferences and Status Conferences before trial began demonstrates the intensity of the Chamber’s pre-trial management.<sup>70</sup> The Chamber actively managed the pre-trial phase to ensure the Accused had adequate time and resources to prepare their defences.<sup>71</sup>

22. The Chamber’s intensive management of the pre-trial phase also meant it was in a position to assess the volume of disclosure involved and the amount of time required to review it. The Pre-Trial Judge (1) encouraged Defence teams to approach their analysis of exculpatory material efficiently;<sup>72</sup> (2) kept abreast of the volume of disclosure;<sup>73</sup> and (3) ensured the Prosecution complied with its disclosure obligations.<sup>74</sup> In addition, preparation time available to Lukić at the pre-trial and trial stages should be considered in assessing whether the decision that the large volume of disclosure did not justify further delay was

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<sup>64</sup> Pre-Trial Work Plan, p.3.

<sup>65</sup> Pre-Trial Work Plan, p.1, citing the Rule 65ter and Status conferences of 30–31 March 2006.

<sup>66</sup> Pre-Trial Work Plan, p.2. *See also* T.206–207 (open).

<sup>67</sup> Pre-Trial Work Plan, p.2.

<sup>68</sup> Lukić Brief, paras.17(h), (j), 22.

<sup>69</sup> T.207 (open).

<sup>70</sup> After the Joinder Decision, Rule 65ter Conferences took place on the following dates: 23 August 2005, 8 November 2005, 30 March 2006, 26 April 2006, 17 May 2006 and 21 June 2006. There were Status Conferences on the following dates: 25 August 2005, 9 December 2005, 31 March 2006. The Pre-Trial Conference took place on 7 July 2006.

<sup>71</sup> Decision on Pavković Third Motion, para.4; Pre-Trial Work Plan, p.2.

<sup>72</sup> [REDACTED].

<sup>73</sup> *E.g.* Pre-Trial Judge Order, pp.2, 8; Prosecution Submissions on Pre-Trial Judge Order, paras.12–19; [REDACTED]; Prosecution Submission on 65ter Order.

<sup>74</sup> *E.g.* T.164–165 (open) (Prosecution ordered to disclose statements of additional witnesses and to inform the Defence of the number and nature of witnesses subject to potential protective measures); Prosecution Notice of Compliance.

reasonable.<sup>75</sup> Considering the proceedings as a whole, Lukić fails to show that he had inadequate time to prepare his defence.

23. When it issued the Work Plan, the Chamber took into account that Lukić's initial appearance had taken place 15 months before the scheduled Pre-Trial Conference, and that he had been represented by counsel for a "significant" amount of time.<sup>76</sup> In fact, Lukić was assigned lead counsel (as opposed to duty counsel) just under one month after his initial appearance.<sup>77</sup> Lukić's submission that he was denied sufficient time and facilities because new lead counsel and co-counsel were appointed in May 2006<sup>78</sup> overlooks (1) that new lead counsel had undertaken "to prepare for trial in accordance with the current trial date";<sup>79</sup> and (2) that newly appointed co-counsel Ivetić had "been involved in the preparation of the defence from the beginning of the case as a legal advisor."<sup>80</sup> Lukić's failure to appoint co-counsel before that date is addressed in more detail below under sub-ground A.2.

24. Lukić joined Pavković's third motion for delay or severance.<sup>81</sup> The Chamber stated that it had considered every argument of the Accused, and that it was:

satisfied that the accused will have adequate time and resources to prepare for the trial scheduled to commence on the date proposed in the work plan. Throughout the pre-trial phase of the proceedings, the Chamber has been continuously alert so that unfair prejudice will not be caused to the accused due to the lack of adequate time and resources for the preparation of their defences, and the Chamber will continue to monitor the progress of the case throughout the remainder of the pre-trial phase.<sup>82</sup>

25. In light of the Chamber's findings in its Work Plan and the Rule 65*ter* and Status Conferences, in which it addressed the Accused's concerns, Lukić fails to show how the Chamber erred in denying his request for delay.

26. On 11 May 2006, in granting the Prosecution leave to amend the indictment, the Chamber addressed the argument that amendments to the indictment to include 1998 events adversely affected the Defence's ability to prepare for trial. Lukić repeats these arguments on

<sup>75</sup> *Karadžić* Trial Commencement AD, para.24; *Krajišnik* AJ, paras.84–85; *Krajišnik* Adjournment AD, para.23.

<sup>76</sup> Pre-Trial Work Plan, p.1.

<sup>77</sup> Registrar's Decision 2.

<sup>78</sup> Lukić Brief, para.20.

<sup>79</sup> Registrar's Decision 3, p.2. Lead counsel was replaced for family health reasons. The Registry found that his replacement at that stage would not have an adverse effect on the Accused's right to a fair trial. Registrar's Decision 3, p.2; Registrar's Decision 4. *See also* T.43 (open) (Ivetić already present).

<sup>80</sup> Lukić Motion to Delay.

<sup>81</sup> Lukić Motion to Delay.

<sup>82</sup> Decision on Pavković Third Motion, para.4, citing Pre-Trial Work Plan.

appeal without showing how the Chamber erred.<sup>83</sup> Since his initial appearance, Lukić was on notice that the Prosecution intended to rely on 1998 events to demonstrate responsibility for the crimes in 1999.<sup>84</sup> The amendments which the Chamber ordered enhanced Defence preparation by clarifying allegations concerning these events.<sup>85</sup> Lukić was on notice of these clarified allegations from 5 April 2006 when the amended indictment order was filed.<sup>86</sup> In ruling upon the sufficiency of the Prosecution’s clarified allegations, and with a view to the 10 July 2006 trial date, the Chamber concluded that Lukić would have sufficient time to prepare.<sup>87</sup>

(i) Lukić does not demonstrate prejudice from the 10 July 2006 commencement of trial

27. Lukić argues that the prejudice resulting from the Chamber’s decisions on joinder, delay and severance is apparent from the fact that more senior co-Accused with three years of pre-trial preparation were acquitted (Milutinović) or received lesser sentences (Ojdanić) than Lukić.<sup>88</sup> His argument should be rejected. Lukić’s higher sentence does not result from inadequate preparation of his case but to the gravity of the crimes and his mode of participation in them (Joint Criminal Enterprise, or “JCE”).<sup>89</sup> This is further demonstrated by the fact that Sainović, who received the same sentence as Lukić, had over three years of pre-trial preparation.<sup>90</sup>

3. Joinder did not prejudice Lukić

28. Lukić implies that he sustained prejudice because the joinder of his case prevented him from preparing properly for cross-examination, curtailed his witness list, and prevented him from adducing sufficient evidence in mitigation.<sup>91</sup> However, insofar as he only develops his argument in this respect with regard to mitigation, this point alone is addressed here. With respect to his preparation for cross-examination and the alleged curtailment of his witness list, the Prosecution relies on its responses below to show that no prejudice was in fact sustained.

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<sup>83</sup> Lukić Brief, para.17(a).

<sup>84</sup> Decision to Amend Indictment, para.12.

<sup>85</sup> Decision to Amend Indictment, paras.11–13.

<sup>86</sup> Decision to Amend Indictment, para.2.

<sup>87</sup> Decision to Amend Indictment, para.13.

<sup>88</sup> Lukić Brief, para.28.

<sup>89</sup> Judgement, Vol.III, paras.1174–1175, 1205.

<sup>90</sup> Šainović’s initial appearance took place on 3 May 2002: *see* Pre-Trial Work Plan, p.1.

<sup>91</sup> Lukić Brief, paras.21–33.

29. Lukić does not show that, if he had been tried separately, he would have been able to present more evidence in mitigation.<sup>92</sup> At trial, the Chamber rejected Lukić’s argument that the joinder of trials had any effect upon the court schedule.<sup>93</sup> The Chamber found that it would have followed the same schedule “regardless of whether Lukić was being tried alone or together with his co-Accused.”<sup>94</sup> Lukić accepts that significant mitigation evidence was adduced, and that the Chamber accepted some mitigating factors while rejecting others.<sup>95</sup> Lukić fails to establish prejudice because he does not identify any evidence which he was precluded from bringing.

30. Rather, the import of Lukić’s submissions is that, if he had he been tried alone, his mitigation evidence and personal circumstances would have been given “appropriate weight”.<sup>96</sup> His allegation that he was treated “differently due to the fact [that] he was convicted alongside other [A]ccused”<sup>97</sup> flies in the face of Rule 82(A), which provides that “[i]n joint trials, each accused shall be accorded the same rights as if such accused were being tried separately.” It also finds no support in the Chamber’s findings relating to mitigating factors.

31. Lukić fails to establish an error when it comes to the Chamber’s discretion in determining what weight to give to mitigating factors. Unlike its analysis with regard to the role and degree of individual participation for the purpose of sentencing,<sup>98</sup> the Chamber determined the mitigating factors applicable to each Accused separately. Only in that context did it conclude that it decide to impose uniform sentences for the Accused, depending on basis of their liability.<sup>99</sup>

32. Specifically regarding Lukić, the Chamber expressly took into account:

- his abuse of his superior position (aggravating his sentence);<sup>100</sup>
- his contribution to law and order in a number of cases connected to the crimes in the Indictment (mitigating his sentence);<sup>101</sup>

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<sup>92</sup> *Contra* Lukić Brief, para.29.

<sup>93</sup> Decision on Court Schedule, para.8.

<sup>94</sup> Decision on Court Schedule, para.8.

<sup>95</sup> Lukić Brief, para.30.

<sup>96</sup> Lukić Brief, para.29.

<sup>97</sup> Lukić Brief, para.33.

<sup>98</sup> *See* Prosecution Brief, paras.121, 161–163, 166; Judgement, Vol.III, para.1175.

<sup>99</sup> Judgement, Vol.III, para.1205.

<sup>100</sup> Judgement, Vol.III, para.1201.

- his state of health (but not finding his condition “rises to the level that would warrant mitigation”).<sup>102</sup>

33. The Chamber did not accept in mitigation all the factors submitted by Lukić and which he repeats on appeal.<sup>103</sup> Either they were unsubstantiated or they were “what any competent law enforcement official would be expected to do in the normal course of his duties”.<sup>104</sup> Lukić argues that, despite identifying a mitigating factor, the Chamber did not apply it.<sup>105</sup> Rather, the Chamber gave this mitigating factor little or no weight in its determination of sentence. The Appeals Chamber’s jurisprudence confirms this approach.<sup>106</sup> Lukić fails to identify an error.

### C. Lukić had adequate time and facilities to prepare his defence (Ground A(2))

34. Considering the proceedings as a whole, Lukić fails to show that the Chamber erred in concluding that he would have sufficient time and resources to prepare his defence with the trial starting on 10 July 2006.<sup>107</sup> Lukić challenges this conclusion on the grounds that he did not have co-counsel assigned to him nor access to documents from the *Milošević* case until shortly before the trial started, and that he only obtained Rule 54*bis* documents from Serbia once trial was underway. Contrary to Lukić’s submissions, none of these factors, whether taken separately or together, show that he was denied a fair trial on account of insufficient time for preparation.<sup>108</sup>

#### 1. Failure to assign co-counsel until May 2006 was the result of the Lukić Defence team’s own arrangements

35. The Chamber did not ignore the supposed difficulties caused by the Registry’s failure to assign Lukić co-counsel until “just before” the trial date.<sup>109</sup> These arguments formed part of

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<sup>101</sup> Judgement, Vol.III, para.1202. The Chamber also noted in this context that Lukić gave an interview to the Prosecution.

<sup>102</sup> Judgement, Vol.III, para.1203.

<sup>103</sup> Lukić Brief, para.30.

<sup>104</sup> Judgement, Vol.III, para.1202.

<sup>105</sup> Lukić Brief, para.31.

<sup>106</sup> *Kunarac* AJ, paras.362, 366.

<sup>107</sup> Decision on Pavković Third Motion, para.4.

<sup>108</sup> Lukić Brief, paras.34, 40.

<sup>109</sup> *Contra* Lukić Brief, para.37. *See also* para.17(c) and (f).

Lukić's pre-trial motion seeking delay or severance.<sup>110</sup> They were addressed by the Pre-Trial Judge and correctly rejected.

36. [REDACTED]<sup>111</sup> [REDACTED]<sup>112</sup> [REDACTED].<sup>113</sup> It was open to Lukić to have appointed co-counsel sooner,<sup>114</sup> or to seek judicial review of Registry's purported denial to assign co-counsel.

37. [REDACTED].<sup>115</sup> [REDACTED].<sup>116</sup> [REDACTED].<sup>117</sup> Lukić does not show a discernible error in the Pre-Trial Judge's conclusion or that it resulted in prejudice to him.

2. Lukić has not identified any prejudice stemming from the Chamber's Rule 54bis Decision

38. Only on 17 May 2006 did Lukić make a Rule 54bis application for Serbia to provide him with documents.<sup>118</sup> He was represented throughout the preceding period and cannot complain of his own error.<sup>119</sup> He had adequate time during pre-trial preparation to make such applications. Indeed, the Pre-Trial Judge repeatedly urged Defence teams that Rule 54bis applications should be made at the earliest opportunity after it became apparent that the relevant State was unco-operative. The Judge indicated the view that a State's failure to respond in a timely manner amounted to lack of co-operation<sup>120</sup> and emphasised regard to the trial date in counsel's consideration whether to proceed under Rule 54bis.<sup>121</sup> Despite these warnings, knowing that some requests had already gone unresolved for more than 4 months,<sup>122</sup> Lukić took no remedial steps for a further six weeks.

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<sup>110</sup> Lukić Motion to Delay.

<sup>111</sup> [REDACTED].

<sup>112</sup> [REDACTED].

<sup>113</sup> [REDACTED].

<sup>114</sup> See Defence Counsel–Pre-Trial Legal Aid Policy, 1 November 2004 (referred to in Lukić Motion in Support of Pavković Second Motion para.7, fn.1, which is cited in Lukić Brief, para.17(e)), para.1 (“The Pre-Trial Legal Aid Policy is based on a lump sum payment system designed to give Lead Counsel maximum flexibility in the use of resources and to allow Lead Counsel to use the lump sum to hire members of the Defence team as he/she sees fit. The Registrar must, however, approve all members of the Defence teams to ensure there is no conflict of interest or other ethical concerns.”) See also paras.3, 28, 29. [REDACTED].

<sup>115</sup> [REDACTED].

<sup>116</sup> [REDACTED].

<sup>117</sup> [REDACTED].

<sup>118</sup> See Rule 54bis Decision, para.1.

<sup>119</sup> Lukić Brief, para.38.

<sup>120</sup> T.198 (open).

<sup>121</sup> E.g. [REDACTED]; T.162, 198, 200 (open).

<sup>122</sup> Lukić Brief, para.38, citing Rule 54bis Decision, para.4. On 31 March 2006, Lukić informed the Pre-Trial Judge that the material he sought from the Serbian authorities was slow in coming “due to the multitude of material and technical aspects of providing it.” T.203 (open).

39. In April 2006, Lukić complained that his lack of access to documents requested from Serbia and Montenegro justified delaying the beginning of trial.<sup>123</sup> [REDACTED].<sup>124</sup> [REDACTED].<sup>125</sup>

40. Lukić eventually filed his Rule 54*bis* application on 17 May 2006. Once received, the Chamber took appropriate action.<sup>126</sup> Lukić does not show a discernible error in the exercise of the Chamber's discretion relating to the management of proceedings and its approach to the Rule 54*bis* application.

41. Furthermore, Lukić fails to identify any prejudice to him stemming from not having the documents until after trial began. Lukić fails to identify any document obtained from Serbia following the Chamber's Rule 54*bis* that ruling he could not make use of during the trial,<sup>127</sup> and so fails to show any impact on the verdict.

42. Lukić also argues that, as a result of the Chamber's longer sitting hours, he was unable to confront witnesses with evidence "that was only later obtained." He refers specifically to "Rule 70 documents".<sup>128</sup> Lukić fails to identify any prejudice because these were admitted into evidence "from the bar table".<sup>129</sup>

3. Any belated access to the Milošević case materials was the result of the Lukić Defence's own shortcomings

43. Lukić's repeats on appeal his argument that the 10 July 2006 trial date granted him insufficient time to review and analyse material from the Milošević case prior to trial.<sup>130</sup>

44. By written order of 1 September 2005, the Chamber directed all Defence teams to follow the Chamber's previous order regarding arrangements put in place for the ongoing provision of documents from the Milošević case.<sup>131</sup> That order directed counsel to liaise with

<sup>123</sup> Lukić Motion to Delay, paras.60–70.

<sup>124</sup> [REDACTED].

<sup>125</sup> [REDACTED].

<sup>126</sup> [REDACTED]; Rule 54*bis* Decision, paras.1–4 (procedural background).

<sup>127</sup> Lukić Brief, para.38.

<sup>128</sup> Lukić Brief, para.39, referring to 6D1635, 6D1637, 6D1638, 6D1639, 6D1640.

<sup>129</sup> Decision on Admission from Bar Table, paras.106–110.

<sup>130</sup> Lukić Brief, para.40. *See also* para.17(b)–(c); Lukić Motion to Delay, paras.37–41.

<sup>131</sup> Pre-Trial Judge Order, p.7, citing *Ojdanić* Access Decision.

the Registry for the provision of all open session transcripts and public exhibits; closed session transcripts were to be provided by the Prosecution subject to an ongoing review.<sup>132</sup>

45. In accordance with this order, the public transcripts of evidence in the Kosovo part of the *Milošević* case were provided, and most of the exhibits made available on the JDB, by at least November 2005.<sup>133</sup> In the Kosovo part of the *Milošević* case, nearly all witness testimony and exhibits was presented in open session.<sup>134</sup>

46. Finally, the documents marked for identification but not admitted (“MFI documents”) from the *Milošević* case were also placed in the JDB. This was done in batches scheduled to begin in mid-October 2005.<sup>135</sup> To the extent that Lukić may complain that he only obtained access to the *Milošević* MFI documents prior to the 30 March 2006 Rule 65ter conference by way of having them copied to the Defence portable hard drive.<sup>136</sup> The only reason for the delayed access by the Lukić Defence to these documents was their inability to access the JDB remotely.<sup>137</sup>

47. Defence teams had access to the JDB within the Tribunal. After November 2005, all Defence teams were provided an off-site JDB decoder to access the JDB remotely.<sup>138</sup> Ensuring their off-site JDB decoder functioned properly was a purely technical matter which the Lukić Defence should have been able to resolve promptly. Although Lukić argues that they had no off-site access to the JDB from November 2005 to the end of March 2006,<sup>139</sup> it was only at the Status Conference of 31 March 2006 that the Defence raised for the first time the matter with the Pre-Trial Judge. According to Lukić, Registry had given them the JDB decoder in December 2005, but not remote access. The Pre-Trial Judge inquired why, if counsel was aware of the difficulty in access already in December, they had not done something about it earlier.<sup>140</sup> Defence counsel informed him that the Registry had indicated the matter had been resolved.<sup>141</sup> [REDACTED].<sup>142</sup> The Pre-Trial Judge was reasonable to

<sup>132</sup> *Ojdanić* Access Decision, p.4.

<sup>133</sup> See Pavković Second Motion, paras.10, 16, 21. See also Lukić Motion in Support of Pavković Second Motion, para.5 (facts in Pavković’s Motion an accurate summary of the efforts at access and the results of the same).

<sup>134</sup> *Ojdanić* Access Decision, p.2. [REDACTED].

<sup>135</sup> Pavković Second Motion, para.19.

<sup>136</sup> Lukić Brief, para.40. See Lukić Motion to Delay, para.39.

<sup>137</sup> T.202 (open).

<sup>138</sup> Lukić Motion to Delay, para.42 (lead counsel completed Registry procedure to obtain JDB decoder key); [REDACTED].

<sup>139</sup> Lukić Brief, para.17(g).

<sup>140</sup> T.202 (open).

<sup>141</sup> T.202 (open).

direct lead counsel as he did. Lukić does not identify an error in the Pre-Trial Judge's approach.

48. Furthermore, Lukić does not identify any prejudice to him. [REDACTED].<sup>143</sup> As an example, the bulk of Rule 66(A) disclosure had been made much earlier.<sup>144</sup> The Pre-Trial Judge directed the Defence to focus on the material already available to them if they had difficulty accessing discrete material until that difficulty was resolved.<sup>145</sup> Lukić does not identify how belatedly accessing material from the *Milošević* case not covered by previous disclosure caused him prejudice.

**D. Lukić was able to challenge the Prosecution's case and present his own case (Ground A(3))**

49. Lukić does not only argue that he did not have adequate time and facilities to prepare his defence but also complains of restrictions to his right to examine witnesses against him and to call witnesses on his own behalf.<sup>146</sup> He fails to identify a discernible error in the Chamber's exercise of its discretion in managing the conduct of his defence which deprived him of a fair trial.

1. The Chamber did not enforce Lukić's right to an expeditious trial to his detriment

50. To illustrate his vague allegations that the guarantee to be tried without undue delay worked to his detriment,<sup>147</sup> Lukić argues that the Chamber denied him leave to file two replies because it shortened the deadlines envisaged in the Rules.<sup>148</sup> The Chamber's decisions in this respect do not demonstrate a discernible error resulting in prejudice to Lukić.

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<sup>142</sup> [REDACTED].

<sup>143</sup> [REDACTED].

<sup>144</sup> *E.g.* Rule 66(A)(ii) disclosure was completed, except for the statements of additional witnesses, on 30 June 2005: [REDACTED].

<sup>145</sup> [REDACTED]. *See also Ojdanić* Access Decision, p.3 (specifying the material subject to Prosecution disclosure obligations). For estimates of material disclosed under Rule 66(A), *see* Prosecution Submission on 65<sup>ter</sup> Order, para.2.

<sup>146</sup> *E.g.* Lukić Brief, paras.43–50, 59–61.

<sup>147</sup> Lukić Brief, para.43.

<sup>148</sup> Lukić Brief, para.44.

51. In the first decision Lukić challenges,<sup>149</sup> the Chamber denied Lukić’s application for leave to file replies because: (1) the application for leave was out of time; (2) Lukić had not moved to enlarge the time for filing it; and (3) the application contravened the Chamber’s procedural guidelines establishing that a request for leave to file a reply should not include the substance of the reply.<sup>150</sup>

52. In view of the Chamber’s consistent practice throughout the trial—of which it had previously reminded Lukić—Lukić cannot claim that the Chamber denied his application as out of time because it suddenly shortened deadlines to his detriment. Following Lukić’s motion for reconsideration, the Chamber explained that Lukić was wrong to argue “that the Chamber shortened the deadline to six days”, for that had been the Chamber’s practice “for almost two years” of trial, and the Chamber had reminded the Lukić Defence of this practice before.<sup>151</sup> The Chamber also found that it was always open to Lukić to seek additional time,<sup>152</sup> which he failed to do.

53. Furthermore, contrary to Lukić’s implication,<sup>153</sup> the Chamber did not deny him leave to file the replies solely on the basis that his request was out of time but because of its form. Even if Lukić’s application for leave had been filed in a timely manner, the Chamber would have still denied it because “the substantive replies were included with the request for leave to file the replies,”<sup>154</sup> contrary to the Chamber’s long-standing order on this point.<sup>155</sup> Lukić’s failure to meet this procedural requirement has nothing to do with his right to be tried without undue delay purportedly operating to his detriment.

54. Finally, Lukić fails to identify any prejudice stemming from the Chamber’s decisions. The two replies for which he was denied leave were replies to the responses filed by the Prosecution and by Pavković and Lazarević, respectively, to Lukić’s motion to admit documents from the bar table.<sup>156</sup> Lukić does not identify, let alone show, how denying him leave to reply had any effect upon his ability to present evidence in support of his case.

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<sup>149</sup> Decision on Leave to File Replies.

<sup>150</sup> Decision on Leave to File Replies, para.14.

<sup>151</sup> Decision on Reconsideration for Leave to File Replies, para.12.

<sup>152</sup> Decision on Reconsideration for Leave to File Replies, para.12.

<sup>153</sup> Lukić Brief, para.44.

<sup>154</sup> Decision on Leave to File Replies, para.14.

<sup>155</sup> Order on Procedure and Evidence, para.11.

<sup>156</sup> Bar Table Reply Application.

2. Lukić had sufficient time to cross-examine witnesses against him

55. Lukić fails to show that the Chamber erred in limiting the parties' time to cross-examine witnesses, or that the Chamber's approach caused him prejudice.

56. Limiting the time available to the parties for cross-examination is established practice at the Tribunal and has been upheld by the Appeals Chamber.<sup>157</sup> While Lukić relies on a decision on interlocutory appeal in the *Orić* case,<sup>158</sup> that decision referred to limitations on the length of the accused's defence case, and not to cross-examination. Lukić fails to identify any error in the exercise of the Chamber's "considerable discretion in setting the parameters of cross-examination and in outlining the exercise of this right by the Defence."<sup>159</sup>

57. In its Decision on Use of Time the Chamber provided that:

- For cross-examination of *viva voce* witnesses, the Defence would have "collectively the same amount of time as the Prosecution [had] taken" for that witness;<sup>160</sup>
- For Rule 92ter witnesses, the Prosecution would have a maximum of 30 minutes to conduct both direct and re-examination, and the Defence collectively would have 60 minutes for cross-examination.<sup>161</sup>

In reaching this decision, the Chamber had in mind that it would "allow the Defence to request more time for the cross-examination of particular witnesses on a case-by-case basis and on good cause having been shown."<sup>162</sup>

58. By its decision, the Chamber adopted a "sufficiently flexible approach" that complied with the right to cross-examine witnesses under Article 21(4) of the Statute.<sup>163</sup> The Chamber explained that cross-examination should be prioritised to challenge the most significant evidence against the cross-examining party and, where the witness was able to give evidence

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<sup>157</sup> *Prlić* AD.

<sup>158</sup> Lukić Brief, para.46, citing to *Orić* AD. See also *Krajišnik* AJ, para.106.

<sup>159</sup> *Prlić* AD, p.3.

<sup>160</sup> Decision on Time-Use, p.6.

<sup>161</sup> Decision on Time-Use, p.6.

<sup>162</sup> Decision on Time-Use, p.6.

<sup>163</sup> *Prlić* AD, p.4.

relevant to the cross-examiner's case, to put to the witness the nature of that case that contradicted the witness' evidence.<sup>164</sup>

59. Lukić's argument that, instead of applying time-constraints, the Chamber should have used less restrictive methods of control does not identify an error in the Chamber's exercise of its discretion.<sup>165</sup> By arguing that the Chamber should have intervened under Rule 90(F) to prevent redundant cross-examination on a case-by-case basis,<sup>166</sup> Lukić overlooks that the imposition of time-limits for cross-examination was itself pursuant to Rule 90(F), and that this practice is consistent with that Rule.<sup>167</sup>

60. Lukić complains that the Chamber prioritised "speed" over "substance", and that, in its impatience, it prevented critical evidence from being elicited.<sup>168</sup> Although he complains about limitations to cross-examination, in order to demonstrate prejudice Lukić focuses instead on the examination-in-chief of one of his own witnesses (Deretić).<sup>169</sup> The passage he cites shows that the Presiding Judge merely inquired into the relevance of the line of questioning pursued by Lukić's counsel. When counsel explained its relevance, the Presiding Judge allowed counsel to continue questioning. The Presiding Judge was performing, on behalf of the Trial Chamber, his duty to exercise sufficient control over the process of examination.<sup>170</sup>

61. Lukić fails to substantiate his claim that the Chamber erred in preventing him from putting certain documents to Radojko Stefanović which would have made the admission of these documents more likely.<sup>171</sup> The Presiding Judge simply directed Lukić's counsel to ask the witness questions on those matters which counsel could reasonably anticipate the witness would know about,<sup>172</sup> including by putting to him documents on which the witness was in a position to comment.<sup>173</sup> Even if Stefanović's cross-examination counted towards the time

<sup>164</sup> Judgement, Vol.I, para.51. *See also* Decision on Time-Use, p.6 ("not always necessary to put the defence case, in all its detail, to each and every witness called by the Prosecution").

<sup>165</sup> *See Prlić AD*, pp.2, 5 (interlocutory appeal based upon argument that Chamber erred, *inter alia*, in applying time-constraints in preference to less restrictive methods of control dismissed).

<sup>166</sup> Lukić Brief, para.46.

<sup>167</sup> *Prlić AD*, p.4.

<sup>168</sup> Lukić Brief, paras.47–50.

<sup>169</sup> Lukić Brief, para.47.

<sup>170</sup> *Rutaganda AJ*, para.45.

<sup>171</sup> Lukić Brief, paras.49–50, citing T.21733–21734 (open), 21739–21743 (open).

<sup>172</sup> T.21740 (open).

<sup>173</sup> T.21739–21740 (open). *See also* Decision on Objection to Report on Time-Use, fns.15 ("During this line of questioning, the Chamber interjected a number of times to query the relevance or usefulness of the questions, given that they seemed general in nature or seemed to be on topics the witness knew nothing about."), 16 ("The Chamber questioned the conduct of cross-examination again [...]).

allotted to Lukić to present his case, Lukić was not free to pursue a pointless line of questioning. The Presiding Judge exercised control over cross-examination of witnesses on behalf of the Chamber. It is the duty of the Chamber and of the Presiding Judge in particular to ensure that cross-examination is not impeded by useless and irrelevant questions. The Chamber was entitled under the Rules to direct Lukić's counsel as it did.<sup>174</sup>

62. Lukić fails to establish prejudice with regards to the intervention during Stefanović's cross-examination. He argues that he was prejudiced because these documents were eventually denied admission as they had not been presented to other—hostile—witnesses during cross-examination. All but one of the documents he mentions were denied admission because they were authored by certain witnesses who should have been confronted with them either because they were able to give evidence relevant to Lukić's case or because the documents were intended to impeach them.<sup>175</sup> One of the documents was actually admitted even if it had not been put to the relevant witness because it was potentially highly relevant to the case.<sup>176</sup> Lukić fails to demonstrate how putting these documents to Stefanović, who was not in a position to comment on them, would have made their admission more likely.

### 3. The Chamber's decision to sit longer hours did not prejudice Lukić

63. Lukić' general arguments that the Chamber's decision to sit longer hours nullified his attempts to make up during trial for deficient pre-trial preparation cannot succeed.<sup>177</sup> He fails to show how the extended sittings caused him any identifiable prejudice as to render the Judgement invalid. His arguments thus cannot succeed. Lukić merely repeats arguments that were unsuccessful at trial,<sup>178</sup> and fails to show an error in the Chamber's trial-management discretion to sit longer hours. In particular, the Chamber dismissed Lukić's argument that as a result of sitting extended hours he had inadequate time to prepare his defence case while simultaneously presenting evidence in court.<sup>179</sup> It found that pre-trial and trial proceedings had been on-going for years—during which time preparations should have been made—and

<sup>174</sup> Rutaganda AJ, para.45, citing to Akayesu AJ, para.318

<sup>175</sup> The exception is 6D1467, for which the Chamber found Lukić had not adequately demonstrated how this document fit into the trial for it to be admitted into evidence: *see* Decision on Admission from Bar Table, para.91, referred to in Lukić Brief, fn.64.

<sup>176</sup> *See* Lukić Brief, fn.64, referring *inter alia* to Decision on Admission from Bar Table, para.86 (where the Chamber, although sympathetic to the objection that the author of the specific document in question (Lazarević) had not been confronted with it in accordance with Rule 90(H)(ii), nevertheless admitted it from the bar table as potentially highly relevant to the case).

<sup>177</sup> Lukić Brief, para.51.

<sup>178</sup> Lukić Brief, para.54. *See* Decision on Court Schedule, para.1.

<sup>179</sup> Decision on Court Schedule, para.6. *See* Lukić Brief, para.52.

that routine trial preparation, such as preparing witnesses' Rule 92*ter* statements, could be done well in advance.<sup>180</sup> It also noted that several extended recesses had been incorporated into the trial schedule throughout, during which time preparations should have continued.<sup>181</sup> Lukić's argument that the Chamber did not address his serious concerns but abused its discretion by pressuring counsel to withdraw part of their motion is irrelevant and without merit.<sup>182</sup> The Chamber invited Lukić to withdraw that part of the Motion which it found could constitute offensive conduct under Rule 46(A).<sup>183</sup>

64. Although Lukić complains that the Prosecution's "last minute disclosure of supplemental information" compounded the difficulties he faced with the extended sitting schedule,<sup>184</sup> he does not allege any specific instance of prejudice or any request for an adjournment in this context. The Chamber was "sympathetic" to the possibility of an adjournment being required to prepare for cross-examination where significant changes had been made to witness statements about to be tendered under Rule 92*ter*, but "[i]n the end no party claimed to have been prejudiced by this in a way that required the Chamber to grant any relief that was refused [sic]."<sup>185</sup>

4. Delaying the beginning of the Defence cases while maintaining briefing deadlines allowed Lukić adequate time to prepare his defence

65. Lukić merely repeats his trial arguments<sup>186</sup>—and fails to identify a discernible error in the Chamber's exercise of its discretion—challenging the Chamber's decision to allow in part the joint Defence request to delay the commencement of the Defence cases but did not alter the briefing schedule.

66. In allowing the Defence request for more time before their cases began, the Chamber noted that it had been "responsive to the needs of the parties throughout the trial" and had consulted the parties "when setting dates and deadlines affecting the parties."<sup>187</sup> It recognised "that there have been instances where Defence preparations for cross-examination may have

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<sup>180</sup> Decision on Court Schedule, para.6.

<sup>181</sup> Decision on Court Schedule, para.6.

<sup>182</sup> Lukić Brief, para.55.

<sup>183</sup> Decision on Court Schedule, paras.7, 12.

<sup>184</sup> Lukić Brief, para.51.

<sup>185</sup> Judgement, Vol.I, para.48.

<sup>186</sup> Lukić Brief, para.56.

<sup>187</sup> Decision on Postponing Trial Schedule, para.4.

diverted some attention away from other matters” and therefore postponed the beginning of the Defence cases. The Chamber did not find it appropriate to amend the briefing schedule.<sup>188</sup>

67. Lukić fails to show how the Chamber erred in this respect. More than a month passed between the end of the oral Rule 98*bis* submissions and the 15 June 2007 deadline for Defence Rule 65*ter* filings.<sup>189</sup> The Chamber had repeatedly reminded the Defence that it was their obligation to plan and prepare for the presentation of their evidence prior to the rendering of the Rule 98*bis* decision, including during the extended recesses which had been incorporated into the trial schedule.<sup>190</sup> In keeping with the briefing schedule, the Chamber also balanced the Prosecution’s “reasonable request [...] for a number of weeks notice of the Rule 65*ter* lists”.<sup>191</sup> Furthermore, the Chamber stated that it would continue to address the parties’ needs in the course of the proceedings to ensure that no unfairness occurred.<sup>192</sup>

68. Lukić also fails to identify any prejudice in the Chamber’s decision to keep to the briefing schedule, for example by identifying witnesses or exhibits which he was precluded from including in his Rule 65*ter* submissions or their impact on the verdict. Lukić accepts that he was able to identify a considerable number of witnesses and exhibits within the allotted time, merely complaining that “the defence exhibits were constantly being received and added through the defence case”<sup>193</sup> without identifying prejudice. Lukić’s subsequent applications to add documents to his Rule 65 *ter* exhibit list—the majority of which cite as a reason that said documents were identified in the preparation of witnesses to be called by the Lukić Defence—were granted.<sup>194</sup> This demonstrates the Chamber was sensitive to the needs of the Defence where justification could be shown.

##### 5. The Chamber allocated Lukić sufficient time within which to present his defence case

69. At the pre-defence conference, the Chamber set out ways in which the Defence could reduce the time needed to present their case, such as by using Rule 92*bis* and *ter*. The Chamber then set the time for the presentation of the Defence case at 240 hours.<sup>195</sup> Lukić has failed to identify a discernible error resulting in prejudice. Appeals Chamber case-law

<sup>188</sup> Decision on Postponing Trial Schedule, para.4.

<sup>189</sup> Decision on Postponing Trial Schedule, para.5(a).

<sup>190</sup> Decision on Postponing Trial Schedule, para.3; Order on Close of Prosecution Case, para.4.

<sup>191</sup> Order on Close of Prosecution Case, para.5.

<sup>192</sup> Decision on Postponing Trial Schedule, para.4.

<sup>193</sup> Lukić Brief, para.58.

<sup>194</sup> *E.g.* Lukić 65*ter* Exhibit Decision 1; Lukić 65*ter* Exhibit Decision 2; Lukić 65*ter* Exhibit Decision 3; Lukić 65*ter* Exhibit Decision 4; Lukić 65*ter* Exhibit Decision 5.

<sup>195</sup> Judgement, Vol.I, para.27, citing T.12821–12848 (open).

recognises that the relation between the length of time accorded to the Prosecution and to the Defence to present their respective cases should not be one of parity but of proportionality.<sup>196</sup> Lukić also overlooks that, although the Prosecution had been allocated 260 hours for the presentation of its evidence, it only used 166 hours.<sup>197</sup> Lukić is thus wrong to argue that he had less than a third of the time the Prosecution used to present its case in order to present his.<sup>198</sup>

70. From among the Accused, Lukić had the longest time to present his defence case—80 hours,<sup>199</sup> and brought the largest number of witnesses. When apportioning time, the Chamber was persuaded by Lukić's argument that he should be given more time than Lazarević because he was the only Accused from the MUP.<sup>200</sup> Lukić used 79 hours.<sup>201</sup> In addition the Chamber stated that it was prepared to alter its order for good cause, and that in doing so it would take into account the efficiency of the moving party's previous use of time.<sup>202</sup>

71. Lukić maintains that he had to remove five international observers from his witness list because he could not locate and/or present them within the allotted time.<sup>203</sup> He implies that the resulting prejudice is apparent from the Chamber's reliance on international observers appearing as Prosecution witnesses in convicting him.<sup>204</sup> It does not follow, however, that Lukić needed international observers to counter this evidence, and he does not substantiate any prejudice sustained. In particular, he does not specify the purported difficulties in locating witnesses or whether he approached the Chamber for relief, including by requesting it to amend time-limits. Regarding his ability to present their testimony, Lukić fails to demonstrate why he could not have sought to present these witnesses through Rule 92*bis* or Rule 92*ter*. The Chamber consistently informed the parties of the procedures at their disposal to reduce in-court time to present their cases.<sup>205</sup> It found that the parties had adequate time in which to present their respective cases precisely as a result of the Chamber's willingness throughout the proceedings to consider receiving evidence in written form.<sup>206</sup>

<sup>196</sup> Contrast Lukić Brief, para.60 with *Orić* AD, para.7.

<sup>197</sup> Judgement, Vol.I, para.24.

<sup>198</sup> Lukić Brief, para.64.

<sup>199</sup> Decision on Remaining Defence Time, para.9(b); Judgement, Vol.I, fn.29.

<sup>200</sup> Decision on Remaining Defence Time, para.6.

<sup>201</sup> Judgement, Vol.I, fn.29.

<sup>202</sup> Decision on Remaining Defence Time, para.9(d).

<sup>203</sup> Lukić Brief, para.61, referring to Dietmar Hartwig, John Christopher Clark, Richard Haeslip, Guy Sands and Keith Roland.

<sup>204</sup> Lukić Brief, para.61, citing Judgement, Vol.III, paras.1041–1048.

<sup>205</sup> See Decision on Remaining Defence Time, para.4.

<sup>206</sup> Judgement, Vol.I, para.46.

6. The Chamber's method of keeping time was appropriate

72. Lukić fails to show any discernible error in the Chamber's time-keeping that caused him prejudice.

73. The Chamber did not abuse its discretion by deducting the time spent by Lukić cross-examining Stefanović, and the time the Chamber spent asking clarifying questions of Miroslav Mijatović, from the time available to Lukić to present his case. The Chamber explained as regards Stefanović that it had allocated time Lukić spent questioning the witness on matters affecting the witness' credibility as cross-examination, and time spent on Rule 90(H)(ii) questioning as time for the presentation of Lukić's case.<sup>207</sup> As regards Mijatović, the Chamber noted that when the Chamber intervenes to clarify an issue during the examination of a party this is properly calculated towards the time for the presentation of that party's case.<sup>208</sup> When the Chamber questions a witness after all the parties have conducted their examinations, or where the Judges' questions deviate from the party's line of examination, that time is properly allocated as Chamber's time.<sup>209</sup> Furthermore, through the Chamber's orders, the monthly reports and the Chamber's in-court statements, Lukić was informed of the Chamber's method of apportioning time.<sup>210</sup>

74. In addition, Lukić argues that the Chamber's practice of keeping time unfairly reduced the time to present his case<sup>211</sup> without specifying any prejudice to him. The Chamber clarified that its system of time-keeping was "a mere tool to assist it in determining issues related to the use of time, which it [would] always consider on a much broader basis than simply the click of the time keeper's watch."<sup>212</sup>

7. Lukić had adequate time and facilities available to him for the translation of documents

75. On 14 November 2007, so as "to ensure the fair and expeditious conduct of the trial,"<sup>213</sup> the Chamber ordered Lukić to submit all of the still un-translated documents on its Rule 65ter list to CLSS by 30 November 2007, indicating the order in which Lukić wanted

<sup>207</sup> Decision on Objection to Report on Time-Use, para.11.

<sup>208</sup> Decision on Objection to Report on Time-Use, para.13.

<sup>209</sup> Decision on Objection to Report on Time-Use, para.13.

<sup>210</sup> Order on Procedure and Evidence, para.2; Decision on Time-Use; Decision on Request for Information on Report on Time-Use, para.5. For a reflection of the text in the first page of the reports on the use of time, see Decision on Request for Information on Report on Time-Use, para.4

<sup>211</sup> Lukić Brief, para.64.

<sup>212</sup> Decision on Objection to Report on Time-Use, para.8; Decision on Request for Information on Report on Time-Use, para.7.

them translated.<sup>214</sup> In making the order, the Chamber took into account that, according to his Rule 65*ter* list, Lukić intended to tender 403 documents as evidence during his defence case,<sup>215</sup> and that the Chamber could deny admission into evidence of documents for which there was no translation as a result of the failure to submit documents in a timely manner.<sup>216</sup>

76. Lukić fails to identify a discernible error in the Chamber's exercise of discretion in setting the 30 November 2007 date. Subsequently, in denying Lukić's motion for an extension of at least two weeks in which to tender as evidence translations of documents for his defence case,<sup>217</sup> the Chamber explained that:

- The Chamber's Order on Procedure and Evidence established that a document must be translated into one of the two working languages of the Tribunal for the Chamber to assess its admissibility;<sup>218</sup>
- Lukić was under an obligation to disclose to the parties all the exhibits he would seek to tender in his case from 15 June 2007, including all translations of exhibits;<sup>219</sup>
- When Lukić did not comply by that date the Chamber "began efforts to facilitate the translation process by mediating" between Lukić and the Registry;<sup>220</sup>
- Five months after the disclosure deadline had elapsed, on 14 November 2007, the Chamber noted its concern that Lukić had still not submitted for translation many documents that it intended to tender as evidence. It ordered Lukić to comply with a previous order that he had breached by submitting to CLSS all of the documents on his Rule 65*ter* list which were still un-translated.<sup>221</sup>
- The Chamber's practice throughout the Defence cases of marking un-translated documents for identification (rather than simply rejecting them) and allowing for

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<sup>213</sup> Winter Recess Order, p.2.

<sup>214</sup> Winter Recess Order, para.6.

<sup>215</sup> Winter Recess Order, para.3.

<sup>216</sup> Winter Recess Order, para.4.

<sup>217</sup> Lukić does not challenge the Chamber's decision denying him an extension of time to submit translations or the decision denying his motion for reconsideration, except in so far as they rely on the order setting the November deadline which he alleges to be wrongly decided: *see* Lukić Brief, para.67, citing Decision on Leave to File Replies and to Decision on Reconsideration for Leave to File Replies.

<sup>218</sup> Decision on Leave to File Replies, para.6.

<sup>219</sup> Decision on Leave to File Replies, para.6, citing Order on Close of Prosecution Case, para.8(d)(ii).

<sup>220</sup> Decision on Leave to File Replies, para.6.

<sup>221</sup> Decision on Leave to File Replies, para.7, referring to Winter Recess Order.

translations to follow was “an extension of the 15 June 2007 deadline, which is done on a case-by-case basis, in the interests of a fair and expeditious trial.”<sup>222</sup>

77. Lukić had adequate time and facilities available to him to translate documents.<sup>223</sup> Lukić complains that, although he had reached an agreement with Registry that he would re-submit all his translation requests once he had reviewed their priority, the Chamber’s order frustrated that process by preventing him from properly making a selection.<sup>224</sup> In refusing to reconsider its decision denying him an extension of time to file outstanding translations, the Chamber found:

This is simply not true. First, the Chamber’s order only dealt with documents that had not been translated yet, *i.e.*, documents for which the Lukić defence was already in breach. Instead of simply rejecting all of them as potential evidence, the Chamber was still willing to entertain their admission, once they were translated. Second, the Chamber was endeavouring to break an apparent “stalemate” between the Lukić Defence and CLSS over the fact that the Lukić Defence had submitted an unrealistic number of documents to CLSS, for which CLSS was seeking a prioritisation so that the Lukić Defence’s most important documents would be translated. After the Chamber’s intercession, a solution was fashioned, and CLSS proceeded to produce translations at an accelerated rate. The Chamber also held a meeting with the Lukić Defence and OLAD over the provision of additional resources so that the Lukić Defence could hire a translator to handle additional documents that were rejected by CLSS due to capacity constraints.<sup>225</sup>

78. Lukić also fails to identify an error when he complains that CLSS gave priority to other defence teams over him because he was sixth in line.<sup>226</sup> The Defence teams presented their evidence in the order in which the Accused were listed in the Indictment.<sup>227</sup> According to the Chamber, giving co-accused priority over Lukić “at a specific time period” allowed those accused whose case was presented earlier to have their documents ready for tender during their defence case.<sup>228</sup> By presenting his case last, Lukić was provided the maximum amount of time to obtain translations of his documents.<sup>229</sup> Lukić’s position as the last to present his case afforded him “the maximum time to ready [his] case, not the opposite.”<sup>230</sup>

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<sup>222</sup> Decision on Leave to File Replies, para.8.

<sup>223</sup> *Contra* Lukić Brief, para.67.

<sup>224</sup> Lukić Brief, para.66.

<sup>225</sup> Decision on Reconsideration for Leave to File Replies, para.5. *See also* paras.7, 9–10.

<sup>226</sup> Lukić Brief, para.66.

<sup>227</sup> Judgement, Vol.I, para.28.

<sup>228</sup> Decision on Reconsideration for Leave to File Replies, para.6.

<sup>229</sup> Decision on Leave to File Replies, para.11.

<sup>230</sup> Decision on Reconsideration for Leave to File Replies, para.6.

79. Finally, Lukić fails to specify in his Brief any Rule 65*ter* document the admission of which was denied as a result of not being translated,<sup>231</sup> and the impact it would have had on the verdict.<sup>232</sup> He fails to show any prejudice to him.

**E. Lukić fails to demonstrate that he was unable to investigate in Kosovo (Ground A(4))**

80. Lukić's ground of appeal alleging that he had "inadequate ability to go visit the terrain" should be summarily dismissed. He merely incorporates by reference the argument set out in Ojdanić's fifth ground of appeal.<sup>233</sup> This practice is impermissible.<sup>234</sup> Further, Ojdanić's arguments cannot be transposed to Lukić's case as they relate to Ojdanić's particular circumstances.<sup>235</sup> Lukić fails to set out any details explaining the attempts he made to investigate in Kosovo or the nature of his alleged inability to carry out such investigations. Similarly, he fails to explain what steps he took to seek a remedy from the Chamber or to identify the impugned decision concerning his Kosovo investigations and the nature of the Chamber's alleged error. In these circumstances, the ground of appeal is no more than an "undeveloped assertion", which suffers from "obvious insufficiencies" warranting summary dismissal.<sup>236</sup>

<sup>231</sup> Lukić Brief, para.67. At trial, Lukić failed to specify how many documents were outstanding or the time it would take to translate them: Decision on Leave to File Replies, para.4.

<sup>232</sup> On 15 December 2009, Lukić filed a Rule 115 motion seeking the admission of 17 documents, 16 of which the Trial Chamber had previously rejected for not having been translated. To the extent that Lukić made arguments in his 115 Motion on the alleged impact on the verdict, the Prosecution has responded in its submissions filed on 14 January 2010: *see* Lukić 115 Motion, Prosecution Response to Lukić 115 Motion.

<sup>233</sup> Lukić Brief, para.68.

<sup>234</sup> *E.g.* Decision on Pavković's Second Motion to Amend Notice, para.18 ("a party may not dispose of its burden on appeal by merely referring to another party's submissions"). *See further* Karadžić Count 11 AD, para.13 ("in the well-established practice of the Tribunal, appellants must substantiate their arguments in support of each ground of appeal in their appeal briefs and not by reference to submissions made elsewhere").

<sup>235</sup> Lukić did not join Ojdanić's initial motion to stay the proceedings based on Ojdanić's alleged inability to investigate in Kosovo: *e.g.* First Decision on Ojdanić Motion to Stay, para.1 (noting that only Milutinović, Pavković, Šainović and Lazarević joined Ojdanić's motion).

<sup>236</sup> SD10, SD14

### III. THE CHAMBER PROPERLY DENIED DOCUMENTS LUKIĆ TENDERED FROM THE BAR TABLE (GROUND B)

81. In challenging the denial of 13 documents he tendered from the bar table,<sup>237</sup> Lukić fails to show (a) the Chamber abused its “considerable discretion in deciding on issues of admissibility of evidence”<sup>238</sup> and (b) how the inclusion of these documents in evidence would have had any impact on the Judgement.<sup>239</sup> Ground B should be dismissed.

82. The Prosecution answers his remaining challenges in turn.

#### A. The Chamber properly excluded the “Map Extracts of Anti-Terrorist Actions”

83. The Chamber denied admission from the bar table of four map extracts of anti-terrorist actions<sup>240</sup> because Lukić had “not demonstrated how the maps relate to an issue in the trial.”<sup>241</sup> Lukić made “no attempt to describe the locations, dates or other details of the actions to which the maps purport to relate, and no explanation is given for why they could not be tendered through a witness during the Defence case.”<sup>242</sup> On appeal, Lukić fails to explain how the Chamber abused its discretion in denying these exhibits. Where a witness was available to explain their content, the Chamber admitted three similar maps tendered by the Lukić during the testimony of Milan Đaković,<sup>243</sup> who explained what they meant.<sup>244</sup> Lukić fails to show the Chamber abused its discretion in denying admission of these unexplained maps on the grounds that their relevance was not sufficiently clear.

84. Further, Lukić fails to explain how the admission of these four maps would have had any impact on the Chamber’s conclusion that such maps were only drafted following consultation with MUP officers at co-ordination meetings<sup>245</sup> and were evidence that “the

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<sup>237</sup> Lukić Brief, paras.73-75.

<sup>238</sup> *Čelebići* AJ, para.533.

<sup>239</sup> Statute, Article 25(1)(b).

<sup>240</sup> Lukić Defence documents marked 6D1622, 6D1623, 6D1624, 6D1625.

<sup>241</sup> Decision on Admission from Bar Table, para.103.

<sup>242</sup> Decision on Admission from Bar Table, para.103.

<sup>243</sup> Exhs.6D1618 (public), 6D1620 (public) and 6D1621 (public), admitted on 20 May 2008.

<sup>244</sup> T.26525–26529 (open).

<sup>245</sup> Judgement, Vol.III, para.974.

MUP Staff played a central role in [...] co-ordinating and planning joint operations with the VJ.”<sup>246</sup>

### **B. The Chamber properly excluded documents printed from the MUP website**

85. The Chamber did not abuse its discretion in denying<sup>247</sup> Lukić’s motion to admit from the bar table eight Serbian-language documents<sup>248</sup> from the “[o]fficial MUP website” listing “persons that were attacked and injured/killed in KLA activities on the territory of Kosovo-Metohi[j]ja and RDB Information on the KLA”<sup>249</sup> where Lukić did not provide any “reference to the supporting materials behind these postings.”<sup>250</sup> Lukić demonstrates no error by the Chamber in the exercise of its discretion.

### **C. The Chamber properly excluded “[d]ocuments underlying 6D614”**

86. Finally, Lukić challenges the exclusion of “[d]ocuments underlying 6D614” as well as the overview of that exhibit.<sup>251</sup> This argument appears to relate to the documents marked 6D889 and 6D925. The Chamber denied admission of these two documents because Lukić failed to “demonstrate to the Chamber how they fit into the case” as they were among 60 documents that Lukić simply listed “in a table [...] and then provides one sentence of argumentation in relation to all of them together.”<sup>252</sup> He fails to show how the Chamber abused its discretion in failing to admit into evidence documents the relevance of which Lukić failed to adequately explain.

87. As to the document marked 6D614, the Chamber admitted “those portions” of the document “that were put to witnesses who were able to give *viva voce* evidence” relating to its contents.<sup>253</sup> Lukić fails to show how the Chamber abused its discretion in declining to admit

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<sup>246</sup> Judgement, Vol.III, para.1012.

<sup>247</sup> Decision on Admission from Bar Table, paras.94, 97.

<sup>248</sup> Lukić Defence documents marked 6D1109, 6D1111, 6D1112, 6D1115, 6D1116, 6D1117, 6D1468, 6D1469.

<sup>249</sup> Lukić Brief, para.74.

<sup>250</sup> Decision on Admission from Bar Table, para.94.

<sup>251</sup> Lukić Brief, para.75.

<sup>252</sup> Decision on Admission from Bar Table, para.51.

<sup>253</sup> Decision on Reconsideration of Bar Table Decision, para.30.

the entire 789-page document<sup>254</sup> or identify what portions of this document would have had any impact on the Judgement.

#### **IV. GROUND C**

88. Lukić did not separately address Ground C from his Notice.<sup>255</sup>

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<sup>254</sup> Decision on Reconsideration of Bar Table Decision, para.27.

<sup>255</sup> Lukić Brief, para.8.

## V. THE CHAMBER PROPERLY RELIED ON PROSECUTION EVIDENCE (GROUND D)

89. In his Ground D Lukić alleges broadly that “[a]ll statements made by witnesses who have been found untruthful in any of their testimony cannot be used as evidence, especially not as evidence to determine Appellant guilty.”<sup>256</sup> He then makes a series of arguments where he says the Chamber erred in relying on certain testimony and not on others challenging:

- The Chamber’s approach to evidence generally;<sup>257</sup>
- The persecution of Albanians before the armed conflict;<sup>258</sup>
- MUP uniforms and insignia;<sup>259</sup>
- Paramilitaries and volunteers;<sup>260</sup>
- Foreign observers;<sup>261</sup>
- Joint Command;<sup>262</sup>
- The NATO bombing and conflict in Kosovo;<sup>263</sup>
- Cvetic’s testimony.<sup>264</sup>

90. The Prosecution will address these arguments in this section. However, the issues concerning NATO bombing in Kosovo<sup>265</sup> and Cvetic’s testimony<sup>266</sup> are dealt with in response to Lukić’s Grounds H, I and O.<sup>267</sup>

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<sup>256</sup> Lukić Brief, para.77.

<sup>257</sup> Lukić Brief, paras.77–83.

<sup>258</sup> Lukić Brief, paras.84–88.

<sup>259</sup> Lukić Brief, paras.89–103.

<sup>260</sup> Lukić Brief, paras.104–135.

<sup>261</sup> Lukić Brief, paras.136–152.

<sup>262</sup> Lukić Brief, paras.153–156.

<sup>263</sup> Lukić Brief, paras.157–161.

<sup>264</sup> Lukić Brief, paras.162–163.

<sup>265</sup> Lukić Brief, paras.157–161.

<sup>266</sup> Lukić Brief, paras.162–163.

<sup>267</sup> See sections VIII. C. 2. (a) and VIII. E. 2. below.

### A. The Chamber approached the evidence properly

91. Lukić argues generally that the Chamber erred in its approach to evidence.<sup>268</sup> None of his arguments show an error.

92. First the Chamber was fully entitled to rely upon the testimony of witnesses who denied the existence of KLA activities.<sup>269</sup> It acknowledged that their testimony in this regard was unreliable.<sup>270</sup> The Chamber was in the best position to assess the reliability and credibility of these witnesses and was entitled to accept certain parts of their testimony and reject others.<sup>271</sup> Lukić shows no error in this regard.

93. Second, the Chamber properly observed that whether exaggerations in a witness's evidence made the witness unreliable was to be decided in the circumstances.<sup>272</sup> Lukić's suggestion that the Chamber could not discern reliable information from exaggeration<sup>273</sup> is unsupported and fails to show any error. Similarly, his allegation that the Chamber wrongly assessed Defence witnesses because it was "unfamiliar with the law that governed certain institutions",<sup>274</sup> is unsupported and shows no error.

94. Third, contrary to Lukić's submission<sup>275</sup> the Chamber was entitled to find some witnesses reliable on some issues and unreliable on others.<sup>276</sup> The Chamber was not required to mention every piece of evidence it considered when deliberating.<sup>277</sup> Lukić shows no error.

95. Finally, the Prosecution understands Lukić to argue that the Chamber showed bias because it commented that evidence had not been put to Prosecution witnesses.<sup>278</sup> However, the Chamber simply observed that the Defence carried out significant investigations at a late stage which led to occasions where Defence witnesses contradicted Prosecution witnesses who had not been asked about the particular contradiction.<sup>279</sup> It then properly observed that it

<sup>268</sup> Lukić Brief, paras.77–83.

<sup>269</sup> *Contra* Lukić Brief, paras.77, 80. *See* also sections VIII. C. 2. (a) and VIII. C. 3. below, responding to a similar issue.

<sup>270</sup> Judgement, Vol.I, para.50.

<sup>271</sup> *Blagojević* AJ, para.82. *See* Judgement, Vol.II, para.1175.

<sup>272</sup> Judgement, Vol.I, para.53.

<sup>273</sup> Lukić Brief, para.80.

<sup>274</sup> Lukić Brief, para.81.

<sup>275</sup> Lukić Brief, paras.82–83.

<sup>276</sup> Judgement, Vol.I, para.61. *Blagojević* AJ, para.82 (citing *Kupreškić* AJ, para.333).

<sup>277</sup> Judgement, Vol.I, para.64. *Kvočka* AJ, para.23.

<sup>278</sup> Lukić Brief, paras.78–79.

<sup>279</sup> Judgement, Vol.I, paras.51–52.

took this into account when evaluating the evidence.<sup>280</sup> Contrary to Lukić's submissions the Chamber did not "put [the] blame" on the Defence.<sup>281</sup> Lukić fails to show any error in the Chamber's reasoning.

### **B. Challenges relating to pre-conflict persecution of Albanians are irrelevant**

96. Lukić's challenges<sup>282</sup> to the Chamber's findings on the historical background of the crisis in Kosovo are irrelevant to the conviction and should be summarily dismissed.<sup>283</sup>

### **C. The Chamber did not err with regard to MUP uniforms and insignia**

97. The Chamber carefully analysed the evidence on the uniforms of the MUP.<sup>284</sup> It concluded that the MUP had:

[N]avy-blue or camouflage blue uniforms before and right through the NATO campaign in Kosovo. [...] [M]embers of the PJP, while engaged in Kosovo, wore green-camouflage uniforms. However [...] they also owned the two regular types of uniforms: camouflage blue and navy-blue. Members of the SAJ and JSO [...] wore green camouflage uniforms. On occasion, uniformed members of the MUP [...] wore coloured ribbons or "armbands" in order to distinguish themselves.<sup>285</sup>

98. Lukić's argument that the Chamber erred in its findings on MUP uniforms,<sup>286</sup> and erred because it found witnesses credible although they allegedly wrongly described MUP uniforms<sup>287</sup> should be dismissed.

99. First, Lukić's submits that the Chamber erred because the uniforms of the MUP had the fluorescent "police" lettering.<sup>288</sup> This undeveloped assertion fails to articulate an error and

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<sup>280</sup> Judgement, Vol.I, para.52.

<sup>281</sup> Lukić Brief, paras.78–79.

<sup>282</sup> Lukić Brief, paras.84–88.

<sup>283</sup> SD1.

<sup>284</sup> Judgement, Vol.I, paras.705–716.

<sup>285</sup> Judgement, Vol.I, para.716.

<sup>286</sup> Lukić Brief, paras.89–98.

<sup>287</sup> Lukić Brief, paras.98–102.

<sup>288</sup> Lukić Brief, para.92.

should be dismissed.<sup>289</sup> Similarly, Lukić’s submission that the Chamber erred in finding that the uniforms were almost black<sup>290</sup> misrepresents the Judgement.<sup>291</sup> The Chamber found that the uniforms were dark blue,<sup>292</sup> and properly observed that the dark blue colour of the police uniforms could be described as almost black.<sup>293</sup> Lukić fails to show no reasonable trial chamber could have reached this conclusion.

100. Second, contrary to Lukić’s assertion<sup>294</sup> the Chamber properly weighed Vasiljević’s testimony in making its findings as to the armament of the JSO.<sup>295</sup> Vasiljević was not the sole witness upon whom the Chamber relied in reaching this conclusion.<sup>296</sup> Lukić fails to show that no reasonable trial chamber could have reached this conclusion.

101. Third, the Chamber did not conclude that in 1999 the MUP’s ribbons were white but found that from the middle of April 1999 “members of the MUP were instructed to use” yellow, red and blue ribbons.<sup>297</sup> Lukić’s argument misrepresents the factual findings and should be summarily dismissed.<sup>298</sup> In so far as Lukić argues that witnesses who testified that the police wore white ribbons are unreliable, his submission should be equally summarily dismissed as mere attempt to substitute his own evaluation of the evidence.<sup>299</sup> Lukić’s unsupported assertion<sup>300</sup> related to the uniforms of the PJP merits similar treatment.<sup>301</sup>

102. Fourth, Lukić’s submissions that some witnesses were not credible because they did not properly describe the MUP uniforms should be dismissed. Lukić first argues that the Chamber erred in concluding that the MUP raped witnesses K62 and K14.<sup>302</sup> Lukić was not convicted for these crimes, thus this argument should be summarily dismissed.<sup>303</sup> In any event, the Chamber reasonably concluded that the persons in camouflage uniform who raped of K62 were either from the MUP or from the VJ.<sup>304</sup> The Chamber explicitly rejected Lukić’s

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<sup>289</sup> SD10.  
<sup>290</sup> Lukić Brief, para.93.  
<sup>291</sup> SD2.  
<sup>292</sup> Judgement, Vol.I, para.716.  
<sup>293</sup> Judgement, Vol.II, para.968.  
<sup>294</sup> Lukić Brief, paras.89–90.  
<sup>295</sup> Judgement, Vol.I, para.688.  
<sup>296</sup> Judgement, Vol.I, para.688.  
<sup>297</sup> Judgement, Vol.I, para.715. *Contra* Lukić Brief, paras.94-96, 103.  
<sup>298</sup> SD2.  
<sup>299</sup> SD3.  
<sup>300</sup> Lukić Brief, para.97.  
<sup>301</sup> SD4.  
<sup>302</sup> Lukić Brief, paras.95, 98–99.  
<sup>303</sup> SD1.  
<sup>304</sup> Judgement, Vol.II, para.889.

argument<sup>305</sup> that K14 was not credible because she testified that the policemen who raped her wore blue not red ribbons.<sup>306</sup> Lukić fails to explain why no reasonable trial chamber could not have so found.

103. Fifth, the Chamber did not find that the MUP committed the crimes in Vladovo/Lladova and Vlaštica/Llashtica.<sup>307</sup> It found, as Lukić acknowledges,<sup>308</sup> that these crimes were committed by VJ and armed civilians wearing police uniform.<sup>309</sup> Lukić's submission that the MUP was not involved in these crimes is irrelevant because, as a JCE member, Lukić is also responsible for crimes committed by the VJ. This submission should be summarily dismissed.<sup>310</sup>

104. Sixth, Lukić repeats his trial argument that those witnesses who testified that the police wore black/blue uniforms, particularly Hiseni, were unreliable.<sup>311</sup> The Chamber heard and explicitly rejected this argument explaining that the dark blue police uniforms could be described as almost black in colour.<sup>312</sup> Lukić fails to show why no reasonable trial chamber could have reached this conclusion.

105. Finally, Lukić's unsupported suggestion<sup>313</sup> that the Prosecution fabricated the evidence should be rejected.<sup>314</sup>

#### **D. The Chamber did not err in assessing paramilitary activities**

106. Lukić apparently submits that no paramilitaries were active in Kosovo in 1999.<sup>315</sup> First he challenges the credibility of certain witnesses.<sup>316</sup> Second he argues that the Chamber erred in finding that the paramilitaries were present in certain locations.<sup>317</sup>

<sup>305</sup> Lukić Brief, para.99. Lukić Closing Brief, para.1064.

<sup>306</sup> Judgement, Vol.II, para.877.

<sup>307</sup> Judgement, Vol.II, paras.944, 946. *Contra* Lukić Brief, para.100.

<sup>308</sup> Lukić Brief, para.100.

<sup>309</sup> Judgement, Vol.II, paras.944, 946.

<sup>310</sup> SD1, SD2.

<sup>311</sup> Lukić Brief, paras.101–102. Lukić Closing Brief, paras.1131–1132.

<sup>312</sup> Judgement, Vol.II, para.968.

<sup>313</sup> Lukić Brief, paras.91,96, 100–101.

<sup>314</sup> SD4.

<sup>315</sup> Lukić Brief, paras.104–135.

<sup>316</sup> Lukić Brief, paras. 106–109, 113–119, 121–122, 126–127, 131–135.

<sup>317</sup> Lukić Brief, paras.104–105, 110–112, 120.

1. The Chamber properly relied upon Vasiljević, Gajić and Cvetić

107. Lukić argues that the Chamber erred in relying upon Vasiljević, Gajić and Cvetić's testimony in discussing the presence of paramilitaries in Kosovo.

(a) Vasiljević

108. Lukić argues that Vasiljević was unreliable.<sup>318</sup> Some of Lukić's arguments<sup>319</sup> should be summarily dismissed as mere attempt to substitute his evaluation of the evidence for that of the Chamber.<sup>320</sup> Lukić's remaining arguments on Vasiljević's credibility misrepresent the Chamber's findings and the evidence.<sup>321</sup>

109. Lukić suggests that the Chamber applied an unfair double standard in assessing Vasiljević's credibility.<sup>322</sup> He asserts that the Chamber was contradictory in finding Vasiljević reliable when establishing Lukić's guilt, and unreliable when assessing Ojdanić's responsibility.<sup>323</sup> However, the Chamber did not find Vasiljević unreliable but merely observed, discussing his evidence of the under-reporting of crime within the VJ, that he was brought back to the Security Administration only on 27 April 1999.<sup>324</sup> Lukić's submission misrepresenting the Chamber's findings should be summarily dismissed.<sup>325</sup>

110. Lukić argues that "the Chamber wrongly presented the facts when it concluded that Vasiljević, Farkaš and Gajić were on a joint mission in Kosovo."<sup>326</sup> The Chamber did not make such finding.<sup>327</sup> Lukić similarly misrepresents the Chamber's finding when he suggests that Vasiljević's testimony about the 16 and 17 May meetings was misquoted.<sup>328</sup> There is no inconsistency in the Chamber's findings as to what Vasiljević reported during these meetings.<sup>329</sup> These submissions should be summarily dismissed since they misrepresent the evidence and the Chamber's findings.<sup>330</sup>

<sup>318</sup> Lukić Brief, paras.106–109, 121–127.

<sup>319</sup> Lukić Brief, paras.106, 121–122.

<sup>320</sup> SD3.

<sup>321</sup> Lukić Brief, paras.107–109, 123–126.

<sup>322</sup> Lukić Brief, paras.107–108.

<sup>323</sup> Lukić Brief, paras.107–108.

<sup>324</sup> Judgement, Vol.III, para.572.

<sup>325</sup> SD2.

<sup>326</sup> Lukić Brief, para.109.

<sup>327</sup> SD2.

<sup>328</sup> Lukić Brief, paras.123-126.

<sup>329</sup> Judgement, Vol.III, paras.349–354, 575–576.

<sup>330</sup> SD2.

111. Finally, Lukić's suggestion that the Chamber tailored Vasiljević's testimony to his detriment<sup>331</sup> is obscure and should be summarily dismissed.<sup>332</sup> In any case, Lukić has failed to show why the Chamber erred in relying upon Vasiljević's testimony.

(b) Gajić

112. Lukić submits that Gajić's testimony was incorrect and unreliable<sup>333</sup> and argues that the Drina Wolves were not active in Kosovo.<sup>334</sup> However, he merely repeats his trial challenges without articulating any error.<sup>335</sup> These arguments should be summarily dismissed.<sup>336</sup>

(c) Cvetić

113. Lukić challenges Cvetić's reliability based on his testimony in relation to the 17 February 1999 and the 17 March 1999 meetings.<sup>337</sup> Contrary to his allegations, the Chamber carefully analysed his arguments and the relevant evidence.<sup>338</sup> It fully considered the testimonies of Vojnović and Gavranić before concluding they were not reliable in the face of Cvetić's testimony and documentary evidence.<sup>339</sup> Second, contrary to Lukić's submission,<sup>340</sup> the Chamber considered that Cvetić clarified his previous testimony during cross-examination, stating that Lukić raised the issue of volunteers at the 17 March 1999 meeting and not at the 17 February 1999 meeting.<sup>341</sup> In any event, his challenge has no impact as the Chamber observed that whether the meeting in which Lukić spoke about the use of volunteers by the MUP was held on 17 February 1999, as claimed by Gavranić, or on 17 March 1999, as claimed by Cvetić, does not undermine its finding.<sup>342</sup>

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<sup>331</sup> Lukić Brief, para.127.

<sup>332</sup> SD14.

<sup>333</sup> Lukić Brief, para.119.

<sup>334</sup> Lukić Brief, paras.113–118.

<sup>335</sup> Lukić Closing Brief, paras.354–356, 358, 360–361.

<sup>336</sup> SD9.

<sup>337</sup> Lukić Brief, paras.131–134. Lukić's further challenges Cvetić's testimony that no police officer was investigated for murder (Lukić Brief, paras.162–163): *see* section VIII. E. 2. below.

<sup>338</sup> Judgement, Vol.I, paras.742–744.

<sup>339</sup> Judgement, Vol.I, para.744.

<sup>340</sup> Lukić Brief, para.134.

<sup>341</sup> Judgement, Vol.I, para.744.

<sup>342</sup> Judgement, Vol.I, para.744, fn.1932.

## 2. Paramilitaries were present in Kosovo

114. Lukić's several unsubstantiated arguments suggesting that paramilitaries were not present in Kosovo in 1999 should be dismissed. First, his reference to Farkaš' testimony<sup>343</sup> should be summarily dismissed as obscure, vague and contrary to common sense.<sup>344</sup>

115. Second, contrary to Lukić's understanding,<sup>345</sup> the Judgement did not misquote his position that members of the Scorpions, a unit that no longer existed in 1998 and 1999, were incorporated in the SAJ.<sup>346</sup> Similarly, there is no contradiction<sup>347</sup> between Gajić's testimony that paramilitary groups were incorporated in the MUP during the NATO bombing<sup>348</sup> and Stoparić's testimony that former Scorpions were incorporated in the SAJ-MUP.<sup>349</sup>

116. Third, Lukić's submission that SAJ and not paramilitaries were present in Poujevo/Podujeva in 1999<sup>350</sup> is irrelevant because the Scorpions were integrated into the SAJ,<sup>351</sup> and should be summarily dismissed.<sup>352</sup> In any event, Lukić fails to show why the Chamber's reasoning and assessment of the evidence was unreasonable.<sup>353</sup>

117. Fourth, Lukić argues the Arkan's Tigers were not in Kosovo in 1999.<sup>354</sup> His submission should be summarily dismissed because he merely recites the evidence he relied upon at trial<sup>355</sup> without articulating any error.<sup>356</sup> Lukić's further argument that Milorad Ulemek Luković (a.k.a, Legija) was not a member of Arkan's Tigers in 1999<sup>357</sup> is consistent with the Chamber's finding that as JSO commander he was a former member of Arkan's Tigers.<sup>358</sup> This argument should be summarily dismissed.<sup>359</sup>

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<sup>343</sup> Lukić Brief, para.120.

<sup>344</sup> SD7, SD14.

<sup>345</sup> *Contra* Lukić Brief, para.104. Lukić Closing Brief, paras.316, 320–321, 327.

<sup>346</sup> Judgement, Vol.I, para.737.

<sup>347</sup> *Contra* Lukić Brief, para.105.

<sup>348</sup> Judgement, Vol.I para.738.

<sup>349</sup> Judgement, Vol.I para.737.

<sup>350</sup> Lukić Brief, para.105.

<sup>351</sup> Judgement, Vol.I para.677, Vol.III, para.575.

<sup>352</sup> SD2.

<sup>353</sup> Judgement, Vol.III paras.266, 351, 572 (fn.1337), 582–583, 1049 (fn.2631) ; Vol.I, para.731.

<sup>354</sup> Lukić Brief, paras.110–112.

<sup>355</sup> Lukić Closing Brief, para.346.

<sup>356</sup> SD9.

<sup>357</sup> Lukić Brief, para.110.

<sup>358</sup> Judgement, Vol.I, paras.686, 739.

<sup>359</sup> SD1.

118. Fifth, Lukić's unsubstantiated submission that he took measures to prevent and punish the paramilitaries<sup>360</sup> is immaterial because he was convicted under JCE and not under Article 7(3) of the Statute.<sup>361</sup>

119. Finally, Lukić's further submissions<sup>362</sup> should be summarily dismissed because they are obscure and unsubstantiated.<sup>363</sup> His mere suggestion that the Chamber should have interpreted Exhibit 6D269 in a different manner<sup>364</sup> should be summarily dismissed.<sup>365</sup>

#### **E. The Chamber did not err in its reliance upon the evidence of foreign observers**

120. Lukić challenges the Chamber's reliance on the testimony and evidence of six representatives of international organisations<sup>366</sup> to find that he "was aware that there were serious allegations of criminal activity by MUP forces in Kosovo in mid-to late 1998, directed against the Kosovo Albanian civilian population."<sup>367</sup> Specifically, the Chamber found that Lukić "was in constant communication with KDOM and KVM representatives in Kosovo", namely Shaun Byrnes and Karol John Drewienkiewicz.<sup>368</sup> Lukić's knowledge of crimes in 1998 and his continued work "to ensure co-operation of the joint MUP/VJ operations despite [this] knowledge" shows he had the intent necessary for his liability through JCE.<sup>369</sup>

121. In each challenge, Lukić fails to show how the Chamber's alleged error had any impact on the Judgment, much less how it occasioned a miscarriage of justice.<sup>370</sup> He further fails to show that the observers' evidence "could not have been accepted by any reasonable tribunal of fact" or that the Chamber's evaluation of the evidence was "wholly erroneous".<sup>371</sup> His challenges also misrepresent the evidence<sup>372</sup> and are irrelevant<sup>373</sup> and vague.<sup>374</sup>

<sup>360</sup> Lukić Brief, para.135.

<sup>361</sup> SD1, SD2.

<sup>362</sup> Lukić Brief, para.128.

<sup>363</sup> SD14.

<sup>364</sup> Lukić Brief, paras.129-130.

<sup>365</sup> SD3.

<sup>366</sup> Frederick Abrahams (Lukić Brief, paras.137, 139–144, 146–147); John Crosland (Lukić Brief, para.138); John Karol Drewienkiewicz (Lukić Brief, para.138), Jan Kickert (Lukić Brief, para.145), Richard Ciaglinski (Lukić Brief, para.148) and Michael Phillips (Lukić Brief, paras.149–150).

<sup>367</sup> Judgement, Vol.III, para.1086.

<sup>368</sup> Judgement, Vol.III, paras.1082–1084.

<sup>369</sup> Judgement, Vol.III, para.1119.

<sup>370</sup> Art.25(1)(b) of the Statute.

<sup>371</sup> *Kupreškić* AJ, para.30. *See also Mrkšić* AJ, para.14.

<sup>372</sup> SD2.

<sup>373</sup> SD7.

122. For example, contrary to Lukić's assertions,<sup>375</sup> the Chamber did not rely on the testimony of Abrahams to show Lukić knew of the crimes in 1998. Rather, it relied on the testimony of Byrnes, Crosland and Drewienkiewicz.<sup>376</sup> His arguments are misconceived.

123. None of his other challenges<sup>377</sup> relating to Abrahams show the Chamber was unreasonable in relying on his evidence. Others amount to mere assertions unsupported by argument or evidence<sup>378</sup> and merit summary dismissal.<sup>379</sup> Further, contrary to his argument,<sup>380</sup> the portions of Abrahams's statement cited by the Chamber were admitted under Rule 92bis<sup>381</sup>.

124. Lukić's arguments relating to other witnesses suffer from similar flaws:

- Crosland: The Chamber specifically considered and rejected<sup>382</sup> Lukić's argument that Crosland's testimony should be rejected because he used the word "razed" to describe damage to the village of Junik.<sup>383</sup> Lukić merely repeats his trial arguments and fails to show how this finding was unreasonable.<sup>384</sup>
- Drewienkiewicz: Lukić fails to explain how Drewienkiewicz's testimony is "self-contradictory" or why he needed to have been an expert in order to testify about burned buildings.<sup>385</sup>
- Kickert: Lukić fails to show any impact<sup>386</sup> of the Chamber's alleged misquotation of Kickert.<sup>387</sup>
- Phillips: Lukić fails to show how the testimony of Phillips was "tainted with speculation and conjecture."<sup>388</sup> [REDACTED],<sup>389</sup>[REDACTED].<sup>390</sup> Though Phillips

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<sup>374</sup> SD14.

<sup>375</sup> Lukić Brief, paras.139, 141, 146–147.

<sup>376</sup> Judgement, Vol.III, paras.1082–1086, 1120.

<sup>377</sup> Lukić Brief, paras.137, 142–144, 146–147.

<sup>378</sup> Lukić Brief, paras.141–144.

<sup>379</sup> SD4.

<sup>380</sup> Lukić Brief, para.137.

<sup>381</sup> Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, p.18.

<sup>382</sup> Judgement, Vol.I, para.886.

<sup>383</sup> Lukić Brief, para.138.

<sup>384</sup> SD9.

<sup>385</sup> Lukić Brief, para.138.

<sup>386</sup> SD10.

<sup>387</sup> Lukić Brief, para.145.

<sup>388</sup> Lukić Brief, para.150.

did refer to “Mr. Lončar” in his testimony regarding the “defensive” nature in which Serbian authorities responded to his reports,<sup>391</sup> he did so after confirming that Lukić attended the meeting at which the report was delivered<sup>392</sup> and in response to a question regarding Lukić’s reaction.<sup>393</sup> He simply misspoke. Lukić fails to show how reliance on this evidence was unreasonable.

- Ciaglinski: Lukić fails to explain<sup>394</sup> how the Chamber’s reliance on Ciaglinski’s “impression that Mijatović, Lukić’s deputy, was in the chain of command of the MUP”<sup>395</sup> had any impact on the Judgement.<sup>396</sup> He also fails to explain how the fact that “[n]one of the members of the KVM were ever police officers in their own countries”<sup>397</sup> somehow made their concerning MUP officials in Kosovo less credible. Ciaglinski needed no police training to conclude that he had the impression Mijatović was in the MUP chain of command.

#### **F. The Chamber did not err in its assessment of the Joint Command**

125. Lukić’s arguments<sup>398</sup> relating to the Chamber’s reliance on Aleksandar Vasiljević and Ljubinko Cvetić should be dismissed because they are contradictory,<sup>399</sup> irrelevant<sup>400</sup> and misrepresent the Chamber’s findings.<sup>401</sup> He fails to explain how the Chamber’s reliance on this testimony was unreasonable and he fails to explain how the Chamber’s reliance on these witnesses affected the Judgement.

126. Lukić finds fault with the Chamber’s reliance on the “speculative” testimony<sup>402</sup> of Vasiljević, yet chides the Chamber for failing to rely on the same testimony.<sup>403</sup> He fails to

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389 [REDACTED].  
 390 Lukić Brief, para.149.  
 391 T.11846 (open).  
 392 T.11845 (open).  
 393 T.11845 (open).  
 394 Lukić Brief, para.148.  
 395 Judgement, Vol.I, para.926.  
 396 SD1.  
 397 Lukić Brief, para.148.  
 398 Lukić Brief, paras.154-156.  
 399 SD14.  
 400 SD7.  
 401 SD2.  
 402 Lukić Brief, para.154.

explain how this testimony is “inconsistent/contradictory”,<sup>404</sup> and his argument that Vasiljević did not refer in his diary to the 1 June 1999 meeting as a “Joint Command” meeting ignores the Chamber’s finding that the meeting “was later described to him by Pavković as a meeting of the Joint Command.”<sup>405</sup> It is therefore reasonable to expect that his contemporaneous notes would not refer to the meeting as a Joint Command meeting.

127. Lukić’s argument that the Chamber erred in relying on Cvetić for evidence relating to the Joint Command when Cvetić was not present at the creation of this body is irrelevant.<sup>406</sup> The Chamber noted that Cvetić’s knowledge of the creation of the Joint Command stemmed from what he had been told by others.<sup>407</sup> Whether he was present at “the establishment of the Joint Command” is not relevant to his testimony.

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<sup>403</sup> Lukić Brief, para.156.

<sup>404</sup> Lukić Brief, para.155.

<sup>405</sup> Judgement, Vol.I, para.1145.

<sup>406</sup> Lukić Brief, para.153.

<sup>407</sup> Judgement, Vol.I, para.1071.

## VI. THE CHAMBER PROPERLY ADMITTED AND RELIED UPON LUKIĆ'S INTERVIEW WITH THE PROSECUTION (GROUND F)

### A. The Chamber correctly admitted Lukić's interview into evidence

#### 1. Overview

128. The Chamber was reasonable to admit into evidence the transcript of Lukić's suspect interview (Exhibit P948) given between 21 and 23 May 2002. Lukić gave the Interview voluntarily<sup>408</sup> and the Prosecution complied with the requirements of Rules 42 and 43.<sup>409</sup> In accordance with Tribunal case-law, the Interview met the requirements for admissibility.<sup>410</sup> Although Lukić made a generalised objection to admission of the Interview when tendered in August 2006, he did not raise the translation issues he now alleges on appeal.<sup>411</sup> There was no basis for the Chamber to reject the Interview when it was tendered.

129. The Chamber was also reasonable not to subsequently reconsider its decision to admit the Interview. Nineteen months after the Chamber admitted the Interview, Lukić belatedly raised alleged errors regarding the live interpretation into English or B/C/S during the Interview. The Chamber noted that, by this time, Lukić had been in possession of:

- the audiovisual recording of the Interview for over three years;
- the English transcript of the Interview for almost three years; and
- the combined English–B/C/S transcript for three months.<sup>412</sup>

As the Chamber concluded "it has been open to the Lukić Defence for some time now to make any corrections it deems fit to the interview."<sup>413</sup> Lukić's only excuse for not raising the alleged translation issues upon receipt of the combined transcript is that he was at the same time busy presenting his case-in-chief.<sup>414</sup> This is not a valid reason for Lukić's delay. In any

<sup>408</sup> Exh.P948 (public), pp.3, 53, 117 (Lukić confirming that he was taking part in the interview voluntarily).

<sup>409</sup> Exh.P.948 (public), pp.1–3, 25–26, 49–53, 73–74, 91–92, 96–97, 115–118, 140–141, 159–160, 170–171; Decision on Lukić Objection to the Admission of P948, paras.10–11; Prosecution Sur-Reply, p.3.

<sup>410</sup> *Halilović* TD, para.10; *Popović* TD, paras.28, 38-39.

<sup>411</sup> Lukić Response to Prosecution Motion to Admit Documentary Evidence, paras.22–24, p.23.

<sup>412</sup> Decision on Lukić Objection to the Admission of P948, paras.7–8.

<sup>413</sup> Decision on Lukić Objection to the Admission of P948, para.10.

<sup>414</sup> Decision on Lukić Objection to the Admission of P948, para.3; Lukić Brief, paras.166, 169.

event, the Chamber correctly concluded that any translation issues could be satisfactorily dealt with by:

- Lukić raising purported deficiencies in the translation for correction on a case-by-case basis; and
- The Chamber taking into account the “circumstances surrounding the interview when it assesses what weight to attribute to it in its final deliberations”.<sup>415</sup>

130. A revised version of the Interview was placed on the record on 22 May 2008.<sup>416</sup> Prior to this, Lukić was given an opportunity to review the revised version and make further submissions. He failed to do so within the allocated time-frame.<sup>417</sup> Only after the revised version was admitted did he object based on four purported deficiencies in the translation. The Chamber properly rejected these objections, holding that:

- Lukić already had ample time to raise objections to the translation;<sup>418</sup>
- the purported errors in the translation were matters that were best addressed in final argument;<sup>419</sup> and
- the Chamber would take the circumstances surrounding the interview into account when it assessed what weight to attribute to the interview in its final deliberations.<sup>420</sup>

2. Lukić fails to establish any error by the Chamber in admitting his Interview

(a) The transcript of Lukić’s Interview was not “late disclosed”

131. Contrary to Lukić’s submission,<sup>421</sup> his suspect interview was timely disclosed under both Rule 66(A)(i) and Rule 43(iv). First, the video recording of his interview was disclosed under Rule 66(A)(i) on 20 April 2005,<sup>422</sup> fourteen days after his initial appearance on 14 April 2005. Audio and video disclosure under Rule 66(A) does not breach the fairness principle as

<sup>415</sup> Decision on Lukić Objection to the Admission of P948, paras.11–12.

<sup>416</sup> Order on the Admission of P948.

<sup>417</sup> Order on the Admission of P948, para.2.

<sup>418</sup> Second Decision on Lukić Objection to the Admission of P948, para.5.

<sup>419</sup> Second Decision on Lukić Objection to the Admission of P948, para.5.

<sup>420</sup> Second Decision on Lukić Objection to the Admission of P948, para.5.

<sup>421</sup> Lukić Brief, paras.166–169, p.42 (heading 1).

<sup>422</sup> Decision on Lukić Objection to the Admission of P948, para.4.

long as it does not make effective use of the material impossible or unreasonably difficult.<sup>423</sup> Lukić has not demonstrated that he could not make effective use of the video recording of his interview.

132. Second, under Rule 43(iv) the only requirement is that the video recording of a suspect interview “shall be transcribed if the suspect becomes an accused.”<sup>424</sup> As the Chamber noted, no time-frame is prescribed for this and Lukić had no entitlement to receive a transcript immediately upon conclusion of each day of his Interview.<sup>425</sup> Nor was Lukić promised that he would receive a transcript at that time. Rather, he was promised that he would be supplied immediately with a copy of the tapes of the interview and that he would receive a copy of the transcript as soon as possible after it was created.<sup>426</sup> Lukić received the English version of the transcript in August 2005 and the combined English–B/C/S version in February 2008.<sup>427</sup> There was nothing improper in this regard.

(b) Lukić had an opportunity to correct alleged translation deficiencies

133. The Chamber correctly concluded that any conceivable prejudice based on Lukić’s inability to detect translation deficiencies based on the English language transcript alone was cured in February 2008 when he received the combined English B/C/S transcript.<sup>428</sup> By that time Lukić was in a position to raise any alleged translation errors and to make submissions to the Chamber about their relevance to the case against him, which he did.<sup>429</sup> Lukić incorrectly asserts that it was “impossible” for him to clarify confusion that arose as a result of the alleged errors in translation.<sup>430</sup>

<sup>423</sup> Šešelj Disclosure Decision, paras.10-12; Šešelj Audio Disclosure Decision, paras.14, 20; Šešelj Disclosure AD, para.19.

<sup>424</sup> Rule 43(vi).

<sup>425</sup> Decision on Lukić Objection to the Admission of P948, para.10.

<sup>426</sup> Exh.P948 (public), pp.3, 52, 117. *Contra* Lukić Brief, paras.167, 177. Although Lukić alleges that OTP investigators promised to give him a transcript at the end of the Interview, the page references that he cites (4, 68, 153, 157) do not support his claim.

<sup>427</sup> Decision on Lukić Objection to the Admission of P948, para.4.

<sup>428</sup> Decision on Lukić Objection to the Admission of P948, para.11.

<sup>429</sup> *E.g.* Lukić Objection to Revised Translation of P948; T.27356–27359 (open).

<sup>430</sup> Lukić Brief, para.168.

(c) Lukić does not substantiate his claim of “gross” translation errors and demonstrates no impact on the Chamber’s findings

134. On appeal, Lukić alleges “gross” or “serious” translation errors in his Interview but he does not explain what these errors are or their alleged impact on the Chamber’s findings.<sup>431</sup> Further, Lukić does not clearly state the remedy that should follow from the alleged translation deficiencies. While he appears to take issue with the admission of the Interview *per se*, he seeks to rely on its content elsewhere in his Brief.<sup>432</sup> The Appeals Chamber should summarily dismiss Lukić’s argument on the grounds that it constitutes an undeveloped assertion in which he fails to articulate a reversible error.<sup>433</sup>

**B. The Chamber correctly relied on Lukić’s interview**

1. Overview

135. None of Lukić’s challenges to the Chamber’s analysis of his Interview establishes a reversible error. Further, his attempt to rely on “illustrative” examples of the alleged problems in the Chamber’s approach is impermissible.<sup>434</sup> Appellants must set forth in their appeal briefs “the arguments in support of each ground of appeal.”<sup>435</sup> The Appeals Chamber should disregard Lukić’s suggestion of problems in the Chamber’s approach to the Interview that are not substantiated by argument.

2. The Chamber made no error regarding Lukić’s position as Head of the MUP Staff

136. Lukić cites passages of his Interview to support his assertion that he was not the highest ranked MUP officer or one of the highest authorities in Kosovo during the war.<sup>436</sup> However, he fails to explain the relationship between the cited passages and the Chamber’s findings and he does not demonstrate that his arguments have any impact on the verdict.

137. The Chamber did not find that Lukić was the highest ranked MUP officer or one of the highest authorities in Kosovo during the war. The Chamber acknowledged Lukić’s arguments

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<sup>431</sup> Lukić Brief, para.166, p.42 (heading 1).

<sup>432</sup> *Contrast* Lukić Brief, para.170 with Lukić Brief, paras.174–178.

<sup>433</sup> SD10.

<sup>434</sup> Lukić Brief, para.182.

<sup>435</sup> Practice Direction, para.4(b).

on this issue<sup>437</sup> but concluded that it was “unnecessary to determine who was the highest ranked police official in Kosovo”.<sup>438</sup> Rather, the relevant issue for the purposes of determining Lukić’s criminal responsibility was “the scope of Lukić’s tasks and responsibilities.”<sup>439</sup> After assessing all of the relevant evidence, the Chamber concluded that Lukić, *de facto* commander of the MUP in Kosovo,<sup>440</sup> “was in charge of the MUP Staff from June 1998 to July 1999” and was involved “in planning, organising, and controlling MUP units in Kosovo”.<sup>441</sup> The portions of his Interview that Lukić cites do not conflict with or undermine the Chamber’s analysis in this regard.

### 3. The Chamber made no error regarding Lukić’s knowledge of the criminal plan

138. Lukić incorrectly asserts that the Chamber assumed “criminal knowledge/liability” based on his presence at a meeting on 21 July 1998.<sup>442</sup> To the contrary, the Chamber’s findings regarding his criminal liability were set out over 204 paragraphs of the Judgement and based on evidence from large numbers of witnesses and documents that Lukić does not address.<sup>443</sup> Similarly, the Chamber’s findings on Lukić’s knowledge of the crimes were set out over 18 paragraphs and based on evidence that Lukić knew of the crimes from, among other things, his attendance at Joint Command meetings, his communications with KDOM and KVM representatives in Kosovo, allegations made by the international community, reports sent and received by him, detailed information received as Head of the MUP Staff, instructions he issued and documents evidencing his knowledge of the large-scale displacements.<sup>444</sup> In challenging the Chamber’s conclusions, Lukić fails to address the full scope of the evidence the Chamber relied upon.

139. Lukić’s claim that the Chamber neglected to analyse the statements he made in his Interview about the 21 July 1998 meeting convened by Milošević in Belgrade is incorrect.<sup>445</sup> In assessing Lukić’s powers as Head of the MUP Staff, the Chamber referred to Lukić’s

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<sup>436</sup> Lukić Brief, paras.174–176. Lukić’s citation in fn.236 to Exh.P948 (public), p.228 is incorrect: the relevant passage is found at p.170.

<sup>437</sup> Judgement, Vol.III, para.941.

<sup>438</sup> Judgement, Vol.III, para.944.

<sup>439</sup> Judgement, Vol.III, para.944. *See also* Judgement, Vol.III, para.1018 (Lukić’s “powers and responsibilities are what really matter”).

<sup>440</sup> Judgement, Vol.III, para.1131.

<sup>441</sup> Judgement, Vol.III, para.1050.

<sup>442</sup> Lukić Brief, para.178.

<sup>443</sup> Judgement, Vol.III, paras.936–1140.

<sup>444</sup> Judgement, Vol.III, paras.1079–1097.

<sup>445</sup> Lukić Brief, para.178.

statement about the meeting, given in his Interview, particularly that “the MUP Staff did not take an active part in the drafting of the plan and that he did not embrace the plan readily” due to the logistical problems he foresaw.<sup>446</sup> The Chamber specifically accepted that “Lukić was not involved in the actual formulation of the Plan at the highest levels”.<sup>447</sup> The relevance of the meeting to the Chamber’s analysis was that it showed Lukić’s involvement at the meeting in which the Plan for Combating Terrorism “was adopted and in implementing measures to ensure proper execution of the Plan.”<sup>448</sup> This was a proper assessment and nothing that Lukić stated in his Interview contradicts it. For example, Lukić specifically acknowledged during his Interview the role that he was assigned in implementing the Plan:

These resources were already planned in advance on the map. The task that was before us was to call in these resources.<sup>449</sup>

140. The Chamber’s assessment of Milutinović’s criminal responsibility has no bearing on the Chamber’s assessment of Lukić’s responsibility.<sup>450</sup> Based on evidence of Milutinović’s involvement at a number of meetings throughout 1998 and 1999—including the 21 July 1998 meeting in Belgrade—the Chamber concluded that Milutinović had not played a significant role.<sup>451</sup> By contrast, based on the evidence against Lukić, the Chamber concluded that he was involved “in planning, organising, and controlling MUP units in Kosovo” generally<sup>452</sup> and specifically that he was involved in implementing the Plan for Combating Terrorism adopted at the 21 July 1998 meeting.<sup>453</sup>

#### 4. The Chamber made no error in its conclusions regarding the Joint Command

141. Lukić alleges an error in the Chamber’s analysis of the Joint Command but fails to establish the impact of this alleged error on the verdict.<sup>454</sup> He does not address the Chamber’s findings concerning the Joint Command. Nor does he address the evidence underpinning the Chamber’s findings, including evidence of orders and reports issued by the Joint Command,

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<sup>446</sup> Judgement, Vol.III, para.1021.

<sup>447</sup> Judgement, Vol.III, para.1021.

<sup>448</sup> Judgement, Vol.III, para.1021.

<sup>449</sup> Exh.P948 (public), p.73.

<sup>450</sup> *Contra* Lukić Brief, para.178.

<sup>451</sup> Judgement, Vol.III, para.143.

<sup>452</sup> Judgement, Vol.III, para.1050.

<sup>453</sup> Judgement, Vol.III, para.1021.

<sup>454</sup> Lukić Brief, paras.179–181.

witness testimony confirming the existence of the Joint Command and evidence of Joint Command meetings.<sup>455</sup>

142. In any event, none of the passages Lukić cites in his Interview support his claim that he denied the existence of the Joint Command.<sup>456</sup> To the contrary, as the Chamber noted, in his Interview, Lukić “explained that, as of 20 July 1998, the Joint Command would meet practically every evening in order to exchange information and provide an overview of the situation.”<sup>457</sup> Further, at trial the Lukić defence did not deny the existence of the Joint Command, but rather made submissions about the nature and function of the body.<sup>458</sup>

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<sup>455</sup> E.g. Judgement, Vol.I, paras.1055–1152; Vol.III, paras.58, 306–331, 503–505, 534, 642–665, 702–710, 804–805, 1022–1033.

<sup>456</sup> Lukić Brief, para.181, fn.244.

<sup>457</sup> Judgement, Vol.III, para.1024.

<sup>458</sup> E.g. Judgement, Vol.I, para.1052; Vol.III, para.1023.

## VII. LUKIĆ FAILS TO DEMONSTRATE BIAS (GROUND G)

### A. Overview

143. Neither the Chamber nor Judge Bonomy demonstrated an appearance of bias against Lukić. The alleged examples of bias that Lukić cites<sup>459</sup> show Judge Bonomy fulfilling his legitimate function as Presiding Judge by ensuring a fair and expeditious trial and the Chamber making proper findings concerning guilt and punishment based on the trial record.

144. To succeed with a claim of bias, Lukić must show that a reasonable observer, properly informed, would reasonably apprehend bias.<sup>460</sup> He fails to meet the high threshold required to rebut the presumption of impartiality established for Judges of the Tribunal.<sup>461</sup>

### B. Judge Bonomy acted properly to manage the proceedings

145. Lukić's six examples of alleged bias by Judge Bonomy<sup>462</sup> serve only to demonstrate that Judge Bonomy properly fulfilled his mandate of controlling the proceeding and ensuring a fair and expeditious trial. To this end he:

- required Lukić's counsel to move on from a futile line of questioning.<sup>463</sup> Lukić's counsel asked a witness whether he was biased in favour of the KLA.<sup>464</sup> This was more a matter of argument than a question for the witness and Judge Bonomy properly asked counsel to proceed with another question;<sup>465</sup>
- reasonably directed that only one person speak at a time. Nothing in the transcript that Lukić cites shows Judge Bonomy improperly curtailing discussions between Lukić and his counsel;<sup>466</sup>

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<sup>459</sup> Lukić Brief, para.186.

<sup>460</sup> *Galić* AJ, para.39; *Furundžija* AJ, para.189.

<sup>461</sup> *Martić* AJ, para.41; *Hadžihasanović* AJ, para.78; *Nahimana* AJ, para.48; *Galić* AJ, para.41; *Semanza* AJ, para.13; *Niyitegeka* AJ, para.45; *Rutaganda* AJ, para.42; *Akayesu* AJ, para.91; *Čelebići* AJ, para.707; *Furundžija* AJ, para.197.

<sup>462</sup> Lukić Brief, para.186.

<sup>463</sup> T.2090 (open).

<sup>464</sup> T.2089 (open).

<sup>465</sup> T.2090 (open).

<sup>466</sup> T.21925 (open).

- admonished Lukić's counsel for making unfounded allegations against the Prosecution.<sup>467</sup> Mr. Ivetić accused the Prosecution of being dishonest because he considered that certain assertions in its brief were not supported by the evidence cited.<sup>468</sup> Judge Bonomy properly responded by stating that inaccuracies in the Prosecution's brief were not a sufficient basis on which to accuse it of purposefully seeking to mislead the Chamber and that he should refrain from doing so;<sup>469</sup>
- properly overruled an unfounded objection from Lukić's counsel on the basis that it is an accepted practice before the Tribunal for counsel to assert during cross-examination that a particular statement is untrue.<sup>470</sup> He explained further that, unless the Chamber agreed with such assertions, they were merely a method of cross-examination.<sup>471</sup>
- prevented Lukić's counsel from giving evidence on behalf of a witness.<sup>472</sup> After a witness eventually answered a question asked by Judge Bonomy Lukić's counsel attempted to clarify the witness's answer.<sup>473</sup> Judge Bonomy properly directed Lukić's counsel not to answer for the witness but to address in re-examination any matters that he felt needed clarification;<sup>474</sup> and
- suggested that Lukić consider withdrawing accusations against the Chamber made in a motion that could reasonably be considered inappropriate and unfounded.<sup>475</sup> In his motion Lukić suggested that the Chamber was treating the trial as a formality and had already assumed Lukić's guilt.<sup>476</sup> In its decision the Chamber suggested that Lukić withdraw the comment.<sup>477</sup> Judge Bonomy simply sought clarification from Lukić as to whether he intended to do so.<sup>478</sup> Lukić replied that he did not.<sup>479</sup>

146. None of the above examples would cause a properly informed and reasonable observer to apprehend bias. Lukić's claims amount to nothing more than dissatisfaction with selected

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467 T.27372 (open).  
 468 T.27372 (open).  
 469 T.27372 (open).  
 470 T.23630–23636 (open).  
 471 T.23636 (open).  
 472 T.22393 (open).  
 473 T.22393 (open).  
 474 T.22393 (open).  
 475 T.23667-23668 (open).  
 476 T.23667-23668 (open).  
 477 T.23667-23668 (open).  
 478 T.23667-23668 (open).  
 479 T.23667-23668 (open).

rulings or comments from Judge Bonomy and do not discharge his heavy burden of establishing bias.

### C. None of the Chamber's findings that Lukić challenges discloses bias

147. Lukić seeks to attribute bias to the Chamber because he was sentenced to 22 years of imprisonment when Ojdanić and Lazarević received only 15 years.<sup>480</sup> He argues that the Chamber accepted mitigating factors for all three accused and suggests that their sentences should have thereby been equal. Lukić's argument overlooks the point that, whereas he was convicted for committing the underlying crimes as a participant in a JCE,<sup>481</sup> Ojdanić and Lazarević were convicted of aiding and abetting many of the underlying crimes.<sup>482</sup> Moreover, Lukić was convicted of additional offences (including murder and destruction of or damage to religious property). The different sentences imposed do not demonstrate that the Chamber was biased against Lukić.<sup>483</sup>

148. Lukić asserts that the other accused who were sentenced to 22 years of imprisonment had no mitigating factors.<sup>484</sup> While this is true in respect of Pavković, the Chamber gave Šainović mitigating credit for his family circumstances and took into account his general cooperation with the Prosecution.<sup>485</sup> Furthermore, there is no prescribed formula for weighing mitigating factors when determining sentence. Lukić fails to establish that the Chamber's assessment of his sentence compared to that of the other accused reflects bias.

149. Lukić complains that he was not given mitigating credit for his voluntary surrender. However, he made no submissions on this issue at trial and it is improper for him to raise it for the first time on appeal.<sup>486</sup> Notwithstanding Lukić's failure to assert his surrender as a mitigating factor, the Chamber gave reasons for disregarding it while at the same time crediting Lazarević for his voluntary surrender.<sup>487</sup> Lukić fails to address this distinction. In

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<sup>480</sup> Lukić Brief, para.189.

<sup>481</sup> Judgement, Vol.III, para.1138.

<sup>482</sup> Judgement, Vol.III, paras.630, 930.

<sup>483</sup> Judgement, Vol.III, para.1175 ("The forms of responsibility in respect of each Accused have been taken into account in the determination of his sentence").

<sup>484</sup> Lukić Brief, para.189.

<sup>485</sup> Judgement, Vol.III, paras.1182-1183.

<sup>486</sup> Lukić Brief, para.189; Judgement, Vol.III, para.1204. *See also Galić* AJ, paras.414 ("an appeal is not the appropriate forum in which mitigating circumstances, evidence of which was readily available at trial, should be presented for the first time"), 423.

<sup>487</sup> Judgement, Vol.III, paras.1200, 1204.

particular, Lazarević voluntarily surrendered to the Tribunal “six days after officially receiving the Indictment against him at the District Court in Belgrade”.<sup>488</sup> By contrast, the Indictment against Lukić became public on 2 October 2003 and he did not surrender until 4 April 2005.<sup>489</sup>

150. Lukić’s remaining arguments are duplicative of submissions made previously in his brief and do not substantiate his claim of bias.<sup>490</sup> His attempt to equate himself with Milutinović fails to address the Chamber’s valid reasons for differentiating between them.<sup>491</sup> Similarly, his complaint about the Chamber’s refusal to admit 6D614 fails to address the Chamber’s valid reasons for rejecting the document.<sup>492</sup> Finally, his general and unreferenced complaint that the Chamber disregarded defence witnesses “almost in totality”<sup>493</sup> fails to address the Chamber’s detailed witness credibility findings throughout the Judgement.

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<sup>488</sup> E.g. Lazarević Provisional Release Decision, para.10.

<sup>489</sup> [REDACTED].

<sup>490</sup> Lukić Brief, paras.190–191.

<sup>491</sup> See section VIII. D. below.

<sup>492</sup> See section III. C. above.

<sup>493</sup> Lukić Brief, para.191.

## VIII. THE CHAMBER PROPERLY FOUND THAT A JCE EXISTED AND THAT LUKIĆ WAS A MEMBER (GROUNDS H, I, O)

### A. Overview

151. The Chamber properly convicted Lukić for committing crimes through his participation in a JCE.<sup>494</sup> After a careful analysis of the evidence, it applied the correct law and properly found that:

- during the time of the crimes, there was a plurality of persons in the JCE with the common purpose to ensure continued control by the FRY/Serbian authorities over Kosovo, which was to be achieved by criminal means;<sup>495</sup>
- Lukić shared with the other JCE members the intent to forcibly displace the Kosovo Albanian population to achieve such common purpose;<sup>496</sup>
- Lukić contributed significantly to the JCE. He was the *de facto* commander over MUP forces deployed in Kosovo, including the regular police in the SUPs, PJP, and SAJ units. He was the bridge between the policy planners in Belgrade and those on the ground. He was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans. “As such, Lukić was an important member of this joint criminal enterprise.”<sup>497</sup>

152. Lukić disagrees with these conclusions and, despite the headings he uses for Grounds H, I and O, his challenges to the Chamber’s findings relate to the elements of JCE: common purpose, *mens rea* and contribution. The Prosecution will respond to these challenges under each of these elements.

153. Lukić’s main arguments are:

- there was no common criminal purpose.<sup>498</sup> In particular he asserts (1) that Kosovo Albanians left *en masse* because of NATO bombing or for reasons related to the

<sup>494</sup> Judgement, Vol.III., para.1138.

<sup>495</sup> Judgement, Vol.III.para.95-97.

<sup>496</sup> Judgement, Vol.III.para.1130.

<sup>497</sup> Judgement Vol.III, para.1131.

<sup>498</sup> Lukić Brief, paras.194-196, 200-221, (Ground H); 225-246, 265-266, (Ground I); 359-360, 362-366, 369-379, 381-391, 393-394, 396, 402-415, 419-422, 435, 449-454, 459, 504-551 (Ground O).

KLA's actions, and (2) that actions of the FRY/Serbian forces were lawful operations against terrorists;<sup>499</sup>

- he was not aware of and did not intend the crimes. In particular he asserts that (1) that he was only informed that measures to enforce the law were being taken against those who committed crimes, and (2) that the Chamber erred in law and fact in assessing his *mens rea*;<sup>500</sup>
- he did not contribute to the crimes because he was not in control of the MUP forces nor did he play any role in the planning of operations leading to crimes.<sup>501</sup>

154. As discussed in detail below, the vast majority of Lukić's arguments under Grounds H, I and O merely repeat his submissions at trial; others are based on a misunderstanding of the law and the Chamber's findings. In either case, summary dismissal is warranted. In any event, Lukić's arguments should be dismissed because he fails to show that the Chamber's conclusions on JCE are erroneous in law or in fact.

## **B. Summary dismissal of arguments based on a misunderstanding of the law**

155. Several arguments advanced by Lukić misrepresent the legal requirements for JCE liability, which was the basis for his conviction.<sup>502</sup> The Chamber found Lukić responsible for committing the crimes under JCE and not for ordering, planning or failing to prevent / punish his subordinates under Article 7(3).

156. The Chamber did not "unjustifiably [lower] the threshold for criminal responsibility"<sup>503</sup> when it convicted Lukić for the crimes committed by the VJ.<sup>504</sup> As a JCE member he is responsible for the crimes committed by the other JCE members and by the physical perpetrators used by them to implement the common purpose,<sup>505</sup> including VJ

<sup>499</sup> Lukić Brief, paras.225-233 (Ground H), 419-422 (Ground I).

<sup>500</sup> Lukić Brief, para.197 (Ground H); 222-224, 247, 260-264, 267-269 (Ground I); 361, 380, 392, 397-401, 418, 433-446, 455-458, 460-469, 470-478, 498-499 (Ground O).

<sup>501</sup> Lukić Brief, paras.198-199 (Ground H); 251-259, 264 (Ground I); 367-368, 417, 423-432, 447-448, 479-498 (Ground O).

<sup>502</sup> See Lukić Brief, paras.82, 193, 198, 247, 251, 260-264, 271, 367-368, 435, 498.

<sup>503</sup> Lukić Brief, para.193

<sup>504</sup> Judgement, Vol.III, para.1132.

<sup>505</sup> *Brdanin* AJ, paras.411-413.

troops. Whether Lukić had effective control over the VJ, who physically committed the crimes, is not a relevant consideration for convictions based on JCE.<sup>506</sup>

157. Lukić further misstates the legal requirements of the different modes of liability when referring to the Chamber's findings on Lazarević and Ojdanić. He suggests that his conviction is erroneous because Lazarević and Ojdanić were not found responsible for crimes committed by the MUP.<sup>507</sup> However, unlike Lukić, Lazarević and Ojdanić were found not to be JCE members because they did not share the intent.<sup>508</sup> They were convicted for aiding and abetting the crimes committed by the VJ alone or by the VJ in coordination with the MUP.<sup>509</sup> The Chamber found that they were not responsible under Article 7(3) for the crimes committed by the MUP alone because they lacked the required effective control over the MUP.<sup>510</sup> There is no contradiction between these findings and Lukić's conviction under JCE.

158. His arguments<sup>511</sup> should be summarily dismissed as evidently unfounded, based on a misunderstanding of the law.<sup>512</sup>

### C. The existence of a common purpose

159. The Chamber concluded that the common purpose of the JCE:

was to ensure continued control by the FRY and Serbian authorities over Kosovo and that it was to be achieved by criminal means. Through a widespread *and* systematic campaign of terror and violence, the Kosovo Albanian population was to be forcibly displaced both within and without Kosovo. The members of the joint criminal enterprise were aware that it was unrealistic to expect to be able to displace each and every Kosovo Albanian from Kosovo, so the common purpose was to displace a number of them sufficient to tip the demographic balance more toward ethnic equality and in order to cow the Kosovo Albanians into submission.<sup>513</sup>

160. Before reaching its conclusion, the Chamber considered other possible explanations for the displacement of civilians, including the NATO bombing, KLA activities and fear of

<sup>506</sup> *Contra*, Lukić Brief, paras.82, 193, 251, 264, 367-368, 498.

<sup>507</sup> Lukić Brief, paras.193, 498.

<sup>508</sup> Judgement, Vol.III, paras.618, 919.

<sup>509</sup> Judgement, Vol.III, paras.628, 927.

<sup>510</sup> Judgement, Vol.III, paras. 632, 932.

<sup>511</sup> Lukić Brief, paras.193, 198, 247, 251, 260-264, 271, 367-368, 435, 498.

<sup>512</sup> SD14.

<sup>513</sup> Judgement, Vol.III, para.95 (emphasis in original).

the conflict between KLA and FRY/Serbian forces. It determined that none was sufficient to prevent a finding beyond reasonable doubt that there was a common purpose to displace Kosovo Albanians forcibly.<sup>514</sup> The Chamber's conclusion on the existence and the nature of a common purpose is based on 30 pages of careful analysis of the evidence.<sup>515</sup> It considered several factors to be compelling evidence of the existence of the common plan,<sup>516</sup> including: the pattern of crimes in spring of 1999,<sup>517</sup> the seizure of identity documents,<sup>518</sup> the process of arming and disarming the population<sup>519</sup> and the context of events in 1998–1999.<sup>520</sup>

161. Lukić argues that the Chamber erred in many respects when making its findings on common purpose.

- First, he argues that Chamber erred in defining the nature of the common purpose.<sup>521</sup>
- Second, he submits that the Chamber failed to consider other alternative explanations for the Kosovo Albanians' displacement;<sup>522</sup>
- Third, he challenges some of the foundations of the Chamber's findings on common purpose. In particular:
  - the pattern of crimes in spring 1999,<sup>523</sup>
  - the seizure of identity documents,<sup>524</sup>
  - the process of arming and disarming the population,<sup>525</sup>
  - the context of events in 1998-1999.<sup>526</sup>

162. Lukić's challenges should be dismissed, for the reasons set out hereafter.

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<sup>514</sup> Judgement, Vol.I, para.1214; Vol.II, paras.1175-1178; Vol.III, para.45.

<sup>515</sup> See Judgement, Vol.III, paras.16-96.

<sup>516</sup> Judgement, Vol.III, para.17.

<sup>517</sup> Judgement, Vol.III, paras.18-46.

<sup>518</sup> Judgement, Vol.III, paras.30-40.

<sup>519</sup> Judgement, Vol.III, paras.49-72.

<sup>520</sup> Judgement, Vol.III, paras.47-48.

<sup>521</sup> Lukić Brief, paras. 194-196, 202, 220, 265-266, 359-360, 365-366, 369-379, 381-391, 396.

<sup>522</sup> Lukić Brief, paras.393-394, 201-221, 234-246, 362-364, 405; Lukić Closing Brief, paras.158-183, 225-232, 277-333.

<sup>523</sup> Lukić Brief, paras.77, 241, 364, 402-404.

<sup>524</sup> Lukić Brief, paras.504-518.

<sup>525</sup> Lukić Brief, paras.519-542, 544-551, 449-453, 459.

<sup>526</sup> Lukić Brief, paras.225-233, 406-415, 258-259.

1. The nature of the common purpose

163. Lukić submits that the Chamber was unreasonable in finding that the FRY/Serbian authorities wanted to ensure continued control over Kosovo through a widespread and systematic campaign of terror and violence. He first argues that there was no need to ensure control over Kosovo because the territorial integrity of FRY/Serbia, including Kosovo, was already guaranteed by the Constitution.<sup>527</sup> Second, he submits that orders were issued to prevent the civilians leaving.<sup>528</sup> Third, he argues that it would be illogical to provoke NATO bombing in order to expel Kosovo Albanians.<sup>529</sup> Fourth, he advances a series of wholly unfounded and unsupported arguments without demonstrating their impact, relevance, or any merit.<sup>530</sup>

164. Lukić's first submission—that the territorial integrity of Serbia, including Kosovo, was guaranteed by the Constitution, the Security Council and other “international groups”<sup>531</sup>—is irrelevant. It does not contradict the Chamber's finding that the plan was to secure control over Kosovo through criminal means rather than through the democratic use of the police and the judicial system.<sup>532</sup> At least 700,000 Kosovo Albanians were forcibly displaced due to the FRY/Serbian campaign.<sup>533</sup> The fact that Serbs also left Kosovo and that the JCE members did not fully achieve their common purpose<sup>534</sup> is irrelevant. As such, these arguments should be summarily dismissed because they are irrelevant and do not impact Lukić's convictions.<sup>535</sup>

165. Second, the Chamber did consider Lukić's submission concerning orders issued to prevent the departure of civilians<sup>536</sup> but found that they were systematically violated<sup>537</sup> and so did not create any doubt as to the existence of the common purpose<sup>538</sup> or Lukić's participation

<sup>527</sup> Lukić Brief, para.382-385.

<sup>528</sup> Lukić Brief, paras.220, 245, 266, 365-366, 377, 391, 396; Lukić Closing Brief, para.305.

<sup>529</sup> Lukić Brief, paras.195-196, 202, 389-390.

<sup>530</sup> Lukić Brief, paras.194, 265, 359-360, 369-379, 395.

<sup>531</sup> Lukić Brief, paras.382-385.

<sup>532</sup> Judgement, Vol.III, para.92.

<sup>533</sup> Judgement, Vol.III, para.45; Vol.II, para.1178; *contra* Lukić Brief, para.386.

<sup>534</sup> Lukić Brief, paras.387-388.

<sup>535</sup> SD1, SD7, SD14.

<sup>536</sup> Lukić Brief, paras.220, 245, 266, 365-366, 377, 391, 396; Lukić Closing Brief, para.305.

<sup>537</sup> Judgement, Vol.III, paras.92, 1129.

<sup>538</sup> Judgement, Vol.III, para.92.

in the JCE.<sup>539</sup> Lukić fails to show that these conclusions were ones that no reasonable trial chamber could have reached.

166. Further, these conclusions do not conflict<sup>540</sup> with the Chamber's findings on Milutinović's participation in the JCE.<sup>541</sup> Milutinović was alleged to have participated in the JCE by the issue of decrees.<sup>542</sup> The Chamber rejected this argument and found that the decrees did not encourage the expulsion of Kosovo Albanians.<sup>543</sup> The Chamber observed that its conclusion is further confirmed by the fact that, when the decrees were issued, Lukić instructed SUPs to prevent civilians from leaving.<sup>544</sup> Lukić fails to demonstrate how the Chamber's findings on Milutinović's intent and contribution show any relevant error.

167. Third, Lukić submits that the Chamber was illogical in finding that the FRY/Serbia caused the failure of the negotiations, provoking NATO bombing, in order to proceed with the expulsion of the Kosovo Albanians.<sup>545</sup> Lukić misrepresents the Chamber's findings. The Chamber concluded that the blame for the failure of the diplomatic efforts did not rest solely with the FRY/Serbia.<sup>546</sup> However, it found that the partial responsibility of the FRY/Serbia "in causing the talks to fail, when viewed in light of the movement of additional forces in Kosovo, gives rise to the inference that this was being done to gain time."<sup>547</sup> Further, the Chamber did not find that the FRY/Serbian authorities wanted NATO to bomb Serbia, but that the bombing provided an opportunity to deal a heavy blow to the KLA and to displace Kosovo Albanians while blaming the KLA and NATO.<sup>548</sup> Lukić's argument should be summarily dismissed because it misrepresents the Chamber's finding.<sup>549</sup>

168. Finally, Lukić advances several unsubstantiated complaints. Repeating trial arguments,<sup>550</sup> he merely points to some allegedly contradictory evidence,<sup>551</sup> failing to show any error in the Chamber's overall assessment of the evidence.<sup>552</sup> For his attempt to substitute

<sup>539</sup> Judgement, Vol.III, para.1129.

<sup>540</sup> *Contra* Lukić Brief, para.396.

<sup>541</sup> Judgement, Vol.III, paras.161-173, 271-276..

<sup>542</sup> Judgement, Vol.III, para.162.

<sup>543</sup> Judgement, Vol.III, paras.162, 173.

<sup>544</sup> Judgement, Vol.III, para.173.

<sup>545</sup> Lukić Brief, paras.195-196, 202, 389-390.

<sup>546</sup> Judgement, Vol.III, para.76.

<sup>547</sup> Judgement, Vol.III, para.92.

<sup>548</sup> Judgement, Vol.III, para.92.

<sup>549</sup> SD2.

<sup>550</sup> Lukić Closing Brief, paras.248-265.

<sup>551</sup> Lukić Brief, paras. 194, 265, 359-360, 369-379.

<sup>552</sup> Judgement, Vol.III, paras.16-96.

his own evaluation of the evidence for that of the Chamber, these arguments should be summarily dismissed.<sup>553</sup>

2. The Chamber properly rejected alternative explanations for the displacement of the Kosovo Albanians

169. Kosovo Albanians fled *en masse* because of the deliberate actions of FRY/Serbian forces.<sup>554</sup> Before reaching this conclusion, the Chamber considered and rejected all the alternative explanations for the displacement.<sup>555</sup> It found that people may have left their homes for different reasons, but none of the Kosovo Albanians who testified cited the NATO bombing as among the reasons for their departure, and in only one area did people move because of KLA actions.<sup>556</sup> Lukić merely repeats his trial argument that equally reasonable alternative explanations for their departure include (a) the NATO bombing campaign (including NATO propaganda) and (b) KLA activities (including the KLA's propaganda, threats and violence toward the civilian population and the general sense of fear of the civilian population because of the conflict with FRY/Serbian forces).<sup>557</sup> The Chamber considered and rejected all the alternatives advanced by Lukić at trial.<sup>558</sup> It did not start "from the premise that there was no other factor in the departure"<sup>559</sup> of the civilian population. Lukić's arguments should be summarily dismissed.<sup>560</sup> In any case, he fails to demonstrate any error in the Chamber's reasoning or conclusion.

(a) NATO Bombing

170. Lukić's argument that the NATO campaign was the cause of the Kosovo Albanian exodus should be summarily dismissed<sup>561</sup> because it merely repeats his submission at trial.<sup>562</sup>

171. Contrary to Lukić's interpretation,<sup>563</sup> the Chamber carefully considered whether the NATO bombing was the reason why civilians left.<sup>564</sup> Moreover, the Chamber was aware that

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<sup>553</sup> SD3.  
<sup>554</sup> Judgement, Vol.II, para.1178, Vol.III, para.45.  
<sup>555</sup> Judgement, Vol.II, paras.1152-1156, 1175-1178, Vol.III, para.45.  
<sup>556</sup> Judgement, Vol.II, para.1175.  
<sup>557</sup> Lukić Brief, paras.201-221, 234-246, 362-364, 393-394, 405; Lukić Closing Brief, paras.158-183, 225-232, 277-305.  
<sup>558</sup> Judgement, Vol.II, paras.1152-1156, 1175-1178; Vol.III, para.45.  
<sup>559</sup> *Contra* Lukić Brief, para.362.  
<sup>560</sup> SD9.  
<sup>561</sup> SD9.  
<sup>562</sup> Lukić Closing Brief, paras.277, 282, 284, 289-300, 303-304.  
<sup>563</sup> Lukić Brief, paras.207-208, 234-239, 243 (e), (e), (f), (g) 244, 158; *See* Lukić Closing Brief, para.289  
<sup>564</sup> Judgement, Vol.I, paras.1205-1216.

the issue was “relevant to the Defence argument”.<sup>565</sup> The Chamber was presented with evidence of the scale and consequences of the NATO bombing campaign<sup>566</sup> and found that the bombing resulted in damage and destruction to numerous targets in the FRY/Serbia.<sup>567</sup> After discussing the evidence, including testimony that the NATO bombing was the cause of the movement,<sup>568</sup> the Chamber concluded that it was not the primary cause.<sup>569</sup> It examined the issue: (1) in relation to the individual municipalities, making findings as to why people were leaving from each of them,<sup>570</sup> and (2) in its analysis of the overall pattern of events.<sup>571</sup> The Chamber also considered and rejected Lukić’s argument that Kosovo Albanians were leaving due to NATO propaganda<sup>572</sup> or that NATO and the KLA were creating an artificial humanitarian catastrophe.<sup>573</sup>

172. Lukić’s suggestion that the Chamber ignored the NATO bombing and accepted “orchestrated testimony of Albanians” is unsupported.<sup>574</sup> The Chamber was entitled to rely, among other evidence,<sup>575</sup> on the testimony of Kosovo Albanian witnesses. It addressed the allegations that these witnesses were incredible<sup>576</sup> and found it inconceivable that these witnesses “could or would all have concocted such detailed and consistent accounts of the [expulsion] that they experienced and witnessed.”<sup>577</sup> The Chamber was in the best position to assess the reliability and credibility of the witnesses and was entitled to accept certain parts of their testimony and reject others.<sup>578</sup> Lukić shows no error in the Chamber’s approach to their evidence.

<sup>565</sup> Judgement, Vol.I para.1214.

<sup>566</sup> Judgement, Vol.I, para.1209-1214.

<sup>567</sup> Judgement, Vol.I, para.1210. *Contra* Lukić Brief paras.237-238

<sup>568</sup> Judgement, Vol.II, paras.1152-1155. *See e.g.*, Vol.II, paras.31-32, 886-887, 914-915, 941-942, 278-280, 285-286; Vol.III paras.42-45.

<sup>569</sup> Judgement, Vol.II, paras.1175-1176.

<sup>570</sup> *See e.g.* Judgement, Vol.II, paras.48, 69, 147, 163, 228-233, 259, 268, 285-286, 380, 432, 546, 550, 555, 675, 727-729, 795, 885-888, 943-945, 947, 998-999, 1099, 1116, 1148.

<sup>571</sup> Judgement, Vol.II, paras.1152-1155, 1175-1176; *contra* Lukić Brief, para.235.

<sup>572</sup> Judgement, Vol.II, paras.886-887; *contra* Lukić Brief, paras.211, 243 (e); Lukić Closing Brief, paras.225-235, 303-304.

<sup>573</sup> Judgement, Vol.II, paras.532, 665, 1154, 1175, 1178; Vol.III, para.117; *contra* Lukić Brief, paras.219, 161; Lukić Closing Brief, paras.169, 302.

<sup>574</sup> Lukić Brief, paras. 77, 160, 208, 241-242, 364. *See also* section VIII. C. 3. below.

<sup>575</sup> Including the testimonies of VJ and MUP members. *See* Judgement, Vol.II paras.1172-1174.

<sup>576</sup> Judgement, Vol.I, para.50.

<sup>577</sup> Judgement, Vol.II para.1175.

<sup>578</sup> *Blagojević* AJ, para.82.

(b) KLA activities

173. Contrary to Lukić's submission,<sup>579</sup> the Chamber carefully considered his argument at trial<sup>580</sup> that the main reason for civilians leaving were the actions (propaganda, fear or threats) of the KLA.<sup>581</sup> The Chamber acknowledged that some people may have left their homes due to instructions from the KLA.<sup>582</sup> In its careful assessment, it also found that in the Vučitrn/Vushtrria and Suva Reka/Suhareka/Suhareka areas, some people moved as a consequence of KLA actions.<sup>583</sup> In general, however, it concluded that the primary reason for Kosovo Albanians to leave their villages and homes was to flee the FRY/Serbian forces' campaign of violence.<sup>584</sup> Lukić merely repeats his argument from trial without articulating any error. His arguments should be summarily dismissed.<sup>585</sup>

174. Lukić further submits that the KLA caused the movement of civilians in order to hide among them and escape.<sup>586</sup> In support of his argument he points to the testimony of witness Gërxhaliu (a KLA member).<sup>587</sup> Lukić ignores that the Chamber considered and accepted Gërxhaliu's testimony that he was hiding among the civilians in a convoy.<sup>588</sup> Lukić's suggestion that, in light of this testimony, the Chamber should have concluded that 700,000 civilians were forced to leave their homes because KLA members wanted to hide among them to escape<sup>589</sup> is untenable. This argument should be summarily dismissed because it is a mere attempt to substitute his interpretation of the evidence.<sup>590</sup> In any case, Lukić has failed to show why the Chamber was unreasonable in concluding that FRY/Serbian forces caused the departure of Kosovo Albanians.

175. Similarly, the Chamber considered and rejected<sup>591</sup> Lukić's trial submissions that civilians were leaving (a) due to the fear of conflict between the KLA and the FRY/Serbian forces<sup>592</sup> or (b) because of a lack of basic necessities such as jobs, electricity and food.<sup>593</sup>

<sup>579</sup> Lukić Brief, paras.210, 212-215, 221.

<sup>580</sup> Lukić Closing Brief, paras.168, 170-173, 181-183, 272-273, 283-288, 302.

<sup>581</sup> Judgement, Vol.II, paras.1153-1154, 1156, 1174, 1177.

<sup>582</sup> Judgement, Vol.II, para.1175.

<sup>583</sup> Judgement, Vol.II, para.1175.

<sup>584</sup> Judgement, Vol.II, para.1178; *see* also section XVI. B. 1. (a) (i) below.

<sup>585</sup> SD9.

<sup>586</sup> Lukić Brief, para.212.

<sup>587</sup> Lukić Brief, para.212.

<sup>588</sup> Judgement, Vol.II, paras. 762-772, 784, 797.

<sup>589</sup> Lukić Brief, para.212.

<sup>590</sup> SD3.

<sup>591</sup> Judgement, Vol.II, paras.1152-1153, 1156, 1174, 1177; Vol.III, 43, 45.

<sup>592</sup> Lukić Brief, para.209; Lukić Closing Brief, para.301.

<sup>593</sup> Lukić Brief, paras.216-217; Lukić Closing Brief, paras.284 (d), 295.

Lukić's obscure submission that men felt safer knowing that their women and children were removed to a safer place<sup>594</sup> should be summarily dismissed.<sup>595</sup>

176. Lukić merely repeats his arguments from trial without showing any error in the Chamber's conclusion that NATO bombing and KLA activities were not the cause of the flight of over 700,000 Kosovo Albanians.<sup>596</sup> Lukić's arguments should be summarily dismissed.<sup>597</sup>

3. The Chamber reasonably relied on the pattern of crimes in spring of 1999 to establish the common purpose

177. On the basis of more than 400 pages of analysis of the underlying offences,<sup>598</sup> the Chamber found a clear pattern of numerous crimes committed by the forces of the FRY/Serbia.<sup>599</sup> These crimes were not committed in a random and un-orchestrated manner, but rather according to a common purpose.<sup>600</sup> The Kosovo Albanian population was fleeing from the co-ordinated criminal actions of the FRY/Serbia.<sup>601</sup> This is one of the strongest foundations for the existence of the common purpose.<sup>602</sup>

178. Lukić challenges these findings by arguing that the Chamber erred in relying upon Kosovo Albanian witnesses and upon insider witness K90.<sup>603</sup> On the contrary, the Chamber properly assessed the evidence of the pattern of crimes. First, the Chamber was fully entitled to rely upon the testimony of Kosovo Albanian witnesses to establish the reason for their flight.<sup>604</sup> The Chamber was aware that a number of them denied the existence of KLA activities and acknowledged that their testimony in this regard was unreliable.<sup>605</sup> A trial chamber is fully entitled to accept certain parts of a witness's testimony and reject others.<sup>606</sup> Second, Lukić argues that the Chamber should not have relied upon witness K90 because he changed his evidence and testified that he was never ordered to expel civilians.<sup>607</sup> Lukić

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<sup>594</sup> Lukić Brief, para.218.

<sup>595</sup> SD14.

<sup>596</sup> Judgement, Vol.III, para.45.

<sup>597</sup> SD9.

<sup>598</sup> Judgement, Vol.II, paras.1-1178.

<sup>599</sup> Judgement, Vol.III, para.46.

<sup>600</sup> Judgement, Vol.III, para.46.

<sup>601</sup> Judgement, Vol.III, para.41-42.

<sup>602</sup> Judgement, Vol.III, para.17.

<sup>603</sup> Lukić Brief, paras.241, 364, 402-404.

<sup>604</sup> *Contra* Lukić Brief, paras.77, 241, 364, 402.

<sup>605</sup> Judgement, Vol.I, para.50.

<sup>606</sup> *Blagojević* AJ, para.82.

<sup>607</sup> Lukić Brief, paras.403-404.

misrepresents K90's testimony. The Chamber noted K90's request to replace the terms "expulsion" and "expelled" with the terms "relocation" and "relocate",<sup>608</sup> and properly weighed his testimony about the "relocation" process of Kosovo Albanians.<sup>609</sup> Lukić's suggestion that K90's testimony does not support the conclusion that there was a pattern of crimes against the Kosovo Albanians has no merit.

179. Lukić's challenges on these points do not show how the Chamber erred in its analysis of the evidence.<sup>610</sup>

#### 4. The Chamber reasonably relied on the seizure of identity documents

180. Identity documents were taken from Kosovo Albanians and often destroyed or burned.<sup>611</sup> In light of the testimony of Kosovo Albanians, members of the FRY/Serbian forces, and international observers, the Chamber was fully entitled to consider the pattern of seizure and destruction of identity documents of the displaced Kosovo Albanians as evidence that FRY/Serbian forces were acting pursuant to a common criminal plan.<sup>612</sup> None of Lukić's arguments shows that the Chamber was unreasonable.

181. Lukić's main argument is that the seizure of the identity documents could not contribute to the common purpose because it did not imply the loss of citizenship.<sup>613</sup> His other submissions are either a repetition of his arguments at trial<sup>614</sup> or a mere attempt to substitute his own evaluation of the evidence.<sup>615</sup> The Prosecution will deal with each of them in the following paragraphs.

182. First, contrary to Lukić's assertion,<sup>616</sup> the Chamber did not find that he contributed to the commission of the crimes by seizing and destroying the identity documents or by ordering this process. It is therefore irrelevant whether the seizure and destruction of the identity cards implied the loss of citizenship or whether the process had a significant impact on the commission of the crimes.<sup>617</sup> The Chamber heard Lukić's argument<sup>618</sup> and acknowledged that

<sup>608</sup> Judgement, Vol.II, para.74. Note that the term "relocation" is coherently used in the Chamber's finding at Vol.III, para.43.

<sup>609</sup> Judgement, Vol.III, para.43.

<sup>610</sup> Judgement, Vol.II, paras.1-1178.

<sup>611</sup> Judgement, Vol.III, paras.30-40.

<sup>612</sup> Judgement, Vol.III, paras.17, 30-40.

<sup>613</sup> Lukić Brief, paras.504, 506, 509, 514, 516-518.

<sup>614</sup> Lukić Brief, paras.511, 513; Lukić Closing Brief, paras.195-224.

<sup>615</sup> Lukić Brief, paras.505, 507-508, 510-513, 515.

<sup>616</sup> Lukić Brief, paras.516-518.

<sup>617</sup> *Contra*, Lukić Brief, paras.504, 506, 509, 514.

FRY/Serbian citizens did not lose their citizenship by deprivation of their identity documents—but found that the process of proving citizenship would become more difficult.<sup>619</sup> These findings do not contradict the Chamber’s conclusion that a common plan existed.

183. Second, Lukić reargues that the identity documents which were destroyed may have been issued illegally by the KLA and/or that the KLA confiscated and destroyed official FRY/Serbia identity documents.<sup>620</sup> He also repeats his argument that passports, and not identity documents, were needed to cross the state border.<sup>621</sup> These arguments should be dismissed because Lukić repeats trial submissions without showing how the Chamber erred.<sup>622</sup>

184. Third, Lukić challenges the Chamber’s findings by reading the evidence in isolation and seeking to substitute his own evaluation.<sup>623</sup> His argument that the testimony of 26 Kosovo Albanians about the confiscation process at the border was insufficient for the Chamber to conclude that this was a common practice (showing the existence of a common purpose<sup>624</sup>) is undeveloped and lacks merit. As such, it should be summarily dismissed.<sup>625</sup> Similarly, Lukić does not show any error in the Chamber’s assessment of the totality of the evidence by merely pointing to a possible inconsistency between the testimony of one witness and the content of one document.<sup>626</sup> This merely repeats his argument from trial and should be summarily dismissed.<sup>627</sup>

185. Lukić misreads other Chamber findings and the evidence.<sup>628</sup> For example, Hoxha testified that MUP personnel ordered the people in his convoy to leave their identity documents in a large box.<sup>629</sup> In cross-examination, he explained that it was impossible to search each of the 10–15,000 persons in the convoy.<sup>630</sup> Lukić fails to explain how this

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<sup>618</sup> Lukić Closing Brief, paras.198, 205-207, 211-212.

<sup>619</sup> Judgement, Vol.III, paras. 166, 172.

<sup>620</sup> Lukić Brief, para.511; Lukić Closing Brief, paras.213-215.

<sup>621</sup> Lukić Brief, para.513; Lukić Closing Brief, para.210.

<sup>622</sup> SD9.

<sup>623</sup> Lukić Brief, paras. 505, 507-508, 510-513, 515.

<sup>624</sup> Judgement, Vol.III, paras.38, 40. *Contra* Lukić Brief, para.507.

<sup>625</sup> SD10.

<sup>626</sup> Lukić Brief, para.508; Lukić Closing Brief, paras.216-217.

<sup>627</sup> SD9.

<sup>628</sup> Lukić Brief, paras.512, 515.

<sup>629</sup> Judgement, Vol.II, para.139.

<sup>630</sup> T.1563-1564 (open).

testimony supports his argument that there was no common purpose.<sup>631</sup> Likewise Lukić misrepresents Fondaj's testimony<sup>632</sup> that identification documents were confiscated and burned at the Vrbnica/Verbnica (Morina) border crossing.<sup>633</sup> The Chamber even quoted the relevant passages.<sup>634</sup> Both these arguments should be summarily dismissed because they are based on a misrepresentation of the evidence.<sup>635</sup>

5. The Chamber reasonably relied on the process of arming of non-Albanians and disarming of Kosovo Albanians

186. The process of arming non-Albanians and disarming the Kosovo Albanian population was properly taken into account by the Chamber when finding the common purpose. The Chamber found that this process was carried out on a discriminatory basis and was designed to render the Kosovo Albanian population vulnerable while at the same time empowering the non-Albanian population.<sup>636</sup> Lukić disagrees, but none of his arguments show that the Chamber erred in this conclusion.

187. Lukić's main argument is that the process of arming was not discriminatory but legal, and that the failure of Kosovo Albanians to respond to mobilisation meant they were not given arms.<sup>637</sup> He further submits that the process of disarming was in substance an operation aimed to seize weapons smuggled into Serbia and illegally hidden by Kosovo Albanians.<sup>638</sup> Lukić's arguments should be dismissed for the reasons discussed below.

(a) Arming of non-Albanians

188. The Chamber considered Lukić's submission<sup>639</sup> that the process of arming the non-Albanians was lawful. It reasoned that the legality of the process *per se* is irrelevant,<sup>640</sup> what mattered was that the process was in fact implemented along ethnic lines.<sup>641</sup> Lukić fails to explain why no reasonable trial chamber could have reached this conclusion.

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<sup>631</sup> Lukić Brief, para.512.

<sup>632</sup> Lukić Brief, para.515.

<sup>633</sup> Exh.P2283, p.5 (public).

<sup>634</sup> Judgement, Vol.II, para.531; Vol.III, para.35, fn.64.

<sup>635</sup> SD2.

<sup>636</sup> Judgement, Vol.III, paras.17, 68, 72.

<sup>637</sup> Lukić Brief, paras.519-527, 537-542, 450.

<sup>638</sup> Lukić Brief, paras.451, 544-551.

<sup>639</sup> Lukić Brief, paras.519-527, 450.

<sup>640</sup> Judgement, Vol.III, paras.55-56.

<sup>641</sup> Judgement, Vol.III, para.56.

189. The Chamber rejected Lukić's arguments that efforts were made to include Kosovo Albanians in security affairs<sup>642</sup> and that they failed to respond to the mobilisation.<sup>643</sup> Whether Kosovo Albanians did not respond because they were threatened by the KLA<sup>644</sup> or because of their "belligerent behaviour"<sup>645</sup> is irrelevant. As the Chamber found, the failure of Kosovo Albanians to respond in large numbers to the mobilisation call did not justify the issuance of instructions to arm only the Serb population.<sup>646</sup> Lukić fails to show why the Chamber erred in finding the process discriminatory.

190. Lukić was actively involved in the process of arming the non-Albanian population and disarming the Kosovo Albanian population.<sup>647</sup> Contrary to Lukić's misunderstanding of the Judgement,<sup>648</sup> this conclusion is based on a detailed discussion of the evidence.<sup>649</sup> Exhibits P1989 and P2804 support the Chamber's conclusion.<sup>650</sup>

191. The armed non-Albanian population was organised into units known as Reserve Police Detachments or Reserve Police Squads (RPOs), and included VJ and MUP reservists not actively engaged in wartime units.<sup>651</sup> Even if the VJ did play a role in commanding the RPOs, these units were under the overall command and authority of the MUP. By March 1999, most of the RPO members joined the MUP and the VJ.<sup>652</sup> Lukić disagrees with these findings. However, his arguments are either undeveloped assertions or mere attempts to substitute his own evaluation of the evidence without showing why the Chamber erred.<sup>653</sup> They should be summarily dismissed.<sup>654</sup>

192. Contrary to Lukić's suggestion,<sup>655</sup> Exhibit 4D521 fully supports the Chamber's finding that Lukić was reprimanded for transgressing his powers by assigning RPO members to MUP units.<sup>656</sup>

<sup>642</sup> Judgement, paras.59-62; *contra* Lukić Brief, para.543.

<sup>643</sup> Judgement, para.67.

<sup>644</sup> Lukić Brief, paras.88, 537-538, 540-542.

<sup>645</sup> Lukić Brief, para.539.

<sup>646</sup> Judgement, Vol.III, para.67.

<sup>647</sup> Judgement, Vol.III, paras.1067, 1121.

<sup>648</sup> Lukić Brief, paras.449-450, 453.

<sup>649</sup> Judgement, Vol.III, paras.1060-1067.

<sup>650</sup> *Contra* Lukić Brief, paras.449, 450.

<sup>651</sup> Judgement, Vol.I, para.765; *see also* Judgement, Vol.I, paras.764-789; Vol.III, para.51.

<sup>652</sup> Judgement, Vol.I, paras.777-778, 787-788; *contra* Lukić Brief, para.535.

<sup>653</sup> Lukić Brief, paras.529-536, 450, 452-453, 459.

<sup>654</sup> SD3, SD10.

<sup>655</sup> Lukić Brief, para.528.

<sup>656</sup> Judgement, Vol.I, para.779.

(b) Disarming of Kosovo Albanians

193. The Chamber rejected the argument that the disarming of Kosovo Albanians was in part voluntary and necessary to remove illegal weapons from the reach of the KLA.<sup>657</sup> Lukić's undeveloped assertions fail to articulate any error in the Chamber's finding that the disarming process was discriminatory. This argument should be summarily dismissed.<sup>658</sup>

194. Lukić further submits that the Chamber erred in concluding that the large majority of the population remained outside the KLA.<sup>659</sup> In support he argues that Ramush Haradinaj stated during a KLA meeting in June 1998 that "in the future we [the KLA] must arm all people who are over 16 years of age."<sup>660</sup> In Lukić's submission, this would show that, contrary to the Chamber's finding, the majority of the population in 1998 and 1999 was armed and linked to the KLA. Lukić's speculative argument is a mere attempt to substitute his evaluation of the evidence and should be summarily dismissed.<sup>661</sup>

6. The Chamber relied appropriately on the context of events in 1998 and 1999

195. The context of the events in 1998 and 1999 provide support for the common purpose.<sup>662</sup> The Chamber found that, throughout the 1990s, the FRY/Serbian authorities took stronger measures to control Kosovo, limiting its autonomy while the KLA gained strength and launched more ambitious attacks against state authorities.<sup>663</sup> The FRY/Serbian authorities attempted to quell the surge in violence in Kosovo in 1998, resulting in the Kosovo Albanian population suffering from the excessive use of force with over 200,000 people internally displaced by the year's end.<sup>664</sup> Only international intervention and the October Agreements enabled these people to return to their homes before the onset of winter. Even then, the FRY/Serbian authorities breached the agreements in order to continue their heavy-handed fight against the KLA.<sup>665</sup>

196. Lukić's main argument seems to be that because the KLA was a "terrorist group" and not an "organised armed group", the FRY/Serbian forces were lawfully conducting actions to

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<sup>657</sup> Judgement, Vol.III, paras.69-70, 72, 91 *contra* Lukić Brief, paras.451, 544-549.

<sup>658</sup> SD10.

<sup>659</sup> Judgement, Vol.III, para.69; *contra* Lukić Brief, para.550-551.

<sup>660</sup> Lukić Brief, para.550-551.

<sup>661</sup> SD3.

<sup>662</sup> Judgement, Vol.III paras.17, 47-48, 90-91; Vol.I, paras.211-237, 842-990.

<sup>663</sup> Judgement, Vol.III, para.90; Vol.I, para.920.

<sup>664</sup> Judgement, Vol.III, para.90; Vol.I, para.920.

<sup>665</sup> Judgement, Vol.III, paras.90-91; Vol.I, para.920.

fight terrorism.<sup>666</sup> Contrary to Lukić's understanding of the Judgement,<sup>667</sup> the Chamber purposefully did not make any finding as to whether the KLA was a "terrorist" group or whether the KLA "fought by legally acceptable means".<sup>668</sup> It rejected the same argument Lukić advanced at trial,<sup>669</sup> holding that it is immaterial whether or not the KLA was labelled as a "terrorist" group.<sup>670</sup> Lukić's mere repetition of this argument<sup>671</sup> fails to point to any error in the Chamber's reasoning and should be summarily dismissed.<sup>672</sup>

197. In addition, Lukić suggests that the FRY/Serbian forces' attacks were not directed against the civilian population but against KLA terrorists who were abusing civilians to implement their terrorist tactics. He argues that the large presence of the KLA and the nature of its strategies deprived the population of its civilian character.<sup>673</sup> The Chamber discussed other evidence related to KLA activities<sup>674</sup> and set forth the correct law in stating that the population need only be predominantly civilian.<sup>675</sup> It then carefully established whether each attack was directed against the civilian population.<sup>676</sup> Lukić does not argue that the civilian victims were proportionate casualties of lawful military attacks launched by the FRY/Serbian forces.<sup>677</sup> Lukić fails to show any legal or factual error in the Chamber's reasoning.

198. All of the other arguments Lukić advances in relation to the context of events in 1998 and 1999 should be summarily dismissed.<sup>678</sup> First, Lukić submits that the FRY/Serbian forces did not fight in a ruthless manner but through arrests, trials and regular procedures.<sup>679</sup> This argument should be summarily dismissed<sup>680</sup> because Lukić merely seeks to substitute his own evaluation of the evidence by pointing to only three exhibits and failing to articulate an error by the Chamber in its 26-page assessment of the relevant evidence.<sup>681</sup>

<sup>666</sup> Lukić Brief, paras.200, 225-233, 419-422.

<sup>667</sup> Lukić Brief, paras.225-226.

<sup>668</sup> Judgement, Vol.I, paras.792-795, 821-841.

<sup>669</sup> Lukić Closing Brief, paras.14-38.

<sup>670</sup> Judgement, Vol.I, para.795.

<sup>671</sup> Lukić Brief, paras.225-227.

<sup>672</sup> SD9.

<sup>673</sup> Lukić Brief, paras.228-233.

<sup>674</sup> Judgement, Vol.I paras.797-820.

<sup>675</sup> Judgement, Vol.I, paras.145-146; *see also Mrkšić* AJ, para.25; *Milošević* AJ, para.50.

<sup>676</sup> Judgement, Vol.II, paras.1179-1262.

<sup>677</sup> *See Milošević* AJ, para.54.

<sup>678</sup> Lukić Brief, paras.406-415, 258-259.

<sup>679</sup> Lukić Brief, paras.406.

<sup>680</sup> SD3.

<sup>681</sup> Judgement, Vol.I, paras.842-920; *see also* Vol.I, paras.211-237, 921-990; Vol.III paras. 47-48, 90-91.

199. His argument that the Chamber erred in its determination of the *modus operandi* of the VJ/MUP<sup>682</sup> should be summarily dismissed because it is unclear and undeveloped.<sup>683</sup>

200. Finally, Lukić submits that the Chamber erred in assessing both Gajić's reports to the Supreme Command Staff<sup>684</sup> and Crosland's testimony on the events in 1998.<sup>685</sup> The Chamber's findings related to Ojdanić's *mens rea* and based on Gajić's reports are immaterial to Lukić's conviction.<sup>686</sup> Lukić's arguments should be summarily dismissed.<sup>687</sup>

201. In relation to his testimony about the events in 1998, Lukić submits that Crosland was an unreliable witness.<sup>688</sup> The Chamber considered and rejected this argument.<sup>689</sup> It found that Crosland was highly professional, with a great deal of experience and knowledge, well-equipped to make detailed and informed reports about the situation in Kosovo in 1998.<sup>690</sup> His testimony was detailed, impartial, and convincing, notwithstanding challenges made by the Defence to his use of the term "razed" to describe the condition of certain villages.<sup>691</sup> Lukić's argument should be summarily dismissed because it misrepresents the Chamber's findings.<sup>692</sup> In any event, it should be dismissed because it fails to show that the Chamber was unreasonable in its assessment of Crosland's testimony.

## D. Mens Rea

### 1. Overview

202. Lukić intended to forcibly displace the Kosovo Albanian population and, as a result, knew of the risk that murder and destruction of or damage to religious property would be committed by the VJ and MUP.<sup>693</sup> Before reaching this conclusion, the Chamber analyzed in depth the evidence pertaining to Lukić's *mens rea*<sup>694</sup> and found that:

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<sup>682</sup> Lukić Brief, para.407.

<sup>683</sup> SD10.

<sup>684</sup> Lukić Brief, paras.408-415.

<sup>685</sup> Lukić Brief, paras.258-259.

<sup>686</sup> Judgement, Vol.III, paras.579-580.

<sup>687</sup> SD1.

<sup>688</sup> Lukić Brief, paras.258-259.

<sup>689</sup> Judgement, Vol.I para.848.

<sup>690</sup> Judgement, Vol.I para.848.

<sup>691</sup> Judgement, Vol.I para.848.

<sup>692</sup> SD2.

<sup>693</sup> Judgement, Vol.III, paras.1130, 1134, 1136.

<sup>694</sup> Judgement, Vol.III, paras.1076-1097, 1117, 1130.

- as a member of the Joint Command,<sup>695</sup> and through his meetings with representatives of international organizations,<sup>696</sup> Lukić was informed of the criminal activity directed against the Kosovo Albanian civilian population by MUP forces in Kosovo in mid-to-late 1998;<sup>697</sup>
- as a member of the Joint Command involved in directing and co-ordinating the activities of VJ and MUP and as head of the MUP Staff, Lukić received detailed daily reports from the ground including information about the criminal activities of the MUP in Kosovo.<sup>698</sup> Lukić himself instructed commanders of PJP, SAJ, JSA and SUP units to report to the MUP Staff.<sup>699</sup> The Chamber rejected Lukić's argument that he had access to only a limited amount of information.<sup>700</sup>

203. The Chamber reasoned that Lukić's knowledge of the commission of crimes from mid-1998 until the end of the NATO campaign in 1999,<sup>701</sup> combined with his continuing work to ensure the co-operation of the joint MUP/VJ operations, was indicative of his intent that those crimes occur.<sup>702</sup> It concluded its lengthy analysis by finding that the only reasonable inference was that Lukić had the intent to forcibly displace the Kosovo Albanian population, both within and without Kosovo, and to thereby ensure continued control by the FRY/Serbian authorities over the province.<sup>703</sup> The Chamber was also satisfied that he shared that intent with other members of the JCE, and that he was on notice of the risk of the commission of other crimes, including murder and destruction of/damage to religious property, in the implementation of the common purpose.<sup>704</sup>

204. Lukić argues that the Chamber erred in the following respects when making its findings on *mens rea*:

- First, the Chamber applied a wrong legal standard in establishing his *mens rea*;<sup>705</sup>

<sup>695</sup> Judgement, Vol.III, paras.1079-1081. For a detailed analysis of the Chamber's findings on the functioning of the Joint Command *see* section XI. A. below.

<sup>696</sup> Judgement, Vol.III, paras. 1082-1085.

<sup>697</sup> Judgement, Vol.III, para.1086.

<sup>698</sup> Judgement, Vol.III, paras.1089-1097, 1123. For a detailed analysis of the Chamber's findings on the functioning of the MUP Staff *see* section XIII. A. below.

<sup>699</sup> Judgement, Vol.III, para.1093.

<sup>700</sup> Judgement, Vol.III, paras.1077, 1088-1089, 1097.

<sup>701</sup> *See* also section XIII. B. 9. below.

<sup>702</sup> Judgement, Vol.III, paras, 1119, 1128.

<sup>703</sup> Judgement, Vol.III, para.1130.

<sup>704</sup> Judgement, Vol.III, paras.1130, 1134, 1136.

<sup>705</sup> Lukić Brief, paras.197, 222-224, 247, 260-264, 418.

- Second, Lukić was not informed of any crime, and only received information of law enforcement measures taken by the relevant authorities;<sup>706</sup>
- Third, Lukić did not intend the crimes because he was merely implementing a lawful campaign against terrorism;<sup>707</sup>
- Fourth, the Chamber applied a double standard when it concluded, allegedly on the basis of the same evidence, that Milutinović and Lazarević did not intend the crimes.<sup>708</sup>

## 2. The Chamber applied the proper legal standard for mens rea

205. The Chamber properly stated that, under JCE I, the Prosecution must prove that the accused voluntarily participated in at least one aspect of the common purpose and that the accused shared with the other JCE members the intent to commit the crime or underlying offence.<sup>709</sup> Lukić advances several arguments on the legal standard applied by the Chamber in establishing his *mens rea*.<sup>710</sup> However, they are all based on a misstatement of the Chamber's findings and the law. Lukić was convicted under JCE and not under ordering, planning or instigating. Thus his discussion of the *mens rea* required for these modes of liability is irrelevant.<sup>711</sup> Further, Lukić seems to confuse the *mens rea* required for JCE with the one needed for superior responsibility under Article 7(3).<sup>712</sup>

206. Lukić also misunderstands the Chamber's legal and factual findings on discriminatory intent. The Chamber properly stated that, under JCE I, an accused needs to share the intent to commit the crime,<sup>713</sup> including the specific discriminatory intent required for persecution.<sup>714</sup> The Chamber found that Lukić shared the discriminatory intent encompassed in the common criminal purpose to forcibly displace part of the Kosovo Albanian population.<sup>715</sup> In any event, Lukić was convicted for persecution under JCE III<sup>716</sup> where proof of the accused's

<sup>706</sup> Lukić Brief, paras.260-261, 392, 433-442, 460-478.

<sup>707</sup> Lukić Brief, paras.361, 455-458, 461, 464-466

<sup>708</sup> Lukić Brief, paras.397-401, 437-442, 455-456, 466.

<sup>709</sup> Judgement, Vol.I, para.108.

<sup>710</sup> Lukić Brief, para.197, 222-224, 247, 260-264, 280, 380.

<sup>711</sup> Lukić Brief, paras.222-224, 247, 260.

<sup>712</sup> Lukić Brief, paras.261-264.

<sup>713</sup> Judgement, Vol.I, para.108; *contra* Lukić Brief, paras.197, 380.

<sup>714</sup> Judgement, Vol.I, para.109; *contra* Lukić Brief, para.247.

<sup>715</sup> Judgement, Vol.III, paras.1117, 1130; *contra* Lukić Brief, paras.247, 380.

<sup>716</sup> Judgement, Vol.III, paras.1134, 1136, 1138.

discriminatory intent is not required<sup>717</sup> rather he need only be aware that persecution was a possible consequence of the execution of the agreed upon crimes of the JCE.

207. All these arguments should be summarily dismissed because they misrepresent the Chamber's findings<sup>718</sup> and are evidently unfounded because they are based on a misunderstanding of the law.<sup>719</sup>

### 3. Lukić was aware of the crimes

208. Lukić submits that he was unaware of the crimes.<sup>720</sup> Some of his arguments are undeveloped and unsupported assertions, which fail to articulate any error.<sup>721</sup> As such, these arguments should be summarily dismissed.<sup>722</sup> In his other arguments, Lukić submits that the Chamber erred in considering certain facts and pieces of evidence to conclude that he was aware of the crimes.<sup>723</sup> These arguments too should be summarily dismissed.

209. First, contrary to Lukić's submission,<sup>724</sup> the evidence supports the Chamber's conclusion that he knew that some PJP (Special Police Unit) commanders were tolerating large numbers of civilians leaving Kosovo in 1999.<sup>725</sup> The MUP Staff Dispatch dated 15 April 1999 reads: "it has come to our attention that some of the said commanders have not been obeying the order and that they have been tolerating massive-scale departures of civilian population".<sup>726</sup> Accordingly, Lukić's submission on this point should be summarily dismissed for its misrepresentation of the evidence.<sup>727</sup>

210. To show that Lukić was aware of the crimes, the Chamber referred to three meetings held on 4, 7 and 11 May 1999, in which crimes and measures to be taken were discussed.<sup>728</sup> Lukić challenges these findings by misrepresenting the evidence and without explaining why the Chamber erred. The Chamber found the commission of serious crimes and their prevention was discussed at the meeting on 4 May 1999.<sup>729</sup> Contrary to his assertion,<sup>730</sup>

<sup>717</sup> Judgement, Vol.I, para.111.

<sup>718</sup> SD2.

<sup>719</sup> SD14.

<sup>720</sup> Lukić Brief, paras.260-264, 392, 433-436, 460-478.

<sup>721</sup> Lukić Brief, paras.433-436, 445-446, 460-461,499-503.

<sup>722</sup> SD9.

<sup>723</sup> Lukić Brief, paras.260-261, 462-478.

<sup>724</sup> Lukić Brief, paras.462-463.

<sup>725</sup> Judgement, Vol.III, para.1124.

<sup>726</sup> Exh.6D778 (public).

<sup>727</sup> SD2.

<sup>728</sup> Judgement, Vol.III, paras.1125-1128.

<sup>729</sup> Judgement, Vol.III,para.1125; *contra* Lukić Brief, paras.464-465.

Exhibit P1696 shows that the MUP and VJ dealt with a number of these cases. It reads: “the security forces dealt with numerous cases of violence, killings [...]”<sup>731</sup> Lukić’s argument should be summarily dismissed as it misrepresents the evidence.<sup>732</sup>

211. Lukić’s further argues that the Chamber erred because it “[...] erroneously concluded that the motive of this meeting held on 4.5.1999 was the letter from Arbour dated 26.3.1999, (more than a month before the meeting) which is completely irrational and unfounded in any evidence. This is clear contradiction to findings in III/140 and III/1005 which don’t mention this letter at all [...]”<sup>733</sup> Whether the Chamber found that the meeting was called *because* of Arbour’s letter<sup>734</sup> is irrelevant. Lukić’s argument is obscure and fails to explain how the alleged error would have any impact on the judgement.<sup>735</sup>

212. Contrary to Lukić’s suggestion,<sup>736</sup> Exhibit P1996 shows that, on 7 May 1999, the MUP Staff addressed the measures for the prevention of crimes and means to protect the civilian population.<sup>737</sup> Similarly, the Chamber properly considered the meeting on 11 May 1999.<sup>738</sup> In this regard, Lukić misses the point: whether or not he was in charge of approving the engagement of MUP forces<sup>739</sup> is irrelevant in the context of establishing his knowledge of the crimes. Lukić’s attempt to substitute his evaluation of the evidence without articulating an error by the Chamber should be summarily dismissed.<sup>740</sup>

213. Among other evidence, the Chamber considered Lukić’s awareness that crimes were committed in 1998, and concluded that he had the proper *mens rea* in 1999.<sup>741</sup> It reached this conclusion after a careful analysis of a large body of evidence.<sup>742</sup> Lukić selectively challenges aspects of this evidence, disregarding the remainder analysed by the Chamber.<sup>743</sup> First, Lukić misreads the Judgement when he argues<sup>744</sup> that the Chamber could not have found Lukić was

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<sup>730</sup> Lukić Brief, para.465.

<sup>731</sup> Exh.P1696 (public).

<sup>732</sup> SD2.

<sup>733</sup> Lukić Brief, para.267.

<sup>734</sup> Judgement, Vol.III, paras.140-141, 1005, 1125, 1201; *contra* Lukić Brief, paras.267-269.

<sup>735</sup> SD8, SD14.

<sup>736</sup> Lukić Brief, paras.467-469.

<sup>737</sup> Judgement, Vol.III, para.1126; Exh.P1996 (public), p.2-3, 6, 10.

<sup>738</sup> Judgement, Vol.III, para.1127.

<sup>739</sup> Lukić Brief, paras.473-476.

<sup>740</sup> SD3.

<sup>741</sup> Judgement, Vol.III, paras.1119-1120.

<sup>742</sup> Judgement, Vol.III, paras.1079-1086, 1120.

<sup>743</sup> Lukić Brief, paras.443-444.

<sup>744</sup> Lukić Brief, para.443.

aware of crimes committed in 1998 on the basis of Exhibits 6D1613, P1989 and 6D874.<sup>745</sup> In fact, this evidence supports the conclusion that Lukić controlled the PJP and SAJ, and is not related to his awareness of crimes in 1998.<sup>746</sup> Second, his argument that Exhibit 6D874 was not signed by him<sup>747</sup> was considered by the Chamber. It found that “even if the dispatch was not sent by Lukić, it was, nevertheless, sent from the MUP Staff in his name; no suggestion was made that it was unauthorised”.<sup>748</sup> Lukić’s arguments should be summarily dismissed<sup>749</sup> because they disregard other evidence analyzed by the Chamber.<sup>750</sup>

214. Lukić was not convicted for the crimes that took place in 1998. His submissions in this regard should be summarily dismissed<sup>751</sup> because they challenge findings on which his conviction does not rely.<sup>752</sup> To the extent he argues he was unaware of the crimes in Gornje Obrinje/Abra e Epërme,<sup>753</sup> he fails to articulate an error and merely seeks to substitute his own evaluation of the evidence.<sup>754</sup>

215. The Chamber found that Lukić was the bridge between the policy-planners in Belgrade and those on the ground in Kosovo, and that he was involved both in the planning process and in ensuring the implementation of those plans.<sup>755</sup> Lukić does not accept these findings and denies that he was aware of the situation of the ground.<sup>756</sup> However, he fails to articulate an error.<sup>757</sup> In conclusion, Lukić fails to show that no reasonable trial chamber could have found that he had detailed information about the activities of the MUP in Kosovo, including the commission of crimes during the Indictment period.<sup>758</sup>

#### 4. Lukić intended the crimes

216. Following a lengthy analysis of the evidence, the Chamber found that Lukić had the intent to displace the Kosovo Albanian population forcibly.<sup>759</sup> Lukić advances several

<sup>745</sup> See Judgement, Vol.III, fn.2819.

<sup>746</sup> Judgement, Vol.III, para.1120, fn.2819.

<sup>747</sup> Lukić Brief, para.444.

<sup>748</sup> Judgement, Vol.III, para.1005. See further section XIII. B. 3. (c) below.

<sup>749</sup> SD2.

<sup>750</sup> Judgement, Vol.III, paras.1079-1097, 1120.

<sup>751</sup> SD1.

<sup>752</sup> Lukić Brief, paras.260-261.

<sup>753</sup> Lukić Brief, para.261.

<sup>754</sup> SD3.

<sup>755</sup> Judgement, Vol.III, para.1131.

<sup>756</sup> Lukić Brief, paras.392, 470-472.

<sup>757</sup> SD10.

<sup>758</sup> Judgement, Vol.III, para.1097.

<sup>759</sup> Judgement, Vol.III, para.1130.

unsubstantiated complaints about this finding,<sup>760</sup> but fails to articulate any error by the Chamber. As such, these arguments should be summarily dismissed.<sup>761</sup> Lukić also submits that he did not intend the crimes because he instructed the police to prevent crimes and that the Chamber applied a double standard *vis à vis* Milutinović and Lazarević.<sup>762</sup> He further repeats that he was merely conducting a lawful operation against terrorism.<sup>763</sup>

217. The Chamber considered and rejected<sup>764</sup> Lukić's arguments that (a) he did not intend the crimes because he instructed the police to prevent ill-treatment of civilians and (b) he was informed that measures were taken by the competent law-enforcement authorities to repress the crimes.<sup>765</sup> First, the Chamber considered that some orders may have been issued to prevent the departure of civilians<sup>766</sup> and that measures to prevent the crimes were discussed during at least three meetings,<sup>767</sup> but it found that these orders were not genuine and did not create any doubt as to Lukić's intent to further the objectives of the joint criminal enterprise.<sup>768</sup> Second, Lukić's awareness that some measures were allegedly taken by competent authorities to repress these crimes does not relieve him from criminal responsibility for committing those crimes through a JCE. The Chamber properly considered his awareness of these measures as confirmation that he was aware of the crimes.<sup>769</sup>

218. Lukić repeats his submission from trial that he did not intend to contribute to any plan because he was acting professionally and lawfully in a legitimate FRY/Serbian anti-terrorist operation.<sup>770</sup> The Chamber considered and rejected this argument.<sup>771</sup> In any event, a JCE member's contribution need not be criminal in itself.<sup>772</sup> Lukić's repetition of his submission without showing any error should be summarily dismissed.<sup>773</sup>

219. Finally, Lukić's attempt to compare his *mens rea* with that of Milutinović and Lazarević<sup>774</sup> is misguided given their different roles in the events. For instance, as President

<sup>760</sup> Lukić Brief, paras.433-434, 460-461, 477-478.

<sup>761</sup> SD10

<sup>762</sup> Lukić Brief, paras.397-401, 435-442, 455-458, 461, 464-466.

<sup>763</sup> Lukić Brief, paras.361, 418-422.

<sup>764</sup> Judgement, Vol.III, paras.1124-1127, 1129-1130.

<sup>765</sup> Lukić Brief, paras.435-436, 455, 457-458, 464-466; Lukić Closing Brief, paras.132-147.

<sup>766</sup> Judgement, Vol.III, paras.1124, 1129.

<sup>767</sup> Judgement, Vol.III, paras.1125-1127.

<sup>768</sup> Judgement, Vol.III, para.1129.

<sup>769</sup> See e.g. Judgement, Vol.III, paras.1091-1093, 1097.

<sup>770</sup> Lukić Brief, para.361, 418-422; Lukić Closing Brief, paras.14-38; 107-108.

<sup>771</sup> Judgement, Vol.I, para.847; Vol.III, para.939.

<sup>772</sup> *Krajišnik* AJ, paras.215, 218, 695.

<sup>773</sup> SD9.

<sup>774</sup> Lukić Brief, paras.397-401, 437-442, 455-456, 464-466.

of Serbia, Milutinović was based in Belgrade and not in Kosovo, like Lukić.<sup>775</sup> Unlike Lukić, Milutinović did not receive specific information through internal sources, and evidence concerning Milutinović's knowledge during the NATO bombing was not extensive.<sup>776</sup> Milutinović did not significantly contribute to the common purpose<sup>777</sup> and did not possess the necessary intent.<sup>778</sup> In this context, the Chamber was fully entitled to note that Milutinović was informed that the crimes were being dealt with and reasonably found that he lacked intent.<sup>779</sup>

220. Also, Lazarević had a different role in the events than Lukić.<sup>780</sup> Lazarević was distant from the policy makers, and, unlike Lukić, he never travelled to Belgrade in 1998 to meet with Milošević.<sup>781</sup> Contrary to Lukić's suggestion, the Chamber acknowledged, while assessing Lazarević's responsibility, that Lukić did not attend the 16 and 17 May meetings in Belgrade.<sup>782</sup> Lukić's submission that the Chamber applied an unfair double standard between Lukić and other accused in assessing *mens rea*<sup>783</sup> is an attempt to substitute his evaluation of the evidence without articulating any error and disregarding other Chamber findings. These arguments should be summarily dismissed because they misrepresent the Chamber's findings.<sup>784</sup>

221. The Chamber properly found that Lukić had the *mens rea* required for JCE.<sup>785</sup> Lukić fails to show how this conclusion was unreasonable.

## **E. Significant contribution to the crimes**

### **1. Overview**

222. The Chamber found that Lukić was an important member of the JCE and significantly contributed to the commission of the crimes.<sup>786</sup> He was in charge of the MUP Staff and *de*

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<sup>775</sup> Judgement, Vol.III, paras.99, 937.

<sup>776</sup> Judgement, Vol.III, para.270.

<sup>777</sup> Judgement, Vol.III, para.275.

<sup>778</sup> Judgement, Vol.III, para.276.

<sup>779</sup> Judgement, Vol.III, para.276.

<sup>780</sup> *Contra* Lukić Brief, paras.397-401, 442.

<sup>781</sup> Judgement, Vol.III, para.918.

<sup>782</sup> Judgement, Vol.III, para.918, fn.2316.

<sup>783</sup> Lukić Brief, paras.397-401, 438-442, 456, 466.

<sup>784</sup> SD2.

<sup>785</sup> Judgement, Vol.III, para.1130.

<sup>786</sup> Judgement, Vol.III, para.1131.

*facto* commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999 including the regular police in the SUPs, the PJP and the SAJ units.<sup>787</sup> Lukić himself explained that the main role of the MUP Staff that he headed was to co-ordinate, plan, and direct the organizational units, primarily in the task of “curbing terrorism”.<sup>788</sup> The MUP Staff had a central role in planning, organizing, controlling and directing the work of various MUP units as well as co-ordinating and planning joint operations with the VJ.<sup>789</sup> Lukić presented himself to international observers as Chief of Police in Kosovo.<sup>790</sup> He was involved in the establishment and the arming of the RPOs, and exercised authority over them once they were subordinated to the SUPs.<sup>791</sup> Lukić did not replace the commanders of the SUPs, PJP and SAJ units, but rather was the bridge between them and the policy and plans set in Belgrade.<sup>792</sup>

223. As head of the MUP Staff, Lukić was involved in the planning process and in ensuring that day-to-day operations were conducted in accordance with those plans<sup>793</sup>. Lukić had a senior and central role in co-ordinating the actions of the MUP and the VJ as a member of the Joint Command,<sup>794</sup> a body that played a significant role in directing and co-ordinating the activities of the VJ and the MUP in Kosovo in 1998 and 1999.<sup>795</sup> Lukić co-ordinated the information exchange between the MUP forces in Kosovo and the MUP headquarters in Belgrade.<sup>796</sup> After a careful analysis of the evidence,<sup>797</sup> the Chamber properly found that Lukić made a significant contribution to the crimes and that he was an important member of the JCE.<sup>798</sup>

224. Lukić does not properly challenge the Chamber’s findings as to his significant contribution to the crimes under the JCE. He misunderstands the basis for his convictions. Some of his submissions suggest he did not participate in the crimes.<sup>799</sup> The Prosecution interprets these arguments as challenging the Chamber’s findings on his contribution and responds to them accordingly.

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<sup>787</sup> Judgement, Vol.III, paras.1050-1051, 1118. For a detailed analysis of the Chamber’s findings on the functioning of the MUP Staff and Lukić’s role in it *see* section XIII. A. below.

<sup>788</sup> Judgement, Vol.III, paras.961, 1013, 1051.

<sup>789</sup> Judgement, Vol.III, para.1051.

<sup>790</sup> Judgement, Vol.III, para.1048.

<sup>791</sup> Judgement, Vol.III, para.1067.

<sup>792</sup> Judgement, Vol.III, paras.1050-1051.

<sup>793</sup> Judgement, Vol.III, paras.1050-1051.

<sup>794</sup> Judgement, Vol.III, para.1032.

<sup>795</sup> Judgement, Vol.III, para.1023. For a detailed analysis of the Chamber’s findings on the functioning of the Joint Command and Lukić’s role in it *see* section XI. A. below.

<sup>796</sup> Judgement, Vol.III, para.1059.

<sup>797</sup> Judgement, Vol.III, paras.936-1075, 1131-1132.

225. Lukić advances three arguments. First, he argues that he did not have effective control over those who committed the crime.<sup>800</sup> Second, he submits that he and the MUP Staff had no power over the MUP troops in Kosovo.<sup>801</sup> Third, he submits that he had no role in planning and co-ordinating the MUP and VJ's actions.<sup>802</sup>

## 2. JCE does not require effective control

226. Lukić misstates the Chamber's findings and the law on JCE when he argues that he should not have been convicted because he did not exercise effective control over the perpetrators of the crime.<sup>803</sup> As a JCE member, Lukić is responsible for the crimes committed by other JCE members and the physical perpetrators they used to implement the common purpose.<sup>804</sup> Contrary to Lukić's submission,<sup>805</sup> his liability did not require him to have exercised authority or control over the VJ in any way.<sup>806</sup>

227. Lukić's reference to the effective control test under Article 7(3) is misplaced.<sup>807</sup> The Chamber carefully analyzed his role and properly found that he significantly contributed to the JCE, including as a *de facto* MUP commander in Kosovo.<sup>808</sup> He had *de facto* authority to start investigations into crimes.<sup>809</sup> For JCE liability, the Chamber was not required to find that Lukić exercised effective control over the MUP, in the sense of a material ability to prevent or punish their criminal conduct. For this reason, the question whether the MUP initiated proceedings for crimes committed in 1998/1999 is immaterial.<sup>810</sup> These arguments should be summarily dismissed as evidently unfounded because they are based on a misunderstanding of the law.<sup>811</sup>

228. Contrary to Lukić's submission, the Chamber properly relied upon Cvetić's testimony that no police officer was charged for murder, arson or expulsion of Kosovo Albanians while

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798 Judgement, Vol.III, para.1131.  
 799 Lukić Brief, paras.198-199, 251-259, 264, 367-368, 417, 423-432, 447-448, 479-498.  
 800 Lukić Brief, paras.251-252, 264, 367-368.  
 801 Lukić Brief, paras.198-199, 264, 432, 447-448, 479-498.  
 802 Lukić Brief, paras. 423-431.  
 803 Lukić Brief, paras.251-252, 264, 367-368.  
 804 Judgement, Vol.I, para.99; Vol.III, para.1132; *Brdanin* AJ, para. 413; *Martić* AJ, paras. 168-169.  
 805 Lukić Brief, paras.367-368.  
 806 *Brdanin* AJ, paras.411-413.  
 807 Lukić Brief, paras.251, 264.  
 808 Judgement, Vol.III, paras.936-1075, 1131-1132.  
 809 Judgement, Vol.III, para.1049. *See* section XIII. B. 8. below.  
 810 Lukić Brief, para.252.  
 811 SD14,

he was Head of Kosovska Mitrovica SUP.<sup>812</sup> In assessing his testimony, the Chamber expressly considered Bogunović and Vojnović’s testimony and rejected Lukić’s argument that the circumstances of Cvetić’s removal undermined his credibility.<sup>813</sup> Similarly, the Chamber was entitled to rely upon Ilić’s testimony that no disciplinary or criminal proceedings were brought against the brigade’s commanders for maltreatment of civilians.<sup>814</sup> Lukić gives no reason to disturb the Chamber’s assessment of the evidence. His arguments should be dismissed.

### 3. Lukić was the *de facto* commander of the MUP in Kosovo

229. Lukić argues that no evidence supports the conclusion that he had authority over the MUP and that he was an important member of the JCE.<sup>815</sup> However, he merely points to one exhibit and one transcript page.<sup>816</sup> He fails to substantiate his assertions and to articulate any error in the Chamber’s conclusion or in its lengthy and well-articulated reasoning.<sup>817</sup>

230. Lukić’s further submission that the MUP Staff had no power and that it was a mere “post box” for communications<sup>818</sup> was expressly considered and rejected by the Chamber.<sup>819</sup> After a careful assessment of the evidence on the role and functions of the MUP Staff,<sup>820</sup> the Chamber concluded that it had a central role in planning, organizing, controlling and directing the work of the various MUP units active in Kosovo as well as co-ordinating and planning joint operations with the VJ.<sup>821</sup> This conclusion was supported by Lukić himself, who explained that the main role of the MUP Staff was to co-ordinate, plan, and direct the organisational units, primarily in the task of “curbing terrorism”.<sup>822</sup> Lukić disagrees with these findings,<sup>823</sup> but fails to explain why they were unreasonable. His arguments should be summarily dismissed.<sup>824</sup>

<sup>812</sup> Judgement, Vol.I, para.720.

<sup>813</sup> Judgement, Vol.I, para.720, *contra* Lukić Brief, paras.253, 162-163.

<sup>814</sup> Judgement, Vol.I, para.723; *contra* Lukić Brief, para.253.

<sup>815</sup> Lukić Brief, paras.432, 479-498.

<sup>816</sup> Lukić Brief, fns.722-723.

<sup>817</sup> Judgement, Vol.III, paras.941-1067.

<sup>818</sup> Lukić Brief, paras.198-199.

<sup>819</sup> Judgement, III, para.1014.

<sup>820</sup> Judgement, Vol.III, paras.947-1011.

<sup>821</sup> Judgement, Vol.III, para.1012.

<sup>822</sup> Judgement, Vol.III, para.1013.

<sup>823</sup> Lukić Brief, paras.447-448.

<sup>824</sup> SD3.

231. The Chamber found that paramilitary groups joined and were under the control of the MUP in Kosovo.<sup>825</sup> The Chamber considered Lukić's argument<sup>826</sup> that the "Scorpions" as a unit no longer existed in 1998-1999 and found that ex-Scorpions were incorporated into the SAJ.<sup>827</sup> Lukić repeats his argument at trial but fails to show that the Chamber's findings were unreasonable.<sup>828</sup> The Chamber similarly rejected Lukić's argument that, at the time the Scorpions were incorporated, their criminal propensity was unknown.<sup>829</sup>

232. The Chamber also heard and rejected<sup>830</sup> Lukić's arguments in relation to the Podujevo/Podujeva massacre.<sup>831</sup> These arguments should be summarily dismissed because they repeat arguments at trial without articulating any error.<sup>832</sup> In any event, Lukić also fails to show that no reasonable trier of fact would have reached this conclusion.

#### 4. Lukić took part in the planning and co-ordinating process

233. The Chamber concluded that as a Joint Command member and Head of the MUP Staff, Lukić was directly involved in the planning process and in ensuring that day-to-day operations were conducted in accordance with those plans.<sup>833</sup> The Chamber considered and accepted Lukić's argument<sup>834</sup> that he was not involved in the actual formulation of the Plan for Combating Terrorism at the highest level, but found that he was involved in both the meeting in which the Plan was adopted and in implementing measures to ensure its proper execution.<sup>835</sup> Contrary to Lukić's submission,<sup>836</sup> this finding does not contradict the conclusion that Lukić participated in high-level meetings.<sup>837</sup>

234. As Head of the MUP Staff, Lukić planned "anti-terrorist" operations in co-operation with the VJ in 1999.<sup>838</sup> He was Pavković's counterpart and, together with Šainović, co-ordinated VJ and MUP activities.<sup>839</sup> Both Pavković and Lukić attended the 1 June 1999 Joint

<sup>825</sup> Judgement, Vol.I, paras.737-745.

<sup>826</sup> Lukić Closing Brief, paras.312-333.

<sup>827</sup> Judgement, Vol.I, para.737; *see also* Vol.I, paras.677, 687.

<sup>828</sup> Lukić Brief, paras.255-256.

<sup>829</sup> Lukić Brief, para.257; Lukić Closing Brief, paras.329-332.

<sup>830</sup> Judgement, Vol.I, para.731.

<sup>831</sup> Lukić Brief, paras.256; Lukić Closing Brief, paras.314-327.

<sup>832</sup> SD9.

<sup>833</sup> Judgement, Vol.III, paras.1050-1051. *See* section VIII. E. 1. above.

<sup>834</sup> Lukić Brief, paras.430-431.

<sup>835</sup> Judgement, Vol.III, para.1021.

<sup>836</sup> Lukić Brief, paras.430-431.

<sup>837</sup> Judgement, Vol.III, para.1021. *See* section XIII. B. 7. below.

<sup>838</sup> Judgement, Vol.III, para.1120. *See also* sections XI. and XIII. A. 1. (d) below.

<sup>839</sup> Judgement, Vol.III, para.1132.

Command meeting.<sup>840</sup> Lukić submits that the Chamber erred in finding that he worked closely with Pavković, the Priština Corps Commander who later became Commander of the 3<sup>rd</sup> Army.<sup>841</sup> His argument is unclear and does not show why the Chamber erred in finding that Lukić and Pavković worked closely together. It should be dismissed.

235. Finally, Lukić misunderstands the Chamber's finding related to the power of the President of the Republic of Serbia over the MUP and the competencies of the "federal" *vis à vis* the "republican" MUP.<sup>842</sup> These irrelevant and undeveloped challenges should be summarily dismissed.<sup>843</sup>

## IX. GROUND J

236. Ground J from Lukić's notice of appeal has "not been dealt with separately".<sup>844</sup>

## X. GROUNDS L AND M

237. Grounds L and M from Lukić's notice of appeal have "not been dealt with separately".<sup>845</sup>

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<sup>840</sup> Judgement, Vol.I, para.1145-1149.

<sup>841</sup> Judgement, Vol.III, para.1118, 773; *contra* Lukić Brief, 424-429.

<sup>842</sup> Lukić Brief, paras.248-250.

<sup>843</sup> SD7-10.

<sup>844</sup> Lukić Brief, para.8.

<sup>845</sup> Lukić Brief, para.8.

## XI. THE CHAMBER PROPERLY FOUND LUKIĆ'S PARTICIPATION IN THE JOINT COMMAND (GROUND N)

### A. Overview

238. The Chamber found that Joint Command was a part of the “whole co-ordination system established in 1998 between the VJ and the MUP”<sup>846</sup> that solved the problem of how to effectively co-ordinate two different armed forces from two different entities: the Serbian MUP (policemen) and the FRY VJ (soldiers). The Joint Command allowed the police commanders to “save face” by not having to be commanded by the military, but provided a way for FRY President Slobodan Milošević to “direct the actions of the [Serbian] MUP in Kosovo [...] and for these actions of the MUP to enjoy the support of the VJ.”<sup>847</sup> Thus, the “established system of command and control within the VJ and the MUP”<sup>848</sup> remained intact, and decisions and orders for joint operations were implemented through these existing chains of command.<sup>849</sup>

239. As to Lukić, the Chamber found that his participation as “a crucial member of the Joint Command”<sup>850</sup> showed he shared the intent of his fellow JCE members to “ensure continued control by the FRY and Serbian authorities over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population.”<sup>851</sup> As evidence of this intent, the Chamber noted:

- “As a member of the Joint Command, Lukić worked closely with the leadership of the VJ, in particular with [...] Nebojša Pavković, co-ordinating various joint VJ and MUP ‘anti-terrorist actions’”<sup>852</sup>
- As a regular participant in Joint Command meetings at which “joint VJ/MUP operations, the ‘refugee’ crisis, and the need to discipline the forces of the FRY and Serbia” were discussed,<sup>853</sup> Lukić was “well aware that there were serious allegations of criminal activity by the MUP forces in Kosovo in mid- to late 1998, directed against the Kosovo

<sup>846</sup> Judgement, Vol.I, para.1151.

<sup>847</sup> Judgement, Vol.I, para.1111.

<sup>848</sup> Judgement, Vol.I, para.1110. *See also* Judgement, Vol.I, paras.1081, 1144.

<sup>849</sup> Judgement, Vol.I, para.1110.

<sup>850</sup> Judgement, Vol.III, para.1033.

<sup>851</sup> Judgement, Vol.III, para.1117.

<sup>852</sup> Judgement, Vol.III, para.1118.

<sup>853</sup> Judgement, Vol.III, para.1079.

Albanian civilian population.”<sup>854</sup> The Chamber found that this knowledge, “combined with his continuing work to ensure co-operation of the joint MUP/VJ operations despite the knowledge of such crimes, is indicative of his intent that those crimes occur.”<sup>855</sup>

240. These findings regarding the Joint Command and Lukić are clear, regardless of the “impression” its use of the term “Joint Command” might have left with Lukić.<sup>856</sup> This false impression forms the first of two main false premises from which his arguments in Ground N flow.

241. Additionally, Lukić’s arguments—as elsewhere in his brief—betray a fundamental misconception of JCE liability. This is the second false premise on which his Ground N arguments are based.

242. Substantively, his arguments generally fall into two major themes, both of which flow from Lukić’s two false premises and both of which fail to undermine the Chamber’s findings.

243. First, Lukić argues generally that the Chamber erred in finding that the Joint Command as an entity had command and control authority over the FRY and Serbian armed forces operating in Kosovo in 1988 and 1999. He makes this argument, in one form or another, throughout his appeal brief.<sup>857</sup> In making this argument, Lukić repeatedly misrepresents the Chamber’s factual findings regarding the role and authority of the Joint Command.<sup>858</sup> He further ignores the Chamber’s findings showing how Lukić’s involvement in the Joint Command was evidence of his participation in the JCE.<sup>859</sup> These arguments warrant summary dismissal.<sup>860</sup>

244. Lukić also argues generally<sup>861</sup> that the VJ was responsible for planning and executing joint MUP-VJ operations in Kosovo in 1998 and 1999. This argument ignores the Chamber’s reasonable findings showing that the VJ and the MUP co-ordinated their actions before each anti-terrorist operation in 1998 and in 1999.<sup>862</sup>

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<sup>854</sup> Judgement, Vol.III, para.1086.

<sup>855</sup> Judgement, Vol.III, para.1119.

<sup>856</sup> Lukić Brief, para.274.

<sup>857</sup> Lukić Brief, paras.274-276, 286-308, 317-325.

<sup>858</sup> See section XI. B. below.

<sup>859</sup> See e.g. Judgement, Vol.III, para.1118 (“As a member of the Joint Command, Lukić worked closely with the leadership of the VJ [...] co-ordinating various joint VJ and MUP ‘anti-terrorist’ actions.”).  
SD2.

<sup>860</sup> Lukić Brief, paras. 284, 308, 309-310, 317, 326-328, 332-334, 336, 338-339, 343-348, 351-357

<sup>861</sup> Lukić Brief, paras. 284, 308, 309-310, 317, 326-328, 332-334, 336, 338-339, 343-348, 351-357

<sup>862</sup> See section XI. C. below.

245. Finally, most of Lukić's arguments in Ground N also warrant summary dismissal, as the Prosecution explains below, and he fails to show how no reasonable trial chamber could have reached these conclusions or to show any error in the Chamber's assessment of the evidence. The Chamber should dismiss Ground N in its entirety.

246. As an example, the Chamber found Đaković's notes of the "meetings of the Joint Command"<sup>863</sup> to be "a fairly reliable record of parts of the meetings of the Joint Command, particularly for the activities of the MUP and VJ and comments made upon the VJ and MUP's activities, including by the non-VJ and MUP personnel attending."<sup>864</sup> The Chamber noted that the Notes were not "a *verbatim*, comprehensive record" and that they are not "official minutes of Joint Command meetings".<sup>865</sup>

247. Significantly, the Chamber also found that the content of the Notes "has been corroborated through other documents in evidence."<sup>866</sup> Lukić's argument that the Chamber "failed to adequately assess the importance of these notes"<sup>867</sup> ignores this finding. Rather, he submits that Đaković was not competent to make notes at the meeting and emphasizes three portions of his testimony regarding these Notes that Lukić finds more favourable to his position.<sup>868</sup> However, Lukić ignores that the Chamber considered these portions<sup>869</sup> and merely asks the Appeals Chamber to reach a different conclusion. His arguments should be summarily dismissed.<sup>870</sup>

248. Further, Lukić's arguments regarding the inaccuracy of these Notes misrepresent the evidence and are belied by the fact that he relies on these same Notes in support of his own arguments. For example, Lukić's argument that "[a] telling example of the unreliability/inaccuracy of the Notes is 10.91998, [sic] wherein it was noted that Stevanović was absent, while at the same time his discussion was recorded"<sup>871</sup> is incorrect. The Notes of the meeting for 10 September 1998 record only "General ĐORĐEVIĆ" as "[n]ot present"<sup>872</sup> and records the contributions of Stevanović.<sup>873</sup> In other places in his brief, Lukić relies on the

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<sup>863</sup> Exh.P1468.

<sup>864</sup> Judgement, Vol.1, para.1062.

<sup>865</sup> Judgement, Vol.1, para.1062.

<sup>866</sup> Judgement, Vol.1, para.1063.

<sup>867</sup> Lukić Brief, para.278.

<sup>868</sup> Lukić Brief, para.278.

<sup>869</sup> See Judgement, Vol.I, paras.1058-1062.

<sup>870</sup> SD3.

<sup>871</sup> Lukić Brief, para.281.

<sup>872</sup> P1468, p.98

<sup>873</sup> P1468, p.101.

accuracy of the Notes in pointing out how often Stevanović attended,<sup>874</sup> remarks by Šainović<sup>875</sup> and even his own remarks.<sup>876</sup>

## **B. The Joint Command did not replace the MUP and VJ chains of command**

249. Lukić demonstrates his false assumption regarding the Joint-Command when complaining: “[T]he Chamber constantly used the term ‘Joint Command,’ which leaves one with the impression that there, indeed, was a body that commanded both the army and police units. This is contrary to other findings made by the Chamber.”<sup>877</sup> Contrary to Lukić’s “impression” the Chamber’s findings are clear that the Joint Command as an entity did not exercise command functions over the VJ and the MUP. The Joint Command did not replace the existing VJ and MUP chains of command, which individual members of the JCE continued to command themselves.

250. The Joint Command “played a role in the co-ordination and exchange of information and intelligence between the MUP and the VJ in the latter half of 1998” even as “[d]ecisions and orders for joint operations were implemented through the existing chains of command.”<sup>878</sup> In 1999, “the co-ordination system continued to function” and the Joint Command was a part of that system.<sup>879</sup>

251. Additionally, “the Joint Command played a significant role in directing and co-ordinating the activities of the VJ and the MUP in Kosovo both in 1998 and 1999”,<sup>880</sup> and “a significant amount of evidence suggests that the formal command structures, as well as the reporting systems, of the VJ and MUP remained intact during the period of operation of the Joint Command.”<sup>881</sup>

252. Many of Lukić’s arguments in Ground N ignore these relevant findings and should be summarily dismissed.<sup>882</sup> The Chamber did not “present[] the facts in an ambiguous manner

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<sup>874</sup> Lukić Brief, para.282.

<sup>875</sup> Lukić Brief, para.302.

<sup>876</sup> Lukić Brief, para.634.

<sup>877</sup> Lukić Brief, para.274.

<sup>878</sup> Judgement, Vol.I, para.1110.

<sup>879</sup> Judgement, Vol.I, para.1151.

<sup>880</sup> Judgement, Vol.III, para.1023.

<sup>881</sup> Judgement, Vol.I, para.1081.

<sup>882</sup> SD2.

and impl[y] that the J[oint] C[ommand] issued orders”<sup>883</sup> nor did it “imply that it was supposed to go in the field and co-ordinate execution of each individual anti-terrorist action”.<sup>884</sup> In addition:

- Contrary to Lukić’s argument,<sup>885</sup> “the Joint Command meetings were more than a daily flow of information, as [...] participating politicians stated what was to be done by the VJ and the MUP.”<sup>886</sup> For example, the Chamber found that the handwritten notes of Joint Command meetings held in Priština/Prishtina between 22 July and 30 October 1998<sup>887</sup> (“Notes”) “demonstrate that decisions regarding how and when the Plan [for Combating Terrorism in Kosovo] was to be implemented were discussed at the Joint Command meetings [...]”.<sup>888</sup>
- Contrary to Lukić’s assertion that the regular participants in the Joint Command meetings “did not convene at all in 1999”,<sup>889</sup> the Chamber found there was a meeting of the Joint Command on 1 June 1999<sup>890</sup> and that “important actors, including some of the Accused, referred to a ‘Joint Command’ in 1999, which they had to take into account in their duties.”<sup>891</sup>
- The Chamber held that “*the individual members of the Joint Command* brought their influence to bear on how the Plan was put into effect, utilising established systems of command and control within the VJ and MUP.”<sup>892</sup> That no formal orders were issued during Joint Command meetings<sup>893</sup> is irrelevant.
- Lukić’s argument about subordinate units reporting to their commands, not the Joint Command,<sup>894</sup> ignores the Chamber’s repeated findings<sup>895</sup> that the Joint Command did not replace the regular VJ or MUP chains of command but rather “played a role in the co-

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<sup>883</sup> Lukić Brief, para.275.

<sup>884</sup> Lukić Brief, para.304.

<sup>885</sup> Lukić Brief, para.277.

<sup>886</sup> Judgement, Vol.I, para.1079.

<sup>887</sup> Exh.P1468.

<sup>888</sup> Judgement, Vol.I, para.1110.

<sup>889</sup> Lukić Brief, para.277.

<sup>890</sup> Judgement, Vol.I, paras.1145, 1149, 1150.

<sup>891</sup> Judgement, Vol.I, para.1151.

<sup>892</sup> Judgement, Vol.I, para.1110.

<sup>893</sup> Lukić Brief, para.286. *See also* Lukić Brief, paras.287-288.

<sup>894</sup> Lukić Brief, para.292.

<sup>895</sup> Judgement, Vol.I, paras.1110-1111.

ordination and exchange of information and intelligence between the MUP and the VJ in the latter half of 1998.”<sup>896</sup>

- Lukić’s argument that “the Chamber should logically conclude that the MUP was directed solely by the Minister [of the Interior] in accordance with the Law on Ministries”<sup>897</sup> ignores the Chamber’s finding that the decision reforming the MUP Staff, with Lukić as its Head, was issued by the Minister of the Interior.<sup>898</sup>

253. Lukić’s remaining arguments regarding the nature of the Joint Command are similarly meritless and should be dismissed for the reasons discussed below.

1. The Chamber reasonably relied on the testimony of Cvetić

254. Lukić’s arguments seeking to undermine Cvetić’s testimony fail.<sup>899</sup> In the paragraph Lukić alleges is in error, the Chamber quotes Cvetić’s testimony that 1) he heard at a meeting of the MUP Staff on 10 July 1998 that “a command had been set up at the highest level” and 2) that, at a meeting on 22 July 1998 “Đorđević reiterated that the establishment of the ‘Joint Command’ comprised Šainović, Matković, Minić, Lukić, Pavković, Anđelković and Gajić”.<sup>900</sup> Whether Cvetić attended any Joint Command meeting is not relevant to the question of whether this testimony is credible.

255. Lukić’s argument<sup>901</sup> about the manner in which Đaković referred to the Joint Command is speculation, and his argument that “[n]o one present at these meetings was aware” of the term or believed it was a command is unsubstantiated and should be summarily dismissed as a mere assertion unsupported by any evidence.<sup>902</sup>

2. The Chamber’s findings regarding Stojanović and Đaković did not shift the Prosecution’s burden

256. The Chamber assessed the credibility and weight to be given to the evidence presented by Stojanović and Đaković.<sup>903</sup> It noted that, although Đaković testified that “all reports

<sup>896</sup> Judgement, Vol.I, para.1110.

<sup>897</sup> Lukić Brief, para.297.

<sup>898</sup> Judgement, Vol.I, para.692, *citing* Exh.P1505.

<sup>899</sup> Lukić Brief, para.289.

<sup>900</sup> Judgement, Vol.I, para.1071.

<sup>901</sup> Lukić Brief, para.289.

<sup>902</sup> SD4.

<sup>903</sup> Judgement, Vol.I, para.1076.

concerning the functioning of co-ordination would have gone through him”, he “did not address the issue of the recipient or purpose” of the intelligence report (addressed to the Joint Command) at Exhibit P2945.<sup>904</sup> Lukić’s argument that the Chamber “shifted the burden of proof upon the Defence, where it noted that witnesses Stojanović or Đaković failed to address or explain certain issues”,<sup>905</sup> relating to the Joint Command must fail.

257. As an example that the Chamber weighed the evidence of the two witnesses, the Chamber noted that although Stojanović testified that “because the heading ‘To the Joint Command for Kosovo and Metohija’ was in the centre of the page”, rather than in the corner as the rules demanded, “it could be seen that the document was not sent to anyone”, Stojanović did not “explain why the heading referring to the Joint Command had been chosen”.<sup>906</sup> Such an exercise cannot be considered “burden shifting”. If that were the case, then the Chamber would be legally bound to accept all the evidence of each Defence witness at face value.

3. Lukić fails to substantiate his argument that the term “JC” was also used when a document was issued by the VJ without MUP participation

258. Lukić’s argument that use of the term “JC” on documents meant that only the army issued it<sup>907</sup> is without merit. Lukić fails to explain how this argument shows error on the part of the Chamber. Next, he fails to explain how the filing of a document bearing the term “Joint Command” in a military logbook shows that this document “was issued by the army without any participation of the MUP”.<sup>908</sup> Finally, even if his argument is accepted, he fails to explain how this fact would have any impact on the outcome of the case.

4. The Chamber properly found that FRY and Serbian officials chose to solve “KLA problem” through criminal acts

259. Lukić’s argument that the Chamber “completely ignored”<sup>909</sup> evidence regarding the MUP obligation to deploy in Kosovo – and that it continued to be commanded not by a “Joint

<sup>904</sup> Judgement, Vol.I, para.1076.

<sup>905</sup> Lukić Brief, para.290.

<sup>906</sup> Judgement, Vol.I, para.1076.

<sup>907</sup> Lukić Brief, para.291.

<sup>908</sup> Lukić Brief, para.291.

<sup>909</sup> Lukić Brief, para.293.

Command” but by the Minister of the Interior in Belgrade<sup>910</sup> misrepresents the Chamber’s finding that:

Rather than solving the KLA problem through the democratic and effective use of the police and the judicial system, the commission of crimes was employed instead.<sup>911</sup>

Thus, the Chamber never found that the MUP was illegally deployed in Kosovo or that it had no role in suppressing terrorism. Rather, it found that these forces—regardless of whether they were legally deployed—were used by members of the JCE to achieve its common purpose: “to ensure continued control by the FRY and Serbian authorities over Kosovo [...] through a widespread *and* systematic campaign of terror and violence” designed to forcibly displace the Kosovo Albanian population both within and without Kosovo.<sup>912</sup> This argument warrants summary dismissal as it misrepresents the Chamber’s findings.<sup>913</sup>

260. Additionally, Lukić fails to substantiate his claim that the Chamber “completely ignored” the evidence to which he cites.<sup>914</sup> Each document was entered into evidence. The Chamber is presumed to have considered this evidence unless it can be shown that it specifically ignored it.<sup>915</sup> The argument warrants summary dismissal as it merely asserts that the Chamber failed to consider relevant evidence.<sup>916</sup>

261. Finally, even if the Chamber had “completely ignored” this evidence, Lukić fails to explain how reference to these documents would have changed the Chamber’s conclusion that “the commission of crimes was employed instead”. Nothing in these documents authorises the MUP to participate in a plan to forcibly displace Kosovo Albanians through the use of violence, terror and intimidation.

##### 5. Lukić was not convicted of crimes committed in 1998

262. Lukić’s argument that “[i]n analyzing the actions carried out by the VJ/MUP in suppressing terrorism in Kosovo in 1998, the Chamber never found that measures implemented in any of the stages were aimed at committing crimes”<sup>917</sup> is irrelevant and

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<sup>910</sup> Lukić Brief, para.297.

<sup>911</sup> Judgement, Vol.III, para.92.

<sup>912</sup> Judgement, Vol.III, para.95.

<sup>913</sup> SD2.

<sup>914</sup> Lukić Brief, para.293.

<sup>915</sup> *Kvočka* AJ, para.23.

<sup>916</sup> SD6.

<sup>917</sup> Lukić Brief, para.308(7).

should be summarily dismissed.<sup>918</sup> Lukić was not convicted for crimes by the VJ and MUP in 1998, only for those in 1999.

6. Lukić fails to demonstrate any contradiction in the Chamber's findings regarding the decision to implement the third stage of the Plan

263. Contrary to Lukić's argument,<sup>919</sup> there is nothing contradictory about the Chamber's findings that the Joint Command had influence in the implementation of the various stages of the Plan for Combating Terrorism, and that the decision to proceed with the third stage of this plan was not made at the meeting of the Joint Command on 31 July 1998. The Chamber cited Pavković<sup>920</sup> for the proposition that Pavković informed Samardžić, not for the proposition that the decision of the Joint Command was final. As the following paragraphs make clear, the VJ did engage in combat operations together with the MUP "[b]etween 25 July and 6 August 1998",<sup>921</sup> as observed by John Crosland.<sup>922</sup> The Chamber noted<sup>923</sup> that VJ troops engaged in combat in the same area before Samardžić ordered them back to barracks. The Chamber does not make findings regarding when the VJ rejoined the battle, but was free to rely on the testimony of Crosland to find that the VJ and the MUP did conduct joint operations in Drenica.

264. More broadly, Lukić fails to explain how this alleged inconsistency constituted an error on the part of the Chamber, or that his proposition, if true, would have had any effect on the Judgement. He also fails to explain the impact of his argument that the Chamber erred in concluding that "the Joint Command allowed the MUP commanders to 'save face'."<sup>924</sup> These arguments warrant summary dismissal.<sup>925</sup>

7. Lukić fails to demonstrate any error in the Chamber's findings regarding command of the joint operation in the sector of the Slup/Sllup and Vokša/Voksh villages

265. Contrary to Lukić's assertion<sup>926</sup> that the Chamber found<sup>927</sup> that both the Joint Command and the Priština Corps commanded an operation in the sector of the Slup/Sllup and

<sup>918</sup> SD7.

<sup>919</sup> Lukić Brief, para.300-302.

<sup>920</sup> Judgement, Vol.I, para.891.

<sup>921</sup> Judgement, Vol.I, para.892.

<sup>922</sup> Crosland, T.9761-9763 (7 February 2007).

<sup>923</sup> Judgement, Vol.I, para.1086.

<sup>924</sup> Lukić Brief, paras.300.

<sup>925</sup> SD1.

<sup>926</sup> Lukić Brief, para.305.

Vokša/Voksh villages, the Chamber never found that these combat operations “were to be ‘commanded by the Joint command’”.<sup>928</sup> Rather, the Chamber found that this was a phrase within the decision. In the same paragraph, Đaković explained that this meant that “both the VJ and the MUP command had agreed upon the tasks that were to be carried out by the VJ and the MUP units during the joint operation.”<sup>929</sup> The Chamber thus held, “before these Priština Corps Command decisions were issued, the MUP had agreed to carry out the various attacks referred to in them.”<sup>930</sup>

266. This argument misconstrues the true effect of the Chamber’s finding. What these paragraphs<sup>931</sup> show is that the main armed forces in Kosovo—the VJ and the MUP—co-ordinated their actions before a combat operation to achieve the desired result. Whether that system of co-ordination was called the “Joint Command” or some other name, the end result was the same: effective, co-ordinated action by police and soldiers in the months proceeding the Indictment period.

### **C. The VJ and the MUP co-ordinated their actions before each anti-terrorist operation in 1998 and in 1999**

267. As the Prosecution explains elsewhere,<sup>932</sup> the Chamber found that staff members from the VJ Priština Corps and the MUP Staff for Kosovo met before each anti-terrorist action. The Chamber refers to the evidence from Milan Đaković of the Priština Corps, who was responsible for ensuring co-ordination between the VJ and the MUP during combat operations until 20 January 1999,<sup>933</sup> and his successor Radojko Stefanović as to how this co-ordination worked:

1. Before each operation, the VJ representative attended co-ordination meetings with MUP organs<sup>934</sup> held at the Priština Corps Command and at the “MUP building.”<sup>935</sup>

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<sup>927</sup> Lukić Brief, para.305.

<sup>928</sup> See Judgement, Vol.I, para.1032.

<sup>929</sup> Judgement, Vol.I, para.1032.

<sup>930</sup> Judgement, Vol.I, para.1032.

<sup>931</sup> Judgement, Vol.I, para.1032; *see also* para.1031.

<sup>932</sup> See section XIII. below.

<sup>933</sup> Judgement, Vol.I, para.1026.

<sup>934</sup> Judgement, Vol.I, paras.1026, 1034.

<sup>935</sup> Judgement, Vol.I, para.1026.

Đaković said that, most often, he met with MUP Staff representative Duško Adamović of the MUP Staff and that, during these meetings, “Adamović and [PJP chief] Obrad Stevanović took part in the drafting plans for joint operations by indicating, *inter alia*, what units would be used during the operations.”<sup>936</sup> Adamović confirmed this.<sup>937</sup> Stefanović testified that, at these meetings, the VJ and MUP representatives “would also reach agreements upon the tasks that the MUP and the VJ units would carry out during the joint operations.”<sup>938</sup>

2. “[A]fter the co-ordination meetings, the VJ and MUP representatives returned to their respective command and reported upon what had been agreed.”<sup>939</sup> Based on information obtained and conclusions drawn at the meeting, the VJ Priština Corps would issue decisions regarding joint combat operations.<sup>940</sup>
3. Đaković said excerpts of these decisions and the accompanying maps that related to the MUP were then given to the MUP Staff “in order for it to be able to co-ordinate things that were within its purview.”<sup>941</sup> Adamović explained that he “would take the map excerpts and distribute them to the officers in the field” after “meetings were held at the MUP staff during which the plan would be discussed for carrying out anti-terrorist actions [involving] the [VJ] and police.”<sup>942</sup> These meetings included “commanders of the PJP detachments and chiefs of secretariats.”<sup>943</sup> Stefanović of the VJ explained that, at the tactical level, “detailed co-ordination and development ... of the way the action would be executed” would continue.”<sup>944</sup>
4. Once an operation was completed the MUP units involved (“either the PJP commanders or their respective SUPs”) would report back to the MUP Staff.<sup>945</sup>

268. Though Adamović denied that what he did at the meetings constituted “planning” the Chamber rejected this.<sup>946</sup> A number of Lukić’s challenges ignore this relevant finding<sup>947</sup> and

<sup>936</sup> Judgement, Vol.I, para.1026.

<sup>937</sup> Judgement, Vol.I, para.1027.

<sup>938</sup> Judgement, Vol.I, para.1034.

<sup>939</sup> Judgement, Vol.I, para.1034.

<sup>940</sup> Judgement, Vol.I, para.1034.

<sup>941</sup> Judgement, Vol.III, para.973.

<sup>942</sup> Judgement, Vol.III, para.975.

<sup>943</sup> Judgement, Vol.III, para.975.

<sup>944</sup> Judgement, Vol.I, para.1034.

<sup>945</sup> Judgement, Vol.III, para.975.

<sup>946</sup> Judgement, Vol.I, para.1027.

<sup>947</sup> See Lukić Brief, paras.326-327, 332-334

should therefore be summarily dismissed.<sup>948</sup> Stefanović testified that “not a single joint operation in 1999 was carried out without co-ordination meetings being organised beforehand.”<sup>949</sup>

269. This evidence and these findings show the Chamber’s conclusion that the MUP Staff “played a central role in planning, organising, controlling, and directing the work of the various MUP units active in Kosovo, as well as co-ordinating and planning joint operations with the VJ”<sup>950</sup> was one it was entitled to reach on the totality of the evidence.

270. None of Lukić’s arguments<sup>951</sup> show that these conclusions are those that no reasonable trier of fact could reach. In referring to the evidence of Stefanović and Adamović,<sup>952</sup> Lukić merely argues for an alternate interpretation without showing how no reasonable trial chamber could have reached this decision. His arguments should be summarily dismissed.<sup>953</sup> Lukić’s other arguments simply ignore the Chamber’s relevant findings regarding co-ordination and joint planning and should be summarily dismissed.<sup>954</sup> For example:

- Contrary to Lukić’s claim, the findings explained above show there was “evidence [...] that the MUP planned [...] actions and issued [...] orders”.<sup>955</sup>
- The MUP Staff with Lukić at its head played a central role in the execution of the Plan for Combatting Terrorism; whether the MUP was involved in the development of this Plan<sup>956</sup> is irrelevant.
- The orders for joint operations in evidence originating from the VJ were drawn up following the co-ordination meetings described by Đaković,<sup>957</sup> Stefanović<sup>958</sup> and Adamović.<sup>959</sup> As they explained, excerpts of these jointly-agreed plans then formed the

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<sup>948</sup> SD2.

<sup>949</sup> Judgement, Vol.I, para.1033.

<sup>950</sup> Judgement, Vol.III, para.1012.

<sup>951</sup> Lukić Brief, paras.309-316.

<sup>952</sup> Lukić Brief, paras.326-327, 332-339.

<sup>953</sup> SD3.

<sup>954</sup> SD2.

<sup>955</sup> Lukić Brief, para.284.

<sup>956</sup> Lukić Brief, paras. 299-300, 308.

<sup>957</sup> Judgement, Vol.I, para.1026; Vol.III, para.973.

<sup>958</sup> Judgement, Vol.I, paras.1033-1034.

<sup>959</sup> Judgement, Vol.I, para.1027, Vol.III, paras.974-975.

basis for the MUP assignments, and the specific tactical planning that followed. Lukić's arguments<sup>960</sup> ignore these relevant findings.

- Lukić's argument that the Chamber "failed to differentiate between the joint anti-terrorist actions carried out by VJ/MUP units [...] and MUP police law-enforcement activities"<sup>961</sup> ignore relevant findings regarding the planning of joint operations. Further, he fails to show that there was any difference between the plans for these anti-terrorist activities and those that the MUP engaged in with the VJ.

271. Lukić's remaining arguments alleging the VJ, not the MUP, conducted planning, are similarly without merit for the reasons explained below.

1. The MUP Staff, with Lukić at its head, controlled the actions of the PJP in Kosovo

272. Lukić's argument that he "was not able to participate in the planning of PJP actions"<sup>962</sup> misrepresents the findings of the Chamber and ignores other important findings. First, though the Chamber noted that "the 10 August decision was sent to the Republic of Serbia MUP PJP Command", it also noted that the decision "contained a clause at the end stipulating that the combat operations were to be 'commanded by the Joint Command for Kosovo and Metohija'", which meant that "both the VJ and MUP command had agreed upon the tasks that were to be carried out by the VJ and the MUP during the joint operation."<sup>963</sup> The Chamber actually found that the MUP had a role in planning this joint operation.<sup>964</sup>

273. This and other arguments<sup>965</sup> ignore other findings that the MUP Staff commanded the PJP units in Kosovo. For example, the Chamber found that the 16 June 1998 decision establishing the MUP Staff stated that "the MUP Staff was to control the work and engagement of the 'organisational units of the Ministry, and also sent and attached units, in suppressing terrorism' in Kosovo."<sup>966</sup> These "sent units" were PJP detachments.<sup>967</sup> The Chamber noted that though Cvetić "agreed with the suggestion that the PJP had its own chain

<sup>960</sup> Lukić Brief, paras.309-317, 336, 339, 343-346, 354, 355-356, 357.

<sup>961</sup> Lukić Brief, para.349.

<sup>962</sup> Lukić Brief, para.331. *See also* paras.329-330.

<sup>963</sup> Judgement, Vol.I, para.1032.

<sup>964</sup> Judgement, Vol.I, para.1031.

<sup>965</sup> Lukić Brief, paras.328 (That Stevanović "was not a member of the MUP Staff", though the Chamber "noted that [he] took part in planning activities."); 358 (That orders within the police were issued by Stevanović rather than Lukić, who had no command over the PJP).

<sup>966</sup> Judgement, Vol.III, para.949.

<sup>967</sup> Judgement, Vol.III, para.949.

of command” he said that “in practice PJP detachments engaged in Kosovo ‘were manoeuvring forces and would be under the command of the MUP Staff.’”<sup>968</sup> The Chamber quoted a former PJP member’s evidence that “it was ‘common knowledge’ that ‘[a]ll MUP units in Kosovo were commanded by the MUP HQ in Priština’.”<sup>969</sup> These arguments should be summarily dismissed because they ignore these other relevant factual findings<sup>970</sup> and because Lukić merely seeks to substitute his own evaluation of the evidence for that of the Chamber.<sup>971</sup>

2. Lukić fails to substantiate his challenges to the Chamber’s findings regarding the *Grom 3* and *Grom 4* directives.

274. Lukić fails to explain the impact of the Chamber’s alleged errors when finding that NATO, rather than “‘terrorist’ forces”, was the “VJ enemy” when *Grom 3* and *Grom 4* were planned,<sup>972</sup> and that Lazarević’s order for the elimination of Albanian terrorist forces in certain sectors<sup>973</sup> was not part of the *Grom 3* directive.

275. Both arguments misrepresent the evidence. As to Lukić’s “NATO” argument, the Chamber noted the objective of the first stage of *Grom 3* was “to prevent NATO from entering Kosovo” and that the objective of the second stage was “the elimination of NATO as well as ‘terrorist’ forces”.<sup>974</sup> Lukić fails to explain how, given this evidence, the Chamber’s conclusion<sup>975</sup> was unreasonable.

276. Further, it does not follow from his argument that a 16 February 1999 order could not have been related to the *Grom 3* directive, which was issued on 7 February 1999.<sup>976</sup>

3. Lukić fails to demonstrate the Chamber “misquoted” minutes of MUP Staff meetings

277. To support its conclusion that “before the major joint VJ/MUP operations were conducted at the end of March and to mid-April 1999, the two bodies co-ordinated their respective plans and activities”,<sup>977</sup> the Chamber noted the MUP planned operations parallel to

<sup>968</sup> Judgement, Vol.III, para.959.

<sup>969</sup> Judgement, Vol.III, para.962.

<sup>970</sup> SD2.

<sup>971</sup> SD3.

<sup>972</sup> Lukić Brief, paras.340-341.

<sup>973</sup> Lukić Brief, para.342.

<sup>974</sup> Judgement, Vol.I, para.1013.

<sup>975</sup> Judgement, Vol.I, para.1012.

<sup>976</sup> Judgement, Vol.I, para.1015.

<sup>977</sup> Judgement, Vol.I, para.1041.

the VJ,<sup>978</sup> referring to the minutes of a 17 February 1999 meeting showing “that the MUP Staff ‘plan[ned] ... to carry out three mopping up operations in the Podujevo, Dragobilja and Drenica areas’, but was waiting for an order to do so.”<sup>979</sup>

278. Though Lukić argues<sup>980</sup> that the Chamber “misquoted” this passage, he fails to show how his interpretation of these minutes has any impact on the Judgement, or that the Chamber’s interpretation of this document was one that no reasonable trier of fact could have made. His own interpretation of the evidence agrees with the Chamber’s findings that the MUP and the VJ co-ordinated their planning.<sup>981</sup>

279. Further, his argument ignores the remainder of the Chamber’s findings in the same paragraph: “According to Lazarević, these minutes show that ‘the MUP planned [actions] in parallel [and] independently from the 3<sup>rd</sup> Army Command and the Corps Command.”<sup>982</sup> Lukić fails to explain how the Chamber erred in this paragraph.

280. Lukić’s argument that the Chamber “incorrectly quoted”<sup>983</sup> another passage from these minutes is similarly without merit. His argument that the annual meetings dealt only with “the work and engagement in the previous year” ignore the words that immediately follow: “[...] and established further tasks and activities for the service.”<sup>984</sup> Lukić fails to explain how the conclusion the Chamber drew from this passage was one that no reasonable trier of fact could have reached.

#### **D. Conclusion**

281. As the Chamber has found, all of Lukić’s actions including his participation in the daily Joint Command meetings with both his VJ counterpart and politicians from the FRY and Serbia shows he shared the intent with the other members of the JCE to “ensure continued control by the FRY and Serbian authorities over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population.”<sup>985</sup> None of Lukić’s arguments in his

<sup>978</sup> Judgement, Vol.I, para.1039.

<sup>979</sup> Judgement, Vol.I, para.1039, *quoting* Exh.P1990.

<sup>980</sup> Lukić Brief, paras.338, 347-348.

<sup>981</sup> *See, e.g.*, Judgement, Vol.I, para.1041.

<sup>982</sup> Judgement, Vol.I, para.1039.

<sup>983</sup> Lukić Brief, para.350.

<sup>984</sup> Exh.P1990, p.1.

<sup>985</sup> Judgement, Vol.III, para.1117. *See also* para.1130.

Ground N, which flow from his fundamental misunderstanding of the Chamber's findings regarding the Joint Command, undermine these JCE findings. The Chamber should dismiss Ground N in its entirety.

## **XII. THE CHAMBER PROPERLY REJECTED SIMONOVIĆ'S EVIDENCE ON MUP STRUCTURE (GROUND K)**

282. The Chamber was entitled to find that “police expert” Simonović’s testimony was unreliable.<sup>986</sup> It has the same broad discretion in weighing expert evidence as it does other evidence,<sup>987</sup> and may consider such matter as the “professional competence of the expert”<sup>988</sup> and the “limitation of expertise of each expert witness.”<sup>989</sup> The Chamber assessed the professional competence of each expert who testified<sup>990</sup> and noted the limitations of Simonović’s expertise<sup>991</sup> relating to his unfamiliarity with the MUP staff in Kosovo, based on Simonović’s concession that he had no experience studying it prior to this case.<sup>992</sup> The Chamber was therefore entitled to find that Simonović’s testimony was unreliable in this respect.<sup>993</sup>

283. Contrary to Lukić’s submission,<sup>994</sup> the Chamber heard several witnesses testify to the MUP’s function in Kosovo and reached a reasonable conclusion about it.<sup>995</sup> Lukić claims that Simonović is “more familiar with the MUP than any other witness” and that Simonović’s testimony is “essential” in assessing Lukić’s responsibility.<sup>996</sup> Nowhere, however, does Lukić point to any specific error in the Chamber’s assessment of Simonović’s testimony that would justify reversal.<sup>997</sup>

284. For the reasons given, Lukić’s claim that the Chamber erred by not relying on Simonović’s testimony should be rejected.

<sup>986</sup> Judgement, Vol.I, para.658. *Contra* Lukić Brief, paras.270-273.

<sup>987</sup> *Popović* Butler Decision, paras.9, 21-22.

<sup>988</sup> *Martić* TJ, para.29; *see also Martić Avramov* Decision, para.12.

<sup>989</sup> *Martić* TJ, para.29.

<sup>990</sup> Judgement, Vol.I, para.40.

<sup>991</sup> Judgement, Vol.I, para.658; Vol.III, para.942.

<sup>992</sup> Simonović, T.25628-22569 (open session).

<sup>993</sup> *See* Judgement, Vol.III, paras.166-172, 942-952; *see also* T.25754-25755 (open).

<sup>994</sup> Lukić Brief, paras.271-273.

<sup>995</sup> *See* section XIII. below.

<sup>996</sup> Lukić Brief, paras.270-271.

<sup>997</sup> *See* Lukić Brief, paras.270-273.

### **XIII. THE CHAMBER PROPERLY FOUND LUKIĆ COMMANDED MUP FORCES VIA THE MUP STAFF (GROUND P)**

#### **A. Overview**

285. As Head of the MUP Staff for Kosovo, Lukić commanded<sup>998</sup> MUP forces who committed crimes on a massive scale<sup>999</sup> during the NATO bombing. He ensured these forces worked in efficient coordination with the other Serbian armed forces in Kosovo, mainly the VJ.<sup>1000</sup> In 1998, the VJ and MUP's "excessive and disproportionate" use of force caused more than 200,000 Kosovo Albanians to be displaced from their homes.<sup>1001</sup> In 1999, forces of the FRY and Serbia expelled at least 700,000 Kosovo Albanians from their homes over a period of around 20 weeks.<sup>1002</sup> Lukić's role, responsibilities and actions as Head of the MUP Staff—regardless of whether he was the highest-ranking MUP official in Kosovo<sup>1003</sup>—showed he shared the criminal intent with the other JCE members<sup>1004</sup> and that he contributed significantly to the JCE.<sup>1005</sup>

#### **1. As Head of the MUP Staff for Kosovo, Lukić made a significant contribution to the JCE**

286. The Chamber concluded that Lukić "was an important member of this Joint Criminal Enterprise" and made a significant contribution to the JCE when it found:<sup>1006</sup>

- 1) He was the *de jure* and *de facto* commander of MUP forces deployed in Kosovo from mid-1998 to mid-1999, including the regular police in the SUPs, PJP, and SAJ units;
- 2) Lukić was the bridge between the policy-planners in Belgrade and those on the ground in Kosovo;

<sup>998</sup> Judgement, Vol.III, para.1131.

<sup>999</sup> Judgement, Vol.III, paras.468, 783, 1132.

<sup>1000</sup> Judgement, Vol.III, para.1131.

<sup>1001</sup> Judgement, Vol.III, paras.90, 456, 463.

<sup>1002</sup> Judgement, Vol.II, para.1178.

<sup>1003</sup> Judgement, Vol.III, paras.944 ("The Chamber accepts [...] that the nature of the position [in the MUP] and its responsibilities mattered more than rank" and "finds it unnecessary to determine who was the highest ranked police official in Kosovo, and instead will examine below the scope of Lukić's tasks and responsibilities."), 1018 ("[T]he Chamber considers that the precise title of Lukić's position, and its translation into English, is immaterial. Rather, his powers and responsibilities are what really matter."), 1050 ("The Chamber is in no doubt that, whatever his precise title, Lukić was in charge of the MUP Staff from June 1998 to July 1999.").

<sup>1004</sup> Judgement, Vol.III, paras.1117–1130.

<sup>1005</sup> Judgement, Vol.III, para.1131.

<sup>1006</sup> Judgement, Vol.III, paras.1130.

3) Lukić was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans.

(a) As Head of the MUP Staff, Lukić exercised *de jure* powers over MUP personnel in Kosovo

287. The 1998 decision reforming the MUP Staff for Kosovo, testimony of relevant witnesses and Lukić's own words confirm the Chamber's finding that he exercised *de jure* powers over MUP personnel. According to a 16 June 1998 decision, the task of the MUP Staff was to "plan, organize and manage" the work of the "organizational units" of the MUP and any other MUP units sent to Kosovo,<sup>1007</sup> including the PJP detachments.<sup>1008</sup> These "formed the mainstay of MUP operations in Kosovo in 1998 and 1999" and were "deployed in actions involving the VJ and other MUP forces".<sup>1009</sup> Ljubinko Cvetić, Head of the Kosovka Mitrovica SUP, confirmed that these MUP Staff functions were particularly relevant to "serious security issues" including "terrorism".<sup>1010</sup> Lukić told Prosecution investigators that the main role of the MUP Staff was to co-ordinate, plan, and direct the organisational units, primarily in the task of "curbing terrorism".<sup>1011</sup>

(b) Lukić was *de facto* commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999, including the regular police in the SUPs, PJP, and SAJ units

288. To conclude that Lukić was the *de facto* commander over MUP forces deployed in Kosovo from mid-1998 until mid-1999, the Chamber found that the MUP Staff "played a central role in planning, organizing, controlling, and directing the work of the various MUP units active in Kosovo, as well as co-ordinating and planning joint operations with the VJ".<sup>1012</sup> Officers from the Priština Corps and officers from the MUP Staff would hold "co-ordination meetings" in which the MUP Staff "took part in the drafting of plans for joint operations by indicating, *inter alia*, which units would be used during the operations."<sup>1013</sup> The

<sup>1007</sup> Judgement, Vol.I, para.692, Vol.III, paras.949, 983.

<sup>1008</sup> Judgement, Vol.III, para.949.

<sup>1009</sup> Judgement, Vol.I, para.725.

<sup>1010</sup> Judgement, Vol.III, para.950. In his testimony, Cvetić commented on Exh.P1251 (Decision on the formation of a Staff of the Ministry in Priština), the language of which, in relevant part, virtually mirrors the language of P1505 (the 16 June 1998 Decision describing the task of the staff).

<sup>1011</sup> Judgement, Vol.III, paras.961, 1013. Contrary to Lukić's argument at para.562 of his brief, nothing in the quoted portion of his interview suggests he was limiting these comments to the role of the Staff in 1998. See Exh.P948 (Sreten Lukić interview with the Prosecution), p.41.

<sup>1012</sup> Judgement, Vol.III, para.1051.

<sup>1013</sup> Judgement, Vol.I, para.1026, Vol.III, para.973.

Chamber found this role on the part of the MUP Staff to be “essential to the process of planning and co-ordinating operations”.<sup>1014</sup>

289. Once the Priština Corps Command issued decisions based on this collaborative planning, “excerpts of these decisions and accompanying maps that related to the MUP were given to the MUP Staff ‘in order for it to be able to coordinate things that were within its purview.’”<sup>1015</sup> These decisions and maps “could not have been planned” without the assistance of the MUP Staff.<sup>1016</sup> The MUP Staff would deliver the map excerpts to “the officers in the field” following meetings at the MUP Staff in which “the plan would be discussed for carrying out anti-terrorist actions [involving] the [VJ] and the police.”<sup>1017</sup>

290. These co-ordination meetings continued in 1999, when “not a single joint operation ... was carried out without co-ordination meetings being organized beforehand.”<sup>1018</sup> After these co-ordination meetings, “the VJ and MUP representatives returned to their respective command and reported upon what had been agreed. Once this co-ordination phase was completed, “the actions remained to be planned at the tactical level”.<sup>1019</sup>

291. As the Chamber noted, Lukić first ordered his staff to engage in these co-ordination meetings on 22 July 1998 following a meeting of the Joint Command.<sup>1020</sup> He played a “central role” as Head of the MUP Staff for Kosovo,<sup>1021</sup> participating in “meetings involving senior MUP, VJ and political figures of the FRY and Serbia throughout his period of tenure as Head of the MUP Staff”<sup>1022</sup> and interacting extensively with international observers, presenting himself as “the Chief of Police in Kosovo.”<sup>1023</sup>

292. As further evidence of his *de facto* command over MUP units in Kosovo in 1998 and 1999, the Chamber noted Lukić “issued numerous dispatches on behalf of the MUP Staff, containing tasks and instructions for the SUPs and PJP and SAJ units.”<sup>1024</sup> It cited to 16 dispatches or orders Lukić issued between 10 July 1998 and 26 May 1999, instructing various MUP units to, among other things, “[o]rganise the defence of villages with the newly formed

<sup>1014</sup> Judgement, Vol.I, para.1026.

<sup>1015</sup> Judgement, Vol.III, para.973.

<sup>1016</sup> Judgement, Vol.III, para.974.

<sup>1017</sup> Judgement, Vol.III, para.975.

<sup>1018</sup> Judgement, Vol.I, para.1033.

<sup>1019</sup> Judgement, Vol.I, para.1041.

<sup>1020</sup> Judgement, Vol.III, para.1033.

<sup>1021</sup> Judgement, Vol.III, para.1051.

<sup>1022</sup> Judgement, Vol.III, para.1019.

<sup>1023</sup> Judgement, Vol.III, para.1048.

[RPOs],<sup>1025</sup> “interview Kosovo Albanians seeking copies of their identity documents and ‘take other measures to ascertain whether they are involved in terrorist activities’”<sup>1026</sup> as well as “take disciplinary measures against police officers engaged in looting”. He held SUP chiefs and PJP commanders responsible for the “implementation of [these] measures and for preventing such occurrences.”<sup>1027</sup>

293. This latter order demonstrated Lukić “had *de facto* authority to require the chiefs of the SUPs to conduct investigations into crimes, even if he was not the person who actually initiated proceedings.”<sup>1028</sup>

294. Finally, as evidence that he was “in charge of the MUP Staff from June 1998 to July 1999”, the Chamber noted that Lukić “chaired most of the meetings held at the MUP Staff, including those attended by high level figures such as the President of Serbia, the Minister of Interior, the heads of the RJB and RDB, the Accused Šainović, and the Head of the PJP units, Obrad Stevanović”.<sup>1029</sup> The Chamber noted that, at a 22 July 1998 meeting, Lukić “was the one who proposed the agenda and led the meeting”. During a 28 July 1998 meeting, Lukić “welcomed those present and gave a briefing”.<sup>1030</sup> At a 5 November 1998 meeting, Lukić “as the chair ‘greeted the participants, thanked President Milutinović, Minister Stojiljković and others for visiting the MUP Staff, and briefed them’ on various issues.”<sup>1031</sup>

295. These findings prove beyond a reasonable doubt that Lukić “was a *de facto* commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999.”<sup>1032</sup>

(c) Lukić was the bridge between the policy-planners in Belgrade and those on the ground in Kosovo

296. In concluding that Lukić was the bridge between policy-planners in Belgrade and those on the ground in Kosovo, the Chamber relied on its findings that “Lukić was present at many meetings with senior VJ and MUP officials, along with political leaders, where he gave

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<sup>1024</sup> Judgement, Vol.III, para.1051.

<sup>1025</sup> Judgement, Vol.III, para.984.

<sup>1026</sup> Judgement, Vol.III, para.987.

<sup>1027</sup> Judgement, Vol.III, para.987.

<sup>1028</sup> Judgement, Vol.III, para.1049.

<sup>1029</sup> Judgement, Vol.III, para.1050.

<sup>1030</sup> Judgement, Vol.III, para.1050.

<sup>1031</sup> Judgement, Vol.III, para.1050.

<sup>1032</sup> Judgement, Vol.III, para.1051.

reports on the situation in Kosovo, and was involved in the planning of further operations”<sup>1033</sup> and that his “role as a key MUP interlocutor in relation to Kosovo continued into 1999.”<sup>1034</sup>

297. The Chamber also noted that the MUP Staff “received various reports from the SUPs, collated them, and sent them to Belgrade”.<sup>1035</sup> Cvetić, testified that “every morning, each of the SUP chiefs had to call the MUP Staff head in Priština.”<sup>1036</sup> The reports were to contain detailed information regarding, among other things, “[t]errorist actions”; “[p]olice operations carried out”; “[m]ovement of police units to, from and within [Kosovo and Metohija].”<sup>1037</sup> Adamović of the MUP Staff testified that the SUPs also reported to the MUP headquarters in Belgrade, but that the MUP Staff “was responsible for collating information on the security situation in Kosovo on the basis of reports received from the SUPs.”<sup>1038</sup>

298. Adamović’s testimony is consistent with the decision on the establishment of the MUP Staff of 16 June 1998, which mandated that Lukić “report to the Minister [of the Interior] about his own actions, actions of the staff, and the aspects of the security situation under the remit of the staff, informing the Minister about security-related developments, measures taken, and the effects of those measures.”<sup>1039</sup> The reports sent by the MUP Staff to Belgrade between 1 January 1999 and 1 May 1999 “bear Sreten Lukić’s typed name as a signature”<sup>1040</sup> and consist of a summary of “events”, “occurrences”, “phenomena” and other “information” related to “security”.<sup>1041</sup>

299. The Chamber found that this evidence established that “Lukić held an instrumental position in co-ordinating information exchange between the MUP forces in Kosovo and the MUP headquarters in Belgrade.”<sup>1042</sup>

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<sup>1033</sup> Judgement, Vol.III, para.1034.

<sup>1034</sup> Judgement, Vol.III, para.1038.

<sup>1035</sup> Judgement, Vol.III, para.1059.

<sup>1036</sup> Judgement, Vol.III, para.976.

<sup>1037</sup> Judgement, Vol.III, para.976.

<sup>1038</sup> Judgement, Vol.III, para.977.

<sup>1039</sup> Judgement, Vol.III, para.1052.

<sup>1040</sup> Judgement, Vol.III, para.1053.

<sup>1041</sup> Judgement, Vol.III, para.1054.

<sup>1042</sup> Judgement, Vol.III, para.1059.

(d) Lukić was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans.

300. Lukić contributed to the JCE as Head of the MUP Staff through his direct involvement in the planning process and by ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans. For example, the Chamber found that, as Head of the MUP Staff, he was a “crucial” member of the Joint Command, a body that had “significant influence over the actions of the MUP and VJ forces”.<sup>1043</sup>

301. The Chamber also found that Lukić, as Head of the MUP Staff for Kosovo, directed the MUP in various ways.<sup>1044</sup> For example, Cvetic told the Chamber that the MUP Staff “adopted plans on the use of PJP and other MUP units in countering terrorism.”<sup>1045</sup> He explained:

[T]he MUP staff adopted plans on the use of such units in countering terrorism. In those plans they laid down the basic tasks and the locations at which those units would be engaged. The staff adopted such plans as the staff as a whole, but such plans were also adopted by the Joint Command as of July 1998. As a rule, those plans included the tasks of both the army and the police, and the tasks would be coordinated at the level of the Joint Command.<sup>1046</sup>

302. On 3 November 1998, Lukić told a meeting of the PJP commanders and SUP chiefs that “[t]he MUP Staff in Priština will now take on the role of planning and the Secretariats will have greater independence in carrying out their regular duties”.<sup>1047</sup> On 2 December 1998, Lukić instructed the attendees at a meeting, including “all chiefs of SUPs and commanders of the special police detachments” to “submit, by 7 December 1998, ‘a plan for the prevention of terrorism’”,<sup>1048</sup> telling them to be “more offensive in work.”<sup>1049</sup>

<sup>1043</sup> Judgement, Vol.III, para.300.

<sup>1044</sup> See e.g. Judgement, Vol.III, para.1122.

<sup>1045</sup> Judgement, Vol.III, para.970.

<sup>1046</sup> T.8075. Contrary to Lukić’s argument (Lukić Brief, para.565), Cvetic’s testimony is consistent with the Chamber’s characterization.

<sup>1047</sup> Judgement, Vol.III, para.989.

<sup>1048</sup> Judgement, Vol.III, para.990.

<sup>1049</sup> Judgement, Vol.III, para.991.

2. Lukić's acts and role as Head of the MUP Staff show he shared the criminal intent with his fellow JCE members

303. Lukić was an “important member of this joint criminal enterprise.”<sup>1050</sup> He “was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans”.<sup>1051</sup> He acted as a bridge between the policy planners in Belgrade and those on the ground in Kosovo. He attended high-level meetings. He was the *de facto* commander of the MUP forces in Kosovo.

304. These findings show that the Chamber was not unreasonable to find that Lukić shared the criminal intent with the other JCE members.<sup>1052</sup> He “worked closely with the leadership of the VJ in coordinating various joint VJ and MUP ‘anti-terrorist actions’”<sup>1053</sup> as shown by his presence at several high-level meetings with the leadership of the FRY and Serbia, at which the Plan for combating Terrorism was discussed.<sup>1054</sup>

305. Further, Lukić continued to work to ensure cooperation of the joint MUP/VJ operations despite knowing of the commission of crimes by MUP subordinates and VJ members from mid-1998 until the end of the NATO campaign.<sup>1055</sup> This is “indicative of his intent that those crimes occur.”<sup>1056</sup>

306. The Chamber found that Lukić had been informed both before and during the NATO air campaign of the commission of crimes by MUP subordinates and VJ members,<sup>1057</sup> including the PJP and SAJ forces that were “under his control while deployed in Kosovo”.<sup>1058</sup>

307. Lukić knew of the allegations in the international community that “widespread crimes committed by VJ and MUP forces in 1998 had led to the forcible displacement of over 230,000 Kosovo Albanians.”<sup>1059</sup> That same year, representatives of international organizations told Lukić that, in August and September 1998, KDOM and KVM representatives in Kosovo “observed, on an almost day-to-day basis, PJP and other police

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<sup>1050</sup> Judgement, Vol.III, para.1131.

<sup>1051</sup> Judgement, Vol.III, para.1131.

<sup>1052</sup> Judgement, Vol.III, para.1130.

<sup>1053</sup> Judgement, Vol.III, para.1118.

<sup>1054</sup> Judgement, Vol.III, para.1118.

<sup>1055</sup> Judgement, Vol.III, para.1119.

<sup>1056</sup> Judgement, Vol.III, para.1119.

<sup>1057</sup> Judgement, Vol.III, para.1119.

<sup>1058</sup> Judgement, Vol.III, para.1120.

<sup>1059</sup> Judgement, Vol.III, para.1120.

units burning villages, destroying crops, killing farm animals, intimidating Kosovo Albanian civilians, and driving them from their homes”;<sup>1060</sup>

308. In 1998, Lukić also heard of allegations that crimes had been committed during joint VJ/MUP operations at Joint Command meetings and from representatives of international organizations. The question of the burning of Kosovo Albanian homes was discussed extensively at Joint Command meetings in August and September 1998, with Šainović noting that “the greatest damage to us is caused by burning the houses without any need, which could cause pressures to the country”<sup>1061</sup> and Đorđević warning “against persons who sent houses on fire”.<sup>1062</sup>

309. In 1999, the Chamber found that Lukić, as Head of the MUP Staff, had “detailed information about the activities of the MUP in Kosovo”,<sup>1063</sup> based on information he received from the SUPs<sup>1064</sup> and information he reported to the MUP in Belgrade.<sup>1065</sup> For example, on 3 April 1999, he reported that police had found “11 unidentified bodies of men between the ages of 25 and 35” in Prizren, “30 unidentified bodies of ‘men killed during operations by Šiptar terrorist gangs’” in Srbica/Skenderaj/Skenderaj and “25 unidentified charred bodies of men” in Mala Kruša.<sup>1066</sup>

310. Other reports show that Lukić “was frequently informed about members of the VJ, RPOs, the SUPs and police stations committing crimes such as appropriating vehicles, stealing technical goods and ‘confiscating’ money from Kosovo Albanians.”<sup>1067</sup>

311. Despite this knowledge, Lukić “continued to order the MUP to engage in joint operations with the VJ”<sup>1068</sup> including one starting on 25 April 1999 when, as Lukić reported to Belgrade, 699,071 Kosovo Albanians had already left Kosovo.<sup>1069</sup>

312. The Chamber found that Lukić was involved in the arming of non-Albanian civilians through the creation and use of the RPOs.<sup>1070</sup> He “exercised authority over the RPOs, which

<sup>1060</sup> Judgement, Vol.III, para.1082.

<sup>1061</sup> Judgement, Vol.III, para.1080.

<sup>1062</sup> Judgement, Vol.III, para.1080.

<sup>1063</sup> Judgement, Vol.III, para.1097.

<sup>1064</sup> Judgement, Vol.III, para.1089.

<sup>1065</sup> Judgement, Vol.III, para.1091.

<sup>1066</sup> Judgement, Vol.III, para.1091.

<sup>1067</sup> Judgement, Vol.III, para.1123.

<sup>1068</sup> Judgement, Vol.III, para.1129.

<sup>1069</sup> Judgement, Vol.III, para.1129. *See also* Exh.6D1261, p.5 (“Between 24 March and 24 April 1999, a total of 669,071 Šiptars left the FRY [...].”)

were subordinated to the SUPs, whose work in turn was controlled and directed by the MUP Staff in conjunction with the MUP in Belgrade.”<sup>1071</sup>

313. It also found that the MUP in Kosovo was involved in the collection of weapons from “Albanian villages” in 1998.<sup>1072</sup>

314. Finally, as Head of the MUP Staff, Lukić was actively engaged in the secret process of arming the non-Albanian population, under the auspices of the RPOs and the disarming of the Kosovo Albanian population.<sup>1073</sup> His “active involvement in this process” shows “he acted in concert with the members of the joint criminal enterprise to further the common purpose of maintaining control over Kosovo through various criminal means.”<sup>1074</sup>

315. These findings show that “the only reasonable inference is that Lukić had the intent to forcibly displace the Kosovo Albanian population, both within and without Kosovo, and thereby ensure continued control by the FRY and Serbian authorities over the province.”<sup>1075</sup>

**B. Lukić’s challenges to the Chamber findings regarding Lukić’s role and responsibility and that of the MUP Staff fail to meet the standard of review**

316. In Ground P, Lukić makes a paragraph-by-paragraph attack on each finding in the Judgement that underpins the Chamber’s conclusions about Lukić’s role in the joint criminal enterprise. This attack merely disagrees with the Chamber’s conclusions. Each of Lukić’s arguments in this ground is a challenge to the Chamber’s factual – not legal – findings. Lukić must prove 1) the error resulted in a miscarriage of justice;<sup>1076</sup> 2) no reasonable trier of fact could have reached the original decision”.<sup>1077</sup> This will only arise where “the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is ‘wholly erroneous’.”<sup>1078</sup> He fails to show that any of his alleged errors meet this test or would have had any impact on the Judgement, much less

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<sup>1070</sup> Judgement, Vol.III, para.1067.

<sup>1071</sup> Judgement, Vol.III, para.1067.

<sup>1072</sup> Judgement, Vol.III, para.58.

<sup>1073</sup> Judgement, Vol.III, para.1121.

<sup>1074</sup> Judgement, Vol.III, para.1121.

<sup>1075</sup> Judgement, Vol.III, para.1130.

<sup>1076</sup> Art. 25 of the Statute.

<sup>1077</sup> *Mrkšić* AJ, para.13.

<sup>1078</sup> *Kupreškić* AJ, para.30.

that they “occasioned a miscarriage of justice”.<sup>1079</sup> Most, if not all, of his arguments in Ground P are so deficient that the Appeals Chamber should dismiss them summarily.

317. The Prosecution addresses Lukić challenges by the themes in which he appears to have raised them. It first disposes of the arguments in these categories, then addresses those arguments that fall outside these general categories. Whilst not strictly following the structure of the appeal brief, as Lukić’s brief is generally repetitious, vague and incoherent, the Prosecution submits that its approach will better assist the Chamber in resolving the differences between the parties.

1. Lukić’s role and responsibilities – not his title or rank – established his criminal liability

318. Lukić’s argues that the Chamber wrongly “interpreted Appellant’s career”<sup>1080</sup> but merely asserts that the Trial Chamber failed to interpret evidence in a particular manner,<sup>1081</sup> without making clear its relevance.<sup>1082</sup> Lukić fails to show how, even if true, the alleged misinterpretation has any effect on the Judgement.<sup>1083</sup>

319. Further, his argument that he was not the highest-ranking police officer in Kosovo<sup>1084</sup> ignores other relevant findings,<sup>1085</sup> including the findings that “whatever his precise title, Lukić was in charge of the MUP Staff from June 1998 to July 1999”.<sup>1086</sup> Lukić’s arguments<sup>1087</sup> concerning his rank/position or the position of others such as Obrad Stevanović and Vlastimir Đorđević<sup>1088</sup> merely point to other evidence, repeat trial submissions or make general assertions which fail to demonstrate that this conclusion was one that no reasonable trier of fact could have reached. Further, the presence of higher-ranking MUP officers at the same meetings he attended,<sup>1089</sup> and the debate over whether he was the Head of the MUP Staff or simply its “manager”<sup>1090</sup> have no impact on these findings.

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<sup>1079</sup> Art.25 of the Statute.

<sup>1080</sup> Lukić Brief, para.552.

<sup>1081</sup> SD3.

<sup>1082</sup> SD8.

<sup>1083</sup> SD1.

<sup>1084</sup> Lukić Brief, para.554.

<sup>1085</sup> SD2.

<sup>1086</sup> Judgement, Vol.III, para.1050.

<sup>1087</sup> See Lukić Brief, paras. 557, 588, 598–600, 602–608, 657.

<sup>1088</sup> Lukić Brief, paras.553-563.

<sup>1089</sup> See Lukić Brief, paras.562, 570, 573, 578, 594, 598, 610.

<sup>1090</sup> See Lukić Brief, paras.587–588.

2. The Chamber's reliance on Đaković and Cvetić was reasonable

320. Lukić fails to demonstrate the Chamber “incompletely and inaccurately quoted” Đaković, of the VJ Priština Corps, as identifying Lukić “as the person in command of the MUP forces in Kosovo.”<sup>1091</sup> Đaković said he was “primarily involved with the PJPs and as for the engagement of these units I mostly dealt with him [Stevanović] with regard to that matter not with General Lukić”<sup>1092</sup> and that Stevanović “had specific authority to deploy and engage the PJP units”.<sup>1093</sup> However, he also testified that Lukić “was responsible for the work of the MUP staff”<sup>1094</sup> and that “no one else in the chain of command could issue orders to the MUP units apart from General Lukić.”<sup>1095</sup>

321. Đaković's testimony is corroborated by documentary evidence noted in the paragraphs following the Chamber's reference to Đaković's testimony.<sup>1096</sup> Lukić fails to show the Chamber unreasonably relied on Đaković.

322. None of Lukić's arguments<sup>1097</sup> that the Chamber failed to take account of Đaković's admissions on cross-examination rebut or cast doubt upon the way the Chamber relied on Đaković's testimony. Lukić fails to substantiate that the Chamber ignored these points of Đaković's testimony. Indeed, in its account of Đaković's evidence, the Chamber noted “[o]nce the Priština Corps Command issued decisions [...]”, illustrating that it did not “ignore” Lukić's first or second points. The Chamber is presumed to have considered all of the relevant evidence unless Lukić can show that it specifically ignored it.<sup>1098</sup>

323. Lukić's argument that the Chamber erred in citing Cvetić's testimony is similarly without merit.<sup>1099</sup> Though Cvetić referred in his testimony to the 15 May 1998 “Decision on formation of a Staff of the Ministry in Priština”<sup>1100</sup> rather than to the 16 June 1998 “Decision to establish a ministerial staff for the suppression of terrorism”,<sup>1101</sup> this fact is irrelevant.

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<sup>1091</sup> Lukić Brief, para.557.

<sup>1092</sup> T.26534-26535 (open).

<sup>1093</sup> T.26518 (open).

<sup>1094</sup> T.26535 (open).

<sup>1095</sup> T.26433-26434 (open).

<sup>1096</sup> See Judgement, Vol.III, paras.1025–1031.

<sup>1097</sup> Lukić Brief, para.567.

<sup>1098</sup> *Kvočka* AJ, para.23.

<sup>1099</sup> See Lukić Brief, para.558.

<sup>1100</sup> Exh.P1251(public).

<sup>1101</sup> Exh.P1505 (public).

These documents define similar tasks for the Staff.<sup>1102</sup> Even if Cvetić saw or knew about only the earlier document, he would still have an accurate picture of the tasks of the MUP Staff. Cvetić's knowledge is derived not only from his understanding of documents but also from his position as Head of the Kosovska Mitrovica SUP who worked in Kosovo during the time of the MUP Staff's existence.<sup>1103</sup>

324. Lukić fails to demonstrate the Chamber relied on this evidence in any of its determinations, or that such reliance would be unreasonable. Rather, it quoted this portion of Cvetić's testimony as evidence the Prosecution relied on.<sup>1104</sup>

325. Lukić fails to substantiate his claim that the Chamber ignored "contradictory evidence from Cvetić, that such plans [for anti-terrorism operations] were made by Joint Command both for VJ/MUP",<sup>1105</sup> or even that Cvetić's testimony is contradictory. The Chamber cited to the page of Cvetić's testimony containing the alleged error<sup>1106</sup> three times in the Judgement.<sup>1107</sup> Also, nothing in Cvetić's testimony contradicts his statement that the MUP Staff "adopted plans on the use of [MUP units] in countering terrorism".<sup>1108</sup> Rather, he testified that such plans were "*also* adopted by the Joint Command as of July 1998."<sup>1109</sup> Additionally, Lukić fails to show how this alleged error rendered the Chamber's reliance on Cvetić unreasonable.

3. The Chamber properly found that the MUP Staff played a central role in planning, organising, controlling, and directing the work of the various MUP units, as well as coordinating and planning joint operations with the VJ

326. The Chamber found that "in the period leading up to and during the NATO air campaign, the MUP Staff played a central role in planning, organizing, controlling, and

<sup>1102</sup> Exh.P1251 (public) in relevant part, reads "The task of the Staff is to plan, organize, guide and coordinate the work of the secretariats of the interior and the border police stations in the territory of Kosovo and Metohija in performing complex and important duties and assignments [...]" Exh.P1505 (public) in relevant part reads "The staff's task is to plan, organize and control the work and engagement of organizational units of the Ministry, and also sent and attached units, in suppressing terrorism in the AP of Kosovo and Metohija."

<sup>1103</sup> Judgement, Vol.I, paras.661, 720.

<sup>1104</sup> See Judgement, Vol.III, para.950.

<sup>1105</sup> Lukić Brief, para.565; see also Lukić Brief, para.564.

<sup>1106</sup> T.8075 (open).

<sup>1107</sup> Judgement, Vol.III, fns.2392, 2420, 2421.

<sup>1108</sup> T.8075 (open).

<sup>1109</sup> T.8075 (open) (emphasis added).

directing the work of the various MUP units active in Kosovo, as well as co-ordinating and planning joint operations with the VJ.”<sup>1110</sup>

327. Lukić’s myriad of challenges to these findings fall into three general categories. First, he alleges that the VJ, not the MUP Staff, planned all joint operations.<sup>1111</sup> Second, he alleges that the SUPs reported to the MUP HQ in Belgrade, and the MUP Staff in Priština only secondarily.<sup>1112</sup> Third, he argues that his attendance at high-level meetings does not prove he had any involvement in planning or commanding.<sup>1113</sup> None of these arguments has merit, as demonstrated below. In addition, throughout Lukić merely reargues his case, points to other evidence and makes unsupported assertions without explaining why no reasonable trial chamber could have reached the conclusions it did. As such, his arguments warrant summary dismissal.

(a) The Chamber reasonably concluded the MUP Staff had a central role in planning joint operations

328. Lukić’s argument that “[t]here is no evidence that would corroborate the conclusion that the MUP played a central role in coordinating/planning joint operations with the VJ<sup>1114</sup> ignores numerous relevant Chamber findings. As such, it should be summarily dismissed.<sup>1115</sup>

329. Specifically, the Chamber found based on witness testimony that before each joint operation, Priština Corps and MUP Staff officers from the MUP Staff would hold “co-ordination meetings” at the MUP Staff in which the MUP Staff “took part in the drafting of plans for joint operations by indicating, *inter alia*, what units would be used during the operations.”<sup>1116</sup> This role on the part of the MUP Staff was “essential to the process of planning and co-ordinating operations”.<sup>1117</sup>

<sup>1110</sup> Judgement, Vol.III, para.1012.

<sup>1111</sup> See Lukić Brief, paras.566–568, 589-590, 601.

<sup>1112</sup> See Lukić Brief, paras.569–571.

<sup>1113</sup> See Lukić Brief, paras.589–597.

<sup>1114</sup> Lukić Brief, para.601.

<sup>1115</sup> SD2.

<sup>1116</sup> Judgement, Vol.I, para.1026; Vol.III, para.973.

<sup>1117</sup> Judgement, Vol.I, para.1026.

(b) The Chamber properly found that the MUP Staff planned/organized, managed RJB units

330. Lukić’s argument that the Chamber contradicted itself in concluding that “the Staff’s role was to plan/organize/manage RJB units” when it also found in the same paragraph that “chains of reporting and command remained intact”<sup>1118</sup> misrepresents the Chamber’s finding and warrants summary dismissal.<sup>1119</sup> The full sentence from the Judgement reads: “Other documents in evidence indicate that the MUP Staff fulfilled this role in practice with regard to the RJB units, without disturbing the commanding functions of specific unit commanders and their normal chain of reporting.”<sup>1120</sup> Rather than contradicting itself, the Chamber offered a fuller explanation. Lukić fails to show how this was unreasonable.

331. As to the Staff’s role in the exchange of information between the RJB and the RDB, contrary to Lukić’s argument,<sup>1121</sup> the evidence shows that Lukić instructed that he be notified of any problems regarding the exchange of information between the RDB and the RJB.<sup>1122</sup> This shows the MUP Staff had a role to play in this area. That Cvetic complained about this exchange of information does not detract from this finding. Rather, it strengthens it. It shows that Lukić was both engaged in the problem of RDB-RJB communication and that those present at the meeting recognized his authority in this area.

332. Lukić fails to explain how the Chamber erred in finding that the MUP Staff had issued an order to all the SUPs to “commence planning actions to crush the terrorist groups that remain in their respective zones of responsibility.”<sup>1123</sup> Contrary to his argument,<sup>1124</sup> the Chamber noted Stefanović’s testimony rather than ignored it.<sup>1125</sup> Lukić fails to show the Chamber was unreasonable to take the word of Lazarević, Commander of the Priština Corps, over that of Stefanović, the commander of the 52<sup>nd</sup> Mixed Artillery Brigade, on the question of orders from the MUP Staff.

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<sup>1118</sup> Lukić Brief, para.572.

<sup>1119</sup> SD2.

<sup>1120</sup> Judgement, Vol.III, para.983.

<sup>1121</sup> Lukić Brief, para.579.

<sup>1122</sup> Judgement, Vol.III, para.992.

<sup>1123</sup> Judgement, Vol.III, para.1002.

<sup>1124</sup> Lukić Brief, paras.581–582.

<sup>1125</sup> Judgement, Vol.III, para.1003.

333. Lukić also misrepresents the evidence by citing to the transcript selectively. Though Stevanović does say, as Lukić asserts,<sup>1126</sup> that he never personally saw an order from the MUP Staff to the SUPs to plan “anti-terrorist actions”, he did not question the existence of such an order. In full, the transcript reads:

Q. [...] You testified in direct about Exhibit 5D476, about an order supposedly sent from the MUP staff with which the secretariats of internal affairs, or SUPs, were ordered to plan anti-terrorist actions with specific VJ—with specific Pristina Corps elements. Do you, sir, or did you have any occasion to physically see with your own eyes any order from the MUP staff for such a thing to take place?

A. No, I personally didn't see such an order, but information came -- the information came from MUP in any case. Thousands and thousands of orders and plans were drafted, so you cannot expect one man to do all of that. This has been—this is something that was done consistently. It's not just one—a one-off thing. A plan is what should be expected in the coming period, what to be prepared for in order to be able to plan.<sup>1127</sup>

334. Lukić merely seeks to substitute his own interpretation of this evidence for that the Chamber but fails to show error. His argument warrants summary dismissal.<sup>1128</sup>

335. In arguing that the missing word “and” in exhibit 5D1289 shows that “these measures [to prevent paramilitary formations and individuals from committing acts of violence] were already undertaken, and need to be continued with”,<sup>1129</sup> Lukić seeks to substitute his own evaluation of the evidence without showing an error by the Chamber. Even accepting Lukić's argument that the word “and” is missing from 5D1289 and that this means, as he suggests, that the acts were already undertaken and needed to be continued, this would still not change the essential meaning the Chamber attaches to the document, nor diminish Lukić's role. It would still show that Lukić exerted authority over the SUPs and PJP detachments in Kosovo.

336. Lukić also fails to show an error by the Chamber in attributing to him a 5 May 1999 dispatch bearing his name.<sup>1130</sup> As the Chamber found with regard to another dispatch issued under Lukić's name the same day, “no suggestion was made that it was unauthorized”.<sup>1131</sup>

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<sup>1126</sup> Lukić Brief, para.581.  
<sup>1127</sup> T.21770-21771 (open).  
<sup>1128</sup> SD3.  
<sup>1129</sup> Lukić Brief, para.583.  
<sup>1130</sup> Lukić Brief, para.583.  
<sup>1131</sup> Judgement, Vol.III, para.1005.

337. More generally, Lukić fails to substantiate either that the document has been translated incorrectly or that the Chamber was unreasonable in its interpretation of the document.

338. Lukić also fails to substantiate his argument that the Chamber misinterpreted the 6 May 1999 dispatch (Exhibit 6D874).<sup>1132</sup> Rather, his assertion that the Chamber should have found that the SUP chiefs, not the MUP Staff, were responsible for the “realization of the envisaged activities”<sup>1133</sup> seeks to have the Appeals Chamber substitute his interpretation of the evidence for that of the Trial Chamber without explaining how the Chamber’s conclusion was one that no reasonable trier of fact court have reached.

339. Lukić’s argument<sup>1134</sup> that the Chamber, in finding that Stevanović “instructed the heads of the SUPs to focus on crime prevention and to organize ‘anti-terrorist’ actions and carry them out following the approval of the MUP Staff”,<sup>1135</sup> “totally disregarded Mijatović’s statement that Stevanović was [the] person who would approve the plan, with an address at the Staff”<sup>1136</sup> misrepresents Mijatović’s testimony. He actually said he didn’t know whether these actions could not go ahead without the approval of the staff, a claim the Chamber treated with incredulity.<sup>1137</sup>

340. In arguing that the Chamber misquoted Živaljević’s telegram of 26 May 1999 and that “the essence of this dispatch is informing about unit losses and seeking help in treatment of civilians, in which there are about 150 ‘fighters’”<sup>1138</sup> Lukić seeks to have the Appeals Chamber substitute his interpretation of this evidence for that of the Chamber without specifying how the Chamber was unreasonable in reaching its conclusion regarding this telegram. This document was sent under Lukić’s name; as with other documents sent under his name but not signed by him, no suggestion was made that it was unauthorized.<sup>1139</sup> Lukić fails to show the Chamber was unreasonable in attributing it to him.<sup>1140</sup>

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<sup>1132</sup> Lukić Brief, para.584.

<sup>1133</sup> Lukić Brief, para.584.

<sup>1134</sup> Lukić Brief, para.585.

<sup>1135</sup> Judgement, Vol.III, para.1007.

<sup>1136</sup> Lukić Brief, para.585.

<sup>1137</sup> T.22304–22305 (open)

<sup>1138</sup> Lukić Brief, para.586.

<sup>1139</sup> Judgement, Vol.III, para.1005.

<sup>1140</sup> Lukić Brief, para.586.

(c) Lukić had significant authority over the SUPs and PJP in Kosovo in 1999

341. The Chamber found that Lukić “had significant authority over the SUPs and PJP detachments in Kosovo”<sup>1141</sup> in 1999.<sup>1142</sup> None of Lukić’s challenges to this finding have merit.

342. Lukić’s argument that the Chamber “ignored the presence of Stojiljković, Stevanović and Ilić” at the meeting of 21 December 1998 and failed to “establish that Stevanović was issuing tasks to the SUP Chiefs and PJP Commander, directly, without Lukić’s presence”<sup>1143</sup> should be dismissed as irrelevant. The presence of Stojiljković, Stevanović and Ilić is irrelevant to the Chamber’s findings as to the meeting of 21 December 1998: that “the SUP Chiefs, among them Petrić, explained that they had drafted plans to combat terrorism and that these plans were mostly implemented”, plans that Lukić had ordered the SUPs to prepare on 2 December 1998.<sup>1144</sup>

343. Lukić fails to show that the Chamber “ignored the presence of Stojiljković, Stevanović and Ilić on 21.12.1998”. Rather, it noted that Stevanović was present.<sup>1145</sup>

344. Further, Lukić fails to explain in his argument how the fact that he reminded the SUPs and PJP detachments in Kosovo to ensure correct behaviour towards KVM members rather than “directing them”<sup>1146</sup> shows that the Chamber erred in concluding that he “had significant authority over the SUPs and PJP detachments in Kosovo”.<sup>1147</sup>

345. Lukić fails to substantiate his claim that the Chamber erred in reaching its conclusions regarding the meetings of 2 December and 27 November 1998 in Belgrade, that the Chamber “ignored the full context of [the meetings of 2 December 1998 and of 27 November 1998], which is police activity and compliance of October agreement.”<sup>1148</sup> His assertion that the Chamber “ignored the full essence of the [plan for the prevention of terrorism] which is classically preventive, and not any offensive operation Plan, which could be seen from the

<sup>1141</sup> Judgement, Vol.III, para.995.

<sup>1142</sup> Judgement, Vol.III, para.996.

<sup>1143</sup> Lukić Brief, para.578.

<sup>1144</sup> Judgement, Vol.III, para.995. *See also* paras.990–991.

<sup>1145</sup> Judgement, Vol.III, para.994 (“Stevanović also informed those present of the forthcoming tasks.”).

<sup>1146</sup> Lukić Brief, para.580.

<sup>1147</sup> Judgement, Vol.III, para.995, 996.

<sup>1148</sup> Lukić Brief, para.577.

minutes”<sup>1149</sup> ignores that the minutes also indicate that he explained that “[t]he essence of the meeting [in Belgrade] was to continue execution of anti-terrorist actions aimed at suppressing terrorism in Kosovo, and that in this regard, the police will be more offensive in taking measures in the newly-arisen situation.”<sup>1150</sup> His argument should be summarily dismissed.<sup>1151</sup>

(d) The Chamber properly concluded SUPs reported regularly to the MUP Staff.

346. The SUPs regularly reported to the MUP Staff on a wide range of security-related topics.<sup>1152</sup> Additionally, “in actions that involved more than the units pertaining to one SUP, the commanders of the relevant units reported back to the MUP Staff” and “commanders of units participating in operations reported to the MUP Staff on the activity undertaken.”<sup>1153</sup>

347. Lukić advances several challenges in this regard.<sup>1154</sup> He claims the SUPs actually only reported to the MUP headquarters in Belgrade and only sent reports to the MUP Staff for its information.<sup>1155</sup> He says the PJP only reported to the MUP Staff because the PJP commander, Stevanović, “was present at/used the Staff premises in 1999”.<sup>1156</sup> He also says the Chamber “forgot to analyze Živaljević’s testimony”, saying Živaljević testified that “he did not report to anyone except in cases of medical assistance or killed policeman.”<sup>1157</sup>

348. Lukić fails to substantiate his claim that the Chamber “took evidence out of context”.<sup>1158</sup> First, the Chamber did note that Adamović “explained that the SUPs reported to the MUP Staff in addition to the MUP headquarters in Belgrade, as the MUP did not have its representatives on the ground and had to rely on the SUPS for its information.”<sup>1159</sup>

349. Second, Lukić fails to explain how his characterisation of the evidence<sup>1160</sup> is different than that of the Chamber. He does not dispute that the SUPs reported to the MUP Staff, only that they also reported to the MUP Headquarters.<sup>1161</sup> This is not in contradiction to the

<sup>1149</sup> Lukić Brief, para.577.

<sup>1150</sup> Judgement, Vol.III, para.990.

<sup>1151</sup> SD3, SD2.

<sup>1152</sup> Judgement, Vol.III, para.976.

<sup>1153</sup> Judgement, Vol.III, paras.981, 982.

<sup>1154</sup> Lukić Brief, paras.569–571.

<sup>1155</sup> Lukić Brief, para.569.

<sup>1156</sup> Lukić Brief, para.570.

<sup>1157</sup> Lukić Brief, para.570.

<sup>1158</sup> Lukić Brief, para.569.

<sup>1159</sup> Judgement, Vol.III, para.977.

<sup>1160</sup> See also Lukić Brief, paras.619-621.

<sup>1161</sup> Lukić Brief, para.569.

findings of the Chamber. Lukić fails to demonstrate any impact on the outcome or to explain how any of the alleged errors regarding PJP reporting, its reliance on Cvetic's testimony or its alleged failure to take into account the testimony of Živaljević<sup>1162</sup> would have had any effect on the outcome.

350. Contrary to Lukić's present argument, Lukić said in his interview that, where an operation is conducted over more than one SUP, reports of the operational commander "would mostly be submitted to the Staff [...]."<sup>1163</sup> He did not say that the PJP only reported back to the MUP Staff because of the presence of Stevanović. The Chamber reasonably relied on Lukić's account.

351. Lukić merely asserts the Chamber "forgot to analyze Živaljević's testimony." However, the Chamber is presumed to have analysed all of the evidence and need not cite to each and every piece of evidence in explaining its conclusion.<sup>1164</sup> Lukić fails to explain how this testimony, even if true, shows the Chamber's findings regarding MUP reporting were those no reasonable trial chamber could have reached on all the evidence.

352. As to Lukić's allegation that Živaljević "did not report to anyone except in cases of medical assistance or killed policemen", Lukić misrepresents the evidence. Živaljević testified that reporting was sporadic because the NATO bombing disrupted communications in Kosovo in 1999. He did not testify, as Lukić now argues, that he didn't report to the MUP Staff because he wasn't supposed to.<sup>1165</sup>

#### 4. The Chamber properly assessed Lukić's role and authority

##### (a) Lukić chaired meetings

353. In challenging<sup>1166</sup> the Chamber's finding that he "chaired most of the meetings held at the MUP Staff, including those attended by high level figures".<sup>1167</sup> Lukić merely seeks to substitute his own evaluation of the evidence for that of the Trial Chamber.<sup>1168</sup> Lukić also fails to demonstrate that the Chamber's finding was unreasonable.

<sup>1162</sup> Lukić Brief, para.570.

<sup>1163</sup> Exh.P948, p.57, (public).

<sup>1164</sup> *Kvočka* AJ, para.23.

<sup>1165</sup> T.24877 (open).

<sup>1166</sup> Lukić Brief, paras.598, 574, 576.

<sup>1167</sup> Judgement, Vol.III, para.1050.

<sup>1168</sup> SD3.

354. Specifically, Lukić fails to demonstrate that the Chamber erred in finding that he “chaired” these meetings when it had found that he “proposed the agenda”, “welcomed those present” and “greeted the participants” before providing, before any other participant spoke, a full briefing.<sup>1169</sup>

355. Lukić’s arguments that he would not have “proposed” the agenda if he were chairing the meeting and that his role at the meeting was not one of substance but rather dictated by “protocol” are mere attempts to substitute his interpretation of the evidence for that of the Chamber.<sup>1170</sup>

(b) Lukić issued numerous dispatches on behalf of the MUP Staff, containing tasks and instructions for the SUPs and PJP and SAJ units

356. Lukić’s argument that the MUP dispatches sent under his name in 1998 and 1999 were not all signed by him<sup>1171</sup> fails to demonstrate error. Each dispatch was sent from the MUP Staff and each included Sreten Lukić’s name typed on the bottom.<sup>1172</sup> As the Chamber noted with regard to a 6 May 1999 dispatch “even if the dispatch was not sent by Lukić, it was, nevertheless, sent from the MUP Staff in his name; no suggestion was made that it was unauthorized.”<sup>1173</sup> Considering the frequency and chronological range of the dispatches and the fact that the Chamber heard no evidence indicating their issuance was unauthorised, Lukić fails to demonstrate that the Chamber was unreasonable in attributing these dispatches to Lukić.

(c) The Chamber gave the report and testimony of Professor Simonović their proper weight.

357. See Prosecution Response to Ground K, above.

<sup>1169</sup> Judgement, Vol.III, para.1050.

<sup>1170</sup> Lukić Brief, para.598.

<sup>1171</sup> Lukić Brief, paras.599–600.

<sup>1172</sup> See Judgement, Vol.III, paras.984, 987–988.

<sup>1173</sup> Judgement, Vol.III, para.1005.

(d) The Chamber properly concluded that Lukić was a “*de facto*” commander of MUP forces in Kosovo

358. None of Lukić’s arguments<sup>1174</sup> challenging the finding that he was “the *de facto* commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999”<sup>1175</sup> show this is a conclusion that no reasonable trier of fact could have reached. His argument that the Chamber’s conclusion that he was *de facto* commander of the MUP forces is “solely based on Lukić’s position as Head of Staff”<sup>1176</sup> ignores these other relevant findings.

359. Contrary to his argument, the Chamber’s finding that “Lukić did not replace Stevanović, Đorđević or Ilić, the heads of the SUPs, or the commanders of PJP or SAJ units”<sup>1177</sup> does not contradict its finding that he was “a *de facto* commander” of MUP forces in Kosovo. His argument misrepresents the Chamber’s actual finding, which specified that he was “the *de facto* commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999”<sup>1178</sup> and that:

Lukić did not replace Stevanović, Đorđević, or Ilić, the heads of the SUPs or the commanders of the PJP or SAJ units, but rather was the bridge between those commanders and the policy and plans set in Belgrade, as well as being directly involved in the planning process and in ensuring day-to-day operations were conducted by the various MUP forces in accordance with those plans.<sup>1179</sup>

Nothing in that finding suggests that he exerted control over these troops exclusive of others in the chain of command higher than Lukić, including the Minister of the Interior, the Head of the RJB or the President of Serbia. Nor need it have. The Chamber’s findings show that he “shared the intent to ensure continued control by the FRY and Serbian authorities over Kosovo through a series of forcible displacement of the Kosovo Albanian population”<sup>1180</sup> and “was an important member of this joint criminal enterprise”.<sup>1181</sup>

360. Also, contrary to Lukić’s argument that the Chamber “gave up with the ‘*de facto* commander’ and assigned a role of the ‘bridge’”,<sup>1182</sup> the Chamber’s findings<sup>1183</sup> show that it

<sup>1174</sup> Lukić Brief, paras.602–605.

<sup>1175</sup> Judgement, Vol.III, para.1131.

<sup>1176</sup> Lukić Brief, para.602.

<sup>1177</sup> Lukić Brief, para.604.

<sup>1178</sup> Judgement, Vol.III, para.1131.

<sup>1179</sup> Judgement, Vol.III, para.1051.

<sup>1180</sup> Judgement, Vol.III, para.1117.

<sup>1181</sup> Judgement, Vol.III, para.1131.

<sup>1182</sup> Lukić Brief, para.606.

understood Lukić's position in the chain of command: he controlled the work of those beneath him while taking orders and direction from his superiors. Lukić fails to demonstrate any logical inconsistency in these findings.

(e) The Chamber's findings regarding the lack of MUP combat orders in evidence are reasonable.

361. Lukić fails to substantiate his claim that "[t]he only reason why there are no police orders in evidence is that no such orders were ever issued".<sup>1184</sup> He also ignores the Chamber's findings regarding joint operations in which it found that "[w]hile little documentary evidence has been presented showing that the MUP issued orders [...] the Chamber considers that the MUP did issue such orders, as the map extracts provided by the VJ did not contain specific instructions as to how the various actions or attacks were to be carried out in practice."<sup>1185</sup>

362. Further, Lukić fails to demonstrate the unreasonableness of the Chamber's finding that "[w]hile there are no combat orders in evidence giving specific deployment taskings to MUP units, there were differences between the organization and structure of the MUP and that of the VJ, as emphasized by the Lukić Defence."<sup>1186</sup> The Chamber noted earlier in the Judgement that, for instance, there were differences between the MUP command structure and the VJ command structure such that, in the MUP, an officer could be commanded by another officer of a lower rank.<sup>1187</sup>

(f) Lukić fails to demonstrate error in the Chamber's reliance on Lukić's letter of promotion

363. In support of its finding that Lukić was a *de facto* commander of the MUP forces in Kosovo, the Chamber noted that Stojiljković, the Minister of the Interior, wrote in a letter recommending Lukić's promotion that Lukić "has excelled in successful command and control of the MUP units engaged in the prevention of terrorism in Kosovo and Methohija."<sup>1188</sup> In his challenge<sup>1189</sup> to the Chamber's reliance on this letter, he fails to explain

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<sup>1183</sup> Judgement, Vol.III, para.1131.

<sup>1184</sup> Lukić Brief, para.607.

<sup>1185</sup> Judgement, Vol.I, para.1029.

<sup>1186</sup> Judgement, Vol.III, para.1051.

<sup>1187</sup> Judgement, Vol.III, para.944.

<sup>1188</sup> Judgement, Vol.III, para.1051.

<sup>1189</sup> Lukić Brief, para.608.

how, if the drafter of this document relied on “formulaic language”, it also included unique mention of Lukić’s specific role in Kosovo.

364. The Chamber should summarily dismiss this argument as a mere assertion unsupported by any evidence<sup>1190</sup> or a mere assertion that the Trial Chamber failed to interpret evidence in a particular manner.<sup>1191</sup>

5. Lukić acted as a bridge between the policy makers in Belgrade and those in Kosovo

365. The Chamber found that Lukić “was also the bridge between the police-planners in Belgrade, such as Milošević, Stojiljković, and Đorđević, and those on the ground in Kosovo.”<sup>1192</sup> The Chamber found that this showed Lukić “was an important member of this joint criminal enterprise” who made a significant contribution to it.<sup>1193</sup>

366. Lukić’s arguments ignore the Chamber’s findings that Lukić sent numerous reports from the MUP Staff to the Minister, per his mandate as Head of the MUP Staff,<sup>1194</sup> and that the secretariats also sent reports to the MUP Staff.<sup>1195</sup> The Chamber did not find that the regular methods of reporting were disrupted or that the MUP Staff became the filter for information for MUP reports originating in Kosovo. None of Lukić’s arguments reveal errors justifying the Appeals Chamber’s intervention.

(a) Lukić fails to substantiate his claim that he could not have been the bridge between policy planners and the PJP

367. Lukić fails to substantiate his argument that he was not the bridge between Belgrade and the PJP commanders because Stevanović attended all the meetings in Belgrade.<sup>1196</sup> Absent citations to the record, the Prosecution can only guess at which evidence he relies on to make this argument.

368. In addition, this argument ignores the Chamber’s findings that the MUP Staff, with Lukić as its Head, “had significant authority over the [...] PJP detachments in Kosovo, in

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<sup>1190</sup> SD4.

<sup>1191</sup> SD3.

<sup>1192</sup> Judgement, Vol.III, para.1131. *See also* Judgement, Vol.III, para.1051 (“Lukić did not replace Stevanović, Đorđević, or Ilić, the heads of the SUPs, or the commanders of PJP or SAJ units, but rather was the bridge between those commanders and the policy and plans set in Belgrade [...]”).

<sup>1193</sup> Judgement, Vol.III, para.1131.

<sup>1194</sup> Judgement, Vol.III, fns.2639–2641.

<sup>1195</sup> Judgement, Vol.III, para.1059.

<sup>1196</sup> Lukić Brief, para.610.

terms of providing broad directions to them, requiring information from them, and ensuring that their activities were in line with the overall policy or plan of the MUP.”<sup>1197</sup> The MUP Staff “fulfilled a broader role” with regard to the PJP, “directing and controlling the activities of [its] commanders and the units under them, and ensuring that they acted in accordance with overarching policies and plans.”<sup>1198</sup> Stevanović’s command of the PJP forces was irrelevant to the question of Lukić’s role as a bridge between the “policy-planners in Belgrade” and the forces on the ground.

(b) Lukić acted as a bridge between Belgrade and Kosovo even though he did not participate in developing the Plan for Combating Terrorism

369. Lukić’s argument that he was not involved in the formation of the Plan for Combatting Terrorism and thus could not have acted as a bridge between policy planners in Belgrade and those in Kosovo<sup>1199</sup> should be summarily dismissed because it ignores other relevant findings of the Chamber.<sup>1200</sup>

370. Regardless of whether Lukić was involved in developing the Plan in the summer of 1998, the record contained much additional evidence to support the Chamber’s finding that Lukić “was also the bridge between the policy-planners in Belgrade ... and those on the ground in Kosovo.”<sup>1201</sup> In particular, the Chamber found:

- a) Several witnesses testified that the SUPs regularly reported to the MUP Staff.<sup>1202</sup>
- b) The mandate of the MUP Staff was to “plan, organise and manage” the work of the “organisational units” of the MUP.<sup>1203</sup>
- c) During some meetings of the MUP Staff, Lukić would brief the participants on matters decided upon in meetings in Belgrade. On 2 December 1998, for example, Lukić “briefed those present about a prior meeting that he had attended in Belgrade on 27 November 1998.”<sup>1204</sup>

<sup>1197</sup> Judgement, Vol.III, para.995.

<sup>1198</sup> Judgement, Vol.III, para.1012.

<sup>1199</sup> Lukić Brief, para.611.

<sup>1200</sup> SD2.

<sup>1201</sup> Judgement, Vol.III, para.1131.

<sup>1202</sup> Judgement, Vol.III, para.976.

<sup>1203</sup> Judgement, Vol.III, para.983.

<sup>1204</sup> Judgement, Vol.III, para.990.

- d) On 6 May 1999, Lukić sent a copy of an article from Politika, dated 5 May, to the chiefs of the Kosovo SUPs and the PJP commanders in Kosovo. He instructed them to familiarize themselves with the contents of the article, which related to a meeting in Belgrade involving Milošević and various high-ranking officials, including Lukić himself.<sup>1205</sup>
- e) The MUP Staff received various reports from the SUPs, collated them, and sent them to Belgrade, showing that Lukić held an instrumental position in coordinating the information exchange between the MUP forces in Kosovo and the MUP headquarters in Belgrade.<sup>1206</sup>
- f) When high-level figures such as the President of Serbia and the Minister of the Interior, the heads of the RJB and RDB, Šainović and the Head of the PJP units were in Kosovo, Lukić chaired meetings with them and often gave briefings on “measures and activities of police units according to the Plan” and “the current security situation in Kosovo and Metohija and informed them on the readiness of police units to continue to carry out their duties and tasks.”<sup>1207</sup>

371. Lukić also fails to explain the relevance of his assertion that no plans were prepared or adopted in Belgrade in 1999.<sup>1208</sup> This argument should be summarily dismissed.<sup>1209</sup> Further, he fails to explain how his assertion<sup>1210</sup> about Lukić’s role in the meeting of 29 October 1998, even if true, demonstrates that the Chamber’s finding that Lukić acted as a bridge between Belgrade and Pristina was one that no reasonable Chamber could have made.

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<sup>1205</sup> Judgement, Vol.III, para.1005.

<sup>1206</sup> Judgement, Vol.III, para.1059.

<sup>1207</sup> Judgement, Vol.III, para.1050.

<sup>1208</sup> Lukić Brief, para.612.

<sup>1209</sup> SD8.

<sup>1210</sup> Lukić Brief, para.612 (“The Chamber itself denied that Lukić’s role at meetings in Belgrade was central when it analyzed his role in the meeting held on 29.10.1998 and found that ‘Lukić briefed participants about positioning of MUP forces in Kosovo, in light of the Holbrooke-Milošević Agreement.’”).

(c) Lukić fails to explain how “[t]he Chamber misquoted the Decision to Establish the MUP Staff”

372. In arguing that the Chamber allegedly “misquoted the Decision to establish the MUP Staff,”<sup>1211</sup> Lukić fails to cite where in the Judgement the Chamber “misquoted” this decision. It should be summarily dismissed for being vague.<sup>1212</sup>

(d) Lukić fails to demonstrate any “incorrect conclusions” regarding his role in reporting to the MUP

373. Lukić fails to substantiate his argument that “[t]he Chamber drew incorrect conclusions on Lukić’s role in the reporting process within the MUP”<sup>1213</sup> without any citations to the Judgement. He fails to say where or how the Chamber drew these incorrect conclusions, rendering his argument impossible to answer.

374. For the Prosecution’s response to arguments regarding the Chamber’s reliance on the Simonović expert report,<sup>1214</sup> see Prosecution Response, Ground K, above.<sup>1215</sup>

(e) The Chamber properly attributed MUP Staff reports to Lukić

375. Lukić’s argument that “none of the numerous Overviews were signed by Lukić”<sup>1216</sup> mischaracterizes the Chamber’s finding. The Chamber found that “[a]ll of these reports bear Sreten Lukić’s typed name as a signature”,<sup>1217</sup> not, as Lukić argues “that all of the reports contained Lukić’s typewritten name and signature.”<sup>1218</sup>

376. In any event, Lukić fails to explain how this finding has any effect on the outcome of the Judgement. He fails, for example, to show that any of these reports were unauthorized or so inaccurate as to lead the Chamber to an incorrect conclusion. He fails to show the Chamber was unreasonable in attributing these reports to Lukić.

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<sup>1211</sup> Lukić Brief, para.614.

<sup>1212</sup> SD14.

<sup>1213</sup> Lukić Brief, para.615.

<sup>1214</sup> Lukić Brief, paras.616, 618.

<sup>1215</sup> See section XII. above.

<sup>1216</sup> Lukić Brief, para.626.

<sup>1217</sup> Judgement, Vol.III, para.1053.

<sup>1218</sup> Lukić Brief, para.626.

(f) Lukić fails to demonstrate error in the Chamber’s findings regarding reports of the number of refugees leaving for Albania

377. Lukić argues that the Chamber “misquoted”<sup>1219</sup> evidence that “from 2 April 1999 [the reports from the MUP Staff to the Minister of Interior] began addressing the numbers of ‘persons from the Albanian and other national communities who fled’ Kosovo” following a 1 April 1999 order by Lukić to the SUPs to include this statistic in their reports to the MUP Staff.<sup>1220</sup> He alleges that the only reason these figures were not included in the 28 and 29 March 1999 reports was because the MUP building was bombed.<sup>1221</sup> In making these arguments, Lukić fails to show how these facts, if true, would have had any impact on the Judgement.

(g) Lukić fails to demonstrate any error in the Chamber’s interpretation of evidence relating to the 28 July 1998 meeting.

378. Lukić fails to explain how the Chamber “mis-identif[ying] the manner of presenting information” regarding the 28 July 1998 meeting<sup>1222</sup> and “ignor[ing] that SUP Chiefs at this meeting shared their information/evaluations/conclusions on equal footing with Lukić”<sup>1223</sup> reveals error in the Chamber’s conclusion that the meeting demonstrates that “Lukić, as Head of the MUP Staff, reported to the Ministry of the Interior.”<sup>1224</sup> The evidence shows that Lukić reported to the Minister of the Interior at the meeting; the fact that the SUP Chiefs also reported to the MUP Minister at the meeting<sup>1225</sup> does not undermine the Chamber’s conclusion. Lukić fails to explain the relevance of the fact that the meeting was held in Priština/Prishtina rather than in Belgrade.<sup>1226</sup>

379. None of the errors Lukić alleges the Chamber made in “interpret[ing]” the meeting “call into question the Chamber’s appreciation of the evidence”.<sup>1227</sup> Though, as Lukić notes,<sup>1228</sup> Marković was not Head of the RDB until 5 November 1998,<sup>1229</sup> and that the heads

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<sup>1219</sup> Lukić Brief, para.627.

<sup>1220</sup> Judgement, Vol.III, para.1054.

<sup>1221</sup> Lukić Brief, para.628.

<sup>1222</sup> Lukić Brief, para.632.

<sup>1223</sup> Lukić Brief, para.633.

<sup>1224</sup> Judgement, Vol.III, para.1058.

<sup>1225</sup> Lukić Brief, para.633.

<sup>1226</sup> Lukić Brief, para.632.

<sup>1227</sup> Lukić Brief, para.574.

<sup>1228</sup> Lukić Brief, para.574.

<sup>1229</sup> Exh.1D437 (public).

of three Kosovo SUPs were present rather than all seven, Lukić fails to explain how this allegedly caused the Chamber to fail to “appreciate” the evidence.

6. The Chamber reasonably found that Lukić was “directly involved in the planning process”

380. Lukić fails to show that no reasonable trial chamber could have reached the conclusion that he was “directly involved in the planning process”<sup>1230</sup> notwithstanding the evidence of lower-level VJ staff officers that he did not meet with them personally.<sup>1231</sup> These arguments should also be summarily dismissed because they ignore relevant factual findings<sup>1232</sup> and are mere assertions that the Chamber must have failed to consider relevant evidence.<sup>1233</sup>

381. Lukić’s argument that neither Đaković nor Stefanović, VJ Priština Corps staff,<sup>1234</sup> dealt with Lukić directly paints an incomplete picture of the Chamber’s findings. The Chamber found that before each joint operation in 1998 and 1999, Đaković and Stefanović met with their counterparts on the MUP Staff, including Adamović.<sup>1235</sup> It also found that Adamović met with his counterparts in the VJ at the express command of Lukić.<sup>1236</sup>

7. Lukić’s attendance at key meetings prove elements of his intent and his contribution to the JCE

382. Lukić’s attendance at—and participation in—key meetings with high-level FRY and Republican officials showed he “exercised considerable *de facto* powers”<sup>1237</sup> and is evidence of both his intent<sup>1238</sup> and contribution to the JCE.<sup>1239</sup> Lukić fails to show how no reasonable trial chamber could have reached its conclusion concerning his attendance at high-level meetings. In his arguments,<sup>1240</sup> Lukić merely reargues his points from trial or points to other evidence without showing how the Chamber erred in reaching its conclusions.

<sup>1230</sup> Judgement, Vol.III, para.1131.

<sup>1231</sup> Lukić Brief, para.613.

<sup>1232</sup> SD2.

<sup>1233</sup> SD6.

<sup>1234</sup> Milan Đaković was Assistant Chief of Staff for Operations and Training in the Priština Corps Command (Judgement, Vol.I, para.587). Radojko Stefanović was Chief of the Department for Operations and Training with the Command of the Priština Corps (Judgement, Vol.I, para.512).

<sup>1235</sup> Judgement, Vol.I, para.1033 (“Radojko Stefanović, Đaković’s successor as of January 1999, testified that not a single joint operation in 1999 was carried out without co-ordination meetings being organised beforehand.”). *See also* Judgement, Vol.I, paras.1026-1027; Vol.III, para.973.

<sup>1236</sup> Judgement, Vol.III, para.1033.

<sup>1237</sup> Judgement, Vol.III, para.1118.

<sup>1238</sup> Judgement, Vol.III, para.1119.

<sup>1239</sup> Judgement, Vol.III, para.1131.

<sup>1240</sup> Lukić Brief, paras.589-597.

383. The Chamber relied on the testimony of Đaković to support its finding that Lukić attended the meeting on 30 May 1998.<sup>1241</sup> In his argument that the Chamber erred in this finding,<sup>1242</sup> Lukić fails explain how this finding was unreasonable and he fails to substantiate his claim that he was not at that meeting. In addition, Lukić fails to explain how the fact that he had been appointed Head of the MUP Staff by order of 11 June 1998<sup>1243</sup> reveals that the Chamber's finding concerning his attendance at the 30 May 1998 meeting was unreasonable. Lukić had previous experience with policing in Kosovo, having served as head of the staff headquarters in Kosovo from October 1990, until the end of February 1991.<sup>1244</sup>

384. Further, Lukić's argument that "a plan for fighting terrorism" was not discussed at the meeting<sup>1245</sup> mischaracterizes the evidence as the Chamber also relied on Pavković's interview<sup>1246</sup> in addition to relying on Đaković to support its conclusion that a plan for fighting terrorism was discussed on 30 May 1998.

385. Lukić's argument that the Chamber drew disparate conclusions<sup>1247</sup> between his involvement in high-level meetings and those of Milutinović mischaracterizes the evidence and ignores relevant Chamber findings.<sup>1248</sup>

386. The evidence shows Lukić actively participated in the meetings he attended, giving briefings<sup>1249</sup> and chairing meetings.<sup>1250</sup> Based on these findings, Lukić fails to show the Chamber's conclusions were unreasonable.

387. Lukić argues<sup>1251</sup> for a different interpretation of the evidence on Joint Command without showing any substantive difference in the characterisation of these meetings and thus fails to show any impact on the Judgement.

388. The Chamber reasonably concluded that Lukić was involved in the co-ordination of Joint Command directives<sup>1252</sup> based on his instruction to Adamović "to go from time to time to Colonel Đaković and to submit information about the units that were in the territory of

<sup>1241</sup> Judgement, Vol.III, para.1020.

<sup>1242</sup> Lukić Brief, para.589.

<sup>1243</sup> Judgement, Vol.III, para.945.

<sup>1244</sup> Exh.P948, p.31 (public).

<sup>1245</sup> Lukić Brief, para.590.

<sup>1246</sup> Judgement, Vol.III, para.643.

<sup>1247</sup> Lukić Brief, para.591.

<sup>1248</sup> SD2; *see* Judgement, Vol.III, paras.142, 143.

<sup>1249</sup> Judgement, Vol.III, paras.137, 333, 986, 990, 1022, 1035, 1050.

<sup>1250</sup> Judgement, Vol.III, paras.986, 989, 1006, 1009, 1050.

<sup>1251</sup> Lukić Brief, para.592.

Kosovo and Metohija, all with a view to planning the implementation of anti-terrorist actions”.<sup>1253</sup> Contrary to Lukić’s argument,<sup>1254</sup> whether or not Adamović was referring to any entity called a “Joint Command” in his testimony cannot affect this conclusion. Lukić attacks linking Adamović’s testimony specifically to the Joint Command, but does not challenge the underlying evidence or that it shows: Lukić instructed Adamović to make sure the MUP and VJ units acted in a co-ordinated manner. He fails to show how this alleged error would have any impact on the outcome.<sup>1255</sup>

389. Lukić alleges the minutes of a 27 November 1998 meeting show that it was dedicated to implementing the October agreements.<sup>1256</sup> Lukić seeks merely to replace his own interpretation of the evidence for that of the Chamber<sup>1257</sup> without demonstrating the Chamber’s conclusion was one that no reasonable trier of fact could reach.<sup>1258</sup> Further, Lukić fails to explain how this alleged error affects a finding on which his conviction relies.<sup>1259</sup> It should be summarily dismissed.

390. Lukić’s argument that the Chamber “misinterpreted/abused what Lukić said in his interview, deliberately interpreting that Lukić was at multiple meetings with Milošević”,<sup>1260</sup> should be summarily dismissed because it misrepresents the evidence and ignores other factual findings.<sup>1261</sup> When Lukić said “I think there was only this one meeting at which I was present”,<sup>1262</sup> he was clearly referring to the period during the NATO bombing. He made this statement in response to the question: “And did you have any other such meetings or briefing during the period of the war?”<sup>1263</sup> which both the interviewer and Lukić clearly understood to be during the NATO bombing between March and June 1999.<sup>1264</sup>

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<sup>1252</sup> Judgement, Vol.III, para.1032.

<sup>1253</sup> Judgement, Vol.III, para.1033.

<sup>1254</sup> Lukić Brief, para.593.

<sup>1255</sup> SD8.

<sup>1256</sup> Lukić Brief, para.595.

<sup>1257</sup> Judgement, Vol.III, para.1037.

<sup>1258</sup> SD3.

<sup>1259</sup> SD1.

<sup>1260</sup> Lukić Brief, para.596.

<sup>1261</sup> SD2.

<sup>1262</sup> Exh.P948, p.144, (public) *cited* in Lukić Brief, para.596.

<sup>1263</sup> Exh.P948, p.144 (public).

<sup>1264</sup> *See* Exh.P948, pp.141 (“Q. Okay. Can you tell me, *after the NATO bombing started*, that is after the 24<sup>th</sup> of March, who the members of the Supreme Command were?”) (emphasis added); 142 (“Q. Okay. Did the MUP have any instructions or orders *during the time of war*, come down from the Supreme Command?”) (emphasis added), (“A: *During the state of war*, a meeting was held at the then president Slobodan Milošević’s place. I think it was at the beginning of May [...]”) (emphasis added); p.143 (“A.

391. The Chamber recalled that, in his Prosecution interview, Lukić confirmed attending at least two meetings with Milošević, on 21 July 1998<sup>1265</sup> and another in May 1999.<sup>1266</sup> Relying on other evidence, the Chamber found that Lukić attended meetings with Milošević on 30 May 1998<sup>1267</sup> and on 29 October 1998.<sup>1268</sup>

(a) A meeting of the Joint Command was held on 1 June 1999

392. The Chamber found that Lukić was present “at the 1 June 1999 meeting of the Joint Command in the basement of the Grand Hotel in Priština/Prishtina.”<sup>1269</sup> Lukić’s argument that “[t]here’s no valid evidence, contrary to the Chamber’s finding, that meeting of ‘JC’ was held on 1.6.1999”<sup>1270</sup> should be dismissed because it mischaracterizes the evidence.<sup>1271</sup> Though, as Lukić records, Vasiljević’s contemporaneous indicated he attended a meeting of the Priština Corps, the Chamber recalled that after the meeting Pavković told Vasiljević it was a meeting of the Joint Command.<sup>1272</sup> Vasiljević confirmed in his testimony that the term “Joint Command” was used.<sup>1273</sup>

8. As Head of the MUP Staff in Kosovo, Lukić had certain disciplinary authority

393. Lukić’s arguments<sup>1274</sup> that he lacked authority to discipline MUP officers fail to demonstrate the Chamber reached conclusions that no reasonable trier of fact could reach. They also misrepresent the Chamber’s findings and ignore other relevant findings.<sup>1275</sup>

394. The Chamber accepted that “disciplinary proceedings were generally initiated by a person’s immediate supervisor and were dealt with by all the relevant SUPs”,<sup>1276</sup> not, as Lukić suggests, that he “wasn’t able to initiate disciplinary proceedings.”<sup>1277</sup> It went on to find that:

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The purpose of this meeting was, since as I recall, it was sometime in May, possibly mid May, to review the situation, to make note of the overview of the situation *since the bombing was deep into its – it had already lasted for quite some time.*) (emphasis added) (public).

<sup>1265</sup> Judgement, Vol.III, para.1021 (“In his interview, Lukić confirmed attending a meeting convened by Milošević, which he believed was held in the beginning of July [...]”).

<sup>1266</sup> Judgement, Vol.III, para.1038 (“In his interview with the Prosecution, Lukić himself described another meeting held in a villa in Belgrade, in May 1999. The meeting was called by Milošević, and also participating were Milutinović, [...]”).

<sup>1267</sup> Judgement, Vol.III, paras.643, 1020; Vol.I, para.993.

<sup>1268</sup> Judgement, Vol.III, para.1035, Vol.I, para.1097.

<sup>1269</sup> Judgement, Vol.III, para.1040.

<sup>1270</sup> Lukić Brief, para.597.

<sup>1271</sup> SD2.

<sup>1272</sup> Judgement, Vol.I, para.1145.

<sup>1273</sup> Judgement, Vol.I, para.1145, *citing* Aleksandar Vasiljević, T. 14504–14505 (29 August 2007).

<sup>1274</sup> Lukić Brief, paras.575, 636-640.

<sup>1275</sup> SD2.

instructions given by Lukić in August 1998 and February 1999 indicate he had *de facto* authority to require the chiefs of the SUPs to conduct investigations into crimes, even if he was not the person who actually initiated proceedings.<sup>1278</sup>

395. This is supported by his interview with the Prosecution, in which Lukić recounted an occasion when the perpetrators of a massacre “were immediately arrested” after he received information about the crime.<sup>1279</sup>

396. The Chamber’s conclusion is enforced by its findings regarding his 7 August 1998 order to Kosovo SUPs and PJP commanders to take disciplinary measures against police officers engaged in looting, adding that the SUP chiefs and PJP commanders were responsible for the “implementation of [...] measures and for preventing such occurrences.”<sup>1280</sup> Lukić fails to show that the Chamber was unreasonable in characterising such a document—in which a superior assigns a group of subordinates a task and informs them that they will be punished for failing to comply, as an order.<sup>1281</sup>

397. Similar language appears in his dispatch of 24 January 1999 in which Lukić directs the SUPs and the PJP detachments in Kosovo to ensure correct behaviour toward KVM members, adding that “[m]embers of the Ministry who are found to be guilty of abuse or overstepping of authority are to be brought to account through disciplinary and other measures.”<sup>1282</sup>

398. In arguing that rather than “directing” the heads of the Kosovo SUPs on 7 August 1998 to interview Kosovo Albanians, the Staff only “passed along information that ‘a number of people of Albanian ethnic minority’ have destroyed official IDs and are, using false ones issued by the KLA”,<sup>1283</sup> Lukić’s fails to explain how the Chamber’s interpretation of this evidence was unreasonable. As the Chamber pointed out in the same paragraph, Lukić, in the same document, “stated that the SUP chiefs and PJP commanders were responsible for the ‘implementation of [these] measures and for preventing such occurrences’”.<sup>1284</sup> The evidence shows, then, that Lukić issued a document to a group of subordinates telling these

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<sup>1276</sup> Judgement, Vol.III, para.1049.

<sup>1277</sup> Lukić Brief, para.636.

<sup>1278</sup> Judgement, Vol.III, para.1049.

<sup>1279</sup> Judgement, Vol.III, para.1049, *citing* Exh.P948, pp.155–156 (public).

<sup>1280</sup> Judgement, Vol.III, para.987, *citing* Exh.6D768, p.2 (public).

<sup>1281</sup> Lukić Brief, para.640.

<sup>1282</sup> Judgement, Vol.III, para.996, *citing* Exh.6D872 (public)

<sup>1283</sup> Lukić Brief, para.575.

subordinates to do something and that they would be punished if they failed. It was reasonable for the Chamber to conclude under these circumstances that this document constituted an order or that it at least demonstrated that “the MUP Staff, and Lukić as its Head, had significant authority over the SUPs and PJP detachments in Kosovo”.<sup>1285</sup>

9. Lukić was informed of MUP/VJ crimes in 1998 and in 1999.

399. Lukić’s challenges to the Chamber’s findings regarding his knowledge of crimes in 1998 and 1999<sup>1286</sup> generally amount to challenges to the Chamber’s reliance on certain evidence or witnesses, challenges to the conclusions the Chamber drew from the evidence and allegations that the information he received was unverified or unconfirmed. As the Prosecution explains below, each of these arguments warrant summary dismissal.

400. The Chamber found that in 1998, Lukić was aware of the allegation in the international community that widespread crimes committed by VJ and MUP forces had resulted in the forcible displacement of more than 230,000 Kosovo Albanians.<sup>1287</sup> He also heard of these widespread crimes directly from representatives of international organizations who were on the ground in Kosovo. Shaun Byrnes of KDOM and his team “observed, on an almost day-to-day basis, PJP and other police units burning villages, destroying crops, killing farm animals, intimidating Kosovo Albanian civilians, and driving them from their homes”<sup>1288</sup> in August and September 1998. Byrnes brought this to Lukić’s attention.<sup>1289</sup> Byrnes also told Lukić of seeing PJP units departing from an empty village in flames in mid or late September 1998 and of an incident that same month in which a MUP operation drove Kosovo Albanian citizens from their homes into the woods nearby.<sup>1290</sup>

401. Reports of crimes (including arson), joint VJ/MUP operations, the “refugee” crisis, and the need to discipline the forces of the FRY and Serbia, were also commonly discussed at the Joint Command meetings which Lukić attended regularly.<sup>1291</sup>

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<sup>1284</sup> Judgement, Vol.III, para.987.

<sup>1285</sup> Judgement, Vol.III, para.995.

<sup>1286</sup> Lukić Brief, paras.641–691.

<sup>1287</sup> Judgement, Vol.III, para.1120.

<sup>1288</sup> Judgement, Vol.III, para.1082.

<sup>1289</sup> Judgement, Vol.III, para.1082.

<sup>1290</sup> Judgement, Vol.III, para.1083.

<sup>1291</sup> Judgement, Vol.III, para.1079.

402. In 1999, Lukić received regular reports from the PJP and SAJ units on the ground as well as from the seven SUPs in Kosovo.<sup>1292</sup> Lukić ordered the SUPs to deliver information to him,<sup>1293</sup> and they did.<sup>1294</sup> He also learned of allegations of criminal acts by the VJ and MUP forces during a 4 May 1999 meeting in Belgrade, which was convened following receipt of a letter from the then Prosecutor of the ICTY, Louise Arbour in which she noted her grave concern at the continued commission of serious breaches of international humanitarian law in Kosovo.<sup>1295</sup>

403. The Chamber concluded that “knowledge of the commission of crimes by MUP subordinates and VJ members from mid-1998 until the end of the NATO campaign in 1999, combined with his continuing work to ensure co-operation of the joint MUP/VJ operations despite the knowledge of such crimes, is indicative of [Lukić’s] intent that those crimes occur.”<sup>1296</sup>

(a) The Chamber’s reliance on Joint Command Notes in establishing Lukić’s knowledge of VJ/MUP misdeeds in 1998 was reasonable

404. Contrary to Lukić’s argument,<sup>1297</sup> the Chamber properly relied on Notes of the Joint Command, drawing reasonable conclusions about the knowledge he gained from those meetings. The Chamber found that Lukić “regularly attended the meetings of the Joint Command, at which various issues were discussed, such as joint VJ/MUP operations, the ‘refugee’ crisis, and the need to discipline the forces of the FRY and Serbia.”<sup>1298</sup> The Chamber noted that “acts of arson committed by forces of the FRY and Serbia were often discussed.”<sup>1299</sup>

405. Lukić says the Chamber should not have relied on this evidence,<sup>1300</sup> from which it drew conclusions it should not have drawn.<sup>1301</sup> Lukić fails to demonstrate the Chamber “improperly interpreted Lukić’s presence”<sup>1302</sup> at the Joint Command meetings by finding that

<sup>1292</sup> Judgement, Vol.III, para.1089

<sup>1293</sup> Judgement, Vol.III, para.1090.

<sup>1294</sup> Judgement, Vol.III, paras.1089, 1090, 1091.

<sup>1295</sup> Judgement, Vol.III, para.1095.

<sup>1296</sup> Judgement, Vol.III, para.1119

<sup>1297</sup> Lukić Brief, paras.641–642.

<sup>1298</sup> Judgement, Vol.III, para.1079.

<sup>1299</sup> Judgement, Vol.III, para.1080.

<sup>1300</sup> Lukić Brief, para.642

<sup>1301</sup> Lukić Brief, para.641.

<sup>1302</sup> Lukić Brief, para.641.

“all these meetings dealt with joint VJ/MUP operations, the refugee crisis, and the need to discipline the FRY/Serbian forces.”<sup>1303</sup>

406. First, Lukić’s argument mischaracterises the Chamber’s findings. The Chamber found that these topics—“joint VJ/MUP operations, the ‘refugee’ crisis, and the need to discipline the forces of the FRY and Serbia”—were among those discussed at the Joint Command meetings.<sup>1304</sup> The Chamber did not find these were the exclusive topics.

407. Second, the Chamber is presumed to have examined all of the evidence.<sup>1305</sup> It need not cite to each piece of evidence for a judgement to be considered well-reasoned. In this case, the English translation of the Joint Command Notes comprises 164 pages,<sup>1306</sup> covering notes of almost-daily meetings from 22 July 1998 until 30 October 1998. Lukić fails to show how the Chamber’s citations to six meetings, meant to illustrate its general conclusions analysis of all the evidence, was unreasonable.

408. Finally, Lukić’s argument fails to address the broader point the Chamber makes from citing to these documents: that “Lukić was aware that there were serious allegations of criminal activity by MUP forces in Kosovo in mid-to-late 1998, directed against the Kosovo Albanian civilian population.”<sup>1307</sup> The question of whether “all these meetings dealt with joint VJ/ MUP operations, the refugee crisis, and the need to discipline the FRY/Serbian forces”<sup>1308</sup> is not relevant to this finding. The Chamber found at least six meetings that sufficed to showed that Lukić was aware.

409. Further, Lukić fails to show that the Chamber’s conclusions regarding discussion of arson at these meetings were those that no reasonable trier of fact could make. In this respect, the Prosecution notes that each of the meetings to which Lukić refers<sup>1309</sup> was devoted to operations. The references to burning houses came from Šainović and Minić, participants in the Joint Command and Working Group for Kosovo.<sup>1310</sup> Under these circumstances, it was

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<sup>1303</sup> Lukić Brief, para.641.

<sup>1304</sup> Judgement, Vol.III, para.1079.

<sup>1305</sup> *Kvočka* AJ, para.23.

<sup>1306</sup> Exh.P1468.

<sup>1307</sup> Judgement, Vol.III, para.1086.

<sup>1308</sup> Lukić Brief, para.641.

<sup>1309</sup> Lukić Brief, para.645.

<sup>1310</sup> Judgement, Vol.III, para.1080.

not unreasonable for the Chamber to conclude that these references were regarding arson by those under the command or control of the participants of the Joint Command.<sup>1311</sup>

(b) Lukić's regular meetings with members of international organisations in 1998 informed him about crimes

410. Contrary to Lukić's arguments,<sup>1312</sup> the Chamber properly relied on the evidence of Shaun Byrnes. None of Lukić's arguments diminish the credibility of Byrnes as a witness, nor show the Chamber was unreasonable in relying on his testimony.

411. First, Byrnes's testimony regarding his understanding of the MUP structure was largely correct and reveals no inconsistency.<sup>1313</sup> His testimony makes clear that Byrnes understood both that Lukić was "in charge of the Serbian police in Kosovo"<sup>1314</sup> and that he also had superiors. This is, in fact, accurate and consistent with his testimony that it was Lukić to whom he reported incidents.<sup>1315</sup>

412. Secondly, Byrnes testified that "when I arrived in Kosovo, and when I first met General Lukić, my recollection is that he or somebody told me that he, General Lukić, was replacing General Stefanović as the Serbian police chief in Kosovo".<sup>1316</sup> Considering he was not a member of the MUP and relied on what he was told regarding the MUP structures, it was not unreasonable for the Chamber to rely on his evidence regardless of the accuracy of this statement. Rather, dismissing his evidence on such grounds would have been unreasonable.

413. Third, the Chamber noted that Byrnes did not witness the PJP setting fire to houses in a village south of Kijevo/Kieva but that he "observed PJP units leaving" the village, which was "empty of inhabitants and in flames."<sup>1317</sup> The Chamber's findings in this regard were based on circumstantial evidence that showed the PJP leaving—and standing by in the sense

<sup>1311</sup> Judgement, Vol.III, para.1080,

<sup>1312</sup> Lukić Brief, para.647-652.

<sup>1313</sup> *Contra* Lukić Brief, para.648.

<sup>1314</sup> T.12151 (open).

<sup>1315</sup> T.12150–12152 (open). ("I brought such information, such reports, to General Lukic's attention whenever we had this information. Sometimes I would make phone calls to him. He was—he was very accessible. I had his cell phone number, I had his office number, and I would use it if it was necessary. As I said earlier, we often met, and I mean often during this period, often, every day. There were times when I saw him twice, three times a day because of some problem. Yes, I brought it to his attention.")

<sup>1316</sup> T.12145-12146 (open).

<sup>1317</sup> Judgement, Vol.III, para.1082.

of failing to intercede—an uninhabited village that was in flames. Lukić fails to show any error in the Chamber’s recitation of, or reliance upon, this testimony.<sup>1318</sup>

414. Finally, Byrnes never testified that he personally photographed the event near Peć,<sup>1319</sup> but said that his team did:

Q. And did you complain about this to General Lukic?

A. We did indeed. We complained about the way it was done. Many of these people -- they were terrified. We had several teams, not one team, we had several teams on the site and reported that unnecessary force was being used by the police against some of the displaced Albanians. The Albanians were terrified. They had no idea what was going to happen to them, particularly if they were being herded on to MUP buses. And we photographed much of what was going on.<sup>1320</sup>

415. The Chamber’s finding that “Byrnes photographed this event”<sup>1321</sup> clearly refers to Byrnes’ team. Even if this mischaracterises the evidence, it does not, as Lukić suggests, render the Chamber’s reliance on Byrnes testimony unreasonable.

416. Lukić fails to cite to where in the evidence Byrnes denied that there was a joint anti-terrorist action in the area of Peć.<sup>1322</sup> Further, Lukić fails to show that the Chamber’s conclusion that international media reports prompted the action near Peć was unreasonable. Further, this is not a finding on which Lukić’s conviction relies. The question of what prompted the MUP to “effectively herd[] [the villagers] home” is irrelevant. What is critical is that Byrnes reported this incident to Lukić,<sup>1323</sup> showing that he was aware of reports of crimes by MUP forces.

417. More broadly, Lukić fails to demonstrate the Chamber’s reliance on the evidence of representatives of international organisations was unreasonable. With regard to the Drewienkiewicz report, Lukić’s argument<sup>1324</sup> ignores that the Chamber also found that Lukić “disagreed that it was inappropriate activity and refused to take any measures in this regard”.<sup>1325</sup> This shows that Lukić was aware of the incident. This supports the Chamber’s

<sup>1318</sup> See Lukić Brief, para.649.

<sup>1319</sup> Lukić Brief, para.651.

<sup>1320</sup> T.12154 (open).

<sup>1321</sup> Judgement, Vol.III, para.1083.

<sup>1322</sup> Lukić Brief, para.651.

<sup>1323</sup> Judgement, Vol.III, para.1083.

<sup>1324</sup> Lukić Brief, para.656.

<sup>1325</sup> Judgement, Vol.III, para.1084.

finding that “Lukić was aware that there were serious allegations of criminal activity by MUP forces in Kosovo in mid-to-late 1998, directed against the Kosovo Albanian population.”<sup>1326</sup>

418. Finally, as to his argument regarding Gornje Obrinje,<sup>1327</sup> Lukić fails to substantiate his argument that “the knowledge about the alleged crime in Gornje Obrinje was based solely on Albanian newspapers.” Further, his argument that “American diplomats” reported that “Albanians” were responsible is not supported by the evidence. The Notes of the Joint Command to which Lukić cites in support of his argument read: “There are some indicates that they are going to come up with some more cases, as D. /lower/ and G. /upper/ O???? were. From /illegible/ information /illegible/ /illegible/ /illegible/ in the embassy that Albanians did it.”<sup>1328</sup>

(c) The Chamber’s findings that Lukić demanded and received reports from the field in 1999

419. As to 1999, the Chamber found that Lukić instructed the MUP forces to report to the MUP Staff,<sup>1329</sup> and that he received information from these forces.<sup>1330</sup> Additionally, the Chamber found that Lukić attended a meeting on 4 May 1999 following “the receipt of a letter from the then Prosecutor of the Tribunal, Louise Arbour, noting her grave concern at the continued commission of serious breaches of international humanitarian law in Kosovo.”<sup>1331</sup>

420. Lukić’s challenges to these findings generally attack the Chamber’s assessment of the evidence it relied upon, alleging misinterpretations of evidence. All of them lack merit.

(i) Lukić fails to demonstrate—based on one alleged example—that reporting from the SUPs to the MUP Staff was incomplete

421. In arguing that the reporting from the SUPs to the MUP Staff was incomplete,<sup>1332</sup> Lukić fails to show where Cvetic testified that he had no knowledge of the incident in Izbica. The Prosecution cannot assess this argument and respond to it.

<sup>1326</sup> Judgement, Vol.III, para.1086.

<sup>1327</sup> Lukić Brief, para.646.

<sup>1328</sup> Exh.P1468, p.135 (public).

<sup>1329</sup> Judgement, Vol.III, paras.1090, 1093–1096.

<sup>1330</sup> Judgement, Vol.III, paras.1089–1092.

<sup>1331</sup> Judgement, Vol.III, para.1095.

<sup>1332</sup> Lukić Brief, para.660.

422. In any event, the Chamber found that Lukić did learn of this event, regardless of Cvetic’s knowledge of it. In his interview, Lukić said he learned of the mass grave at Izbica “through satellite or through the internet.”<sup>1333</sup> Either way, the evidence shows that Lukić “had detailed information about the activities of the MUP in Kosovo during the Indictment period, including the commission of crimes”<sup>1334</sup>. Lukić’s argument fails to show the Chamber was unreasonable.

(ii) The fact that the competent authorities allegedly took the measures envisaged by the law is irrelevant

423. The question whether the competent authorities allegedly took the measures envisaged by the law when there were indicia of a mass grave<sup>1335</sup> is not relevant to the question of whether Lukić had knowledge of the crimes in 1999. Insofar as Lukić meant to argue that he referred criminal matters to the appropriate authorities, this would only confirm that he had knowledge of the crimes.

424. Further, contrary to Lukić’s undeveloped argument that “[n]one of the Indictment crimes was known to Lukić at the relevant time”,<sup>1336</sup> the Chamber specifically rejected Lukić’s argument that “he had access to only a limited amount of information” about MUP activities in Kosovo in 1999.<sup>1337</sup> It found that he received information from the PJP and SAJ units on the ground as well as the SUPs.<sup>1338</sup>

(iii) Lukić fails to demonstrate how the Chamber’s alleged factual errors regarding Exh.P1092 have any impact on the Judgement

425. Though, as Lukić alleges,<sup>1339</sup> Exhibit P1092 appears to relate only to the subordinate divisions of the Priština MUP rather than to “police stations throughout Kosovo” as the Chamber found,<sup>1340</sup> Lukić fails to explain how this error has any impact on any relevant

<sup>1333</sup> Exh.P948, p.160 (public).

<sup>1334</sup> Judgement, Vol.III, para.1097.

<sup>1335</sup> Lukić Brief, para.661.

<sup>1336</sup> Lukić Brief, Vol.III, para.661.

<sup>1337</sup> Judgement, Vol.III, para.1097.

<sup>1338</sup> Judgement, Vol.III, para.1089.

<sup>1339</sup> Lukić Brief, para.665.

<sup>1340</sup> Judgement, Vol.III, para.1090.

Chamber findings or on the Judgement. Even discounting this as a “reporting alternative”,<sup>1341</sup> the Chamber also relied on other evidence to show that Lukić was informed of events on the ground during the NATO bombing.<sup>1342</sup>

(iv) Lukić fails to explain how the Chamber “misquoted” a 24 March 1999 dispatch.

426. Lukić fails to show how the Chamber’s characterisation of the order (“the Minister of Interior instructed all organisational units of the MUP in Kosovo to report any security incidents to the MUP Staff in Kosovo, as well as to the MUP in Belgrade”<sup>1343</sup>), which does not differ substantially from his own,<sup>1344</sup> was unreasonable. Further, even assuming for the sake of argument that the Chamber did err and that the dispatch required organisation units to report to the MUP Staff last,<sup>1345</sup> he fails to show how this would have any impact on the Judgement or in any way detracts from the Chamber’s finding that Lukić “had detailed information about the activities of the MUP in Kosovo during the Indictment period”.<sup>1346</sup>

(v) Lukić fails to demonstrate error in the Chamber’s reliance on Lukić’s report of 10 April 1999

427. Lukić’s argument that the MUP Staff report of 10 April 1999 is neither a report nor signed by Lukić<sup>1347</sup> repeats his “reports/overview” argument from paragraph 662 of his brief. As there, he fails to explain the difference, other than semantic, between these two terms and how referring to a document one way rather than the other constitutes an error of any kind.

428. The document was sent under Lukić’s name, from the MUP Staff, of which Lukić was the head. There is no indication that it was sent incorrectly or in error.

429. Finally, Lukić misses the Chamber’s point in citing to this document. What it shows, the Chamber found, is that reports were sent regularly from the SUPs to the MUP Staff, which collated information and sent it to the MUP in Belgrade. This is consistent with the Chamber’s findings regarding MUP Staff reporting at Volume III, paragraphs 1052-1059 of the Judgement.

<sup>1341</sup> Judgement, Vol.III, para.1090.

<sup>1342</sup> Judgement, Vol.III, paras.1089, 1091–1092, 1094–1095.

<sup>1343</sup> Judgement, Vol.III, para.1090.

<sup>1344</sup> Lukić Brief, para.667.

<sup>1345</sup> Lukić Brief, para.667.

<sup>1346</sup> Judgement, Vol.III, para.1097.

<sup>1347</sup> Lukić Brief, para.668.

(vi) Lukić fails to demonstrate the Chamber erred in relying on the 3 April 1999 report he sent to Belgrade.

430. Lukić fails to show that it was unreasonable for the Chamber to infer from the report of 3 April 1999 from the MUP Staff to Belgrade that Lukić had knowledge of crimes being committed in Kosovo.<sup>1348</sup> The report gives a summary of incidents that occurred on one day, 6 a.m. on 2 April to 6 a.m. on 3 April, in Kosovo. It refers to the deaths of people who are young (between 25 and 35) and whose bodies have been charred.<sup>1349</sup> This, combined with the information the Chamber found that he already had from 1998 (including that Shaun Byrnes reported to him on an “almost day-to-day basis” that “PJP and other police units” were burning villages, destroying crops, killing farm animals, intimidating Albanian civilians and driving them from their homes)<sup>1350</sup> show that it was reasonable for the Chamber to infer from this dispatch that Lukić also knew these suspicious deaths were criminal and that the forces of the VJ or MUP might be responsible.

431. In arguing that his “obligations ended upon reporting on the incident, and the incident came into the remit of the competent prosecutor and judge”,<sup>1351</sup> Lukić betrays a misunderstanding of JCE liability. Though his actions might have been sufficient to end his criminal liability under a 7(3) “command responsibility” theory of liability for failure to punish, they are largely irrelevant to the question of his guilt under JCE. The Chamber found that his knowledge of crimes being committed by the MUP and VJ forces in 1999 combined with his continued participation in ensuring co-operation between the two entities showed that he shared the intent of the JCE.<sup>1352</sup> Under this theory, the question of whether he took actions to investigate the crimes is beside the point.

(vii) Lukić fails to demonstrate how the Chamber’s alleged misquote of his interview had any effect on the Judgement

432. Although, as he argues,<sup>1353</sup> Lukić was referring to the victims of Pusto Selo and not Izbica in his interview with the Prosecution as might be inferred from the way Volume III, paragraph 1092 of the Judgement is phrased, Lukić fails to explain how this alleged error had

<sup>1348</sup> Lukić Brief, paras.671–672.

<sup>1349</sup> Exh.6D1239, p.2 (public).

<sup>1350</sup> Judgement, Vol.III, para.1082.

<sup>1351</sup> Lukić Brief, para.672.

<sup>1352</sup> Judgement, Vol.III, para.1119.

<sup>1353</sup> Lukić Brief, para.673.

any impact on the judgement or on the conclusion that he “had detailed information about the activities of the MUP in Kosovo during the Indictment period”.<sup>1354</sup>

(viii) The Chamber properly relied on the 4 May 1999 meeting to show Lukić had knowledge of MUP crimes in 1999

433. As a member of the JCE, the crimes of both the VJ and the MUP are imputable to Lukić.<sup>1355</sup> The Chamber inferred, from “his continuing to ensure co-operation of the joint MUP/VJ operations despite the knowledge”<sup>1356</sup> that these units had committed crimes, that he shared the intent with other members of the JCE “that these crimes occur.”<sup>1357</sup> Thus, it is irrelevant whether Lukić did or did not hear of crimes committed by the MUP during the 4 May meeting.<sup>1358</sup>

434. This evidence must be read holistically with the other evidence before the Chamber, namely that Lukić was receiving daily reports from the SUPs, PJP detachments and SAJ units on the ground;<sup>1359</sup> that in 1998, he “regularly attended the meetings of the Joint Command” at which crimes were sometimes discussed;<sup>1360</sup> and that he had regular contact with members of the international community.<sup>1361</sup> This distinguishes him from Milutinović who, as the Chamber found, would not have been in the same position as Lukić to assess the truthfulness of the conclusion that “a large number” of sentences between five years and 20 years’ imprisonment had been handed down for VJ crimes in Kosovo before 4 May 1999.<sup>1362</sup>

(ix) Lukić fails to substantiate a number of arguments with references to the record or the Judgment

435. In a number of his arguments, Lukić fails to refer to either the Judgment or evidence in the record. For these arguments, the Prosecution cannot evaluate their currency or relevancy. Answering them would amount to speculation likely to be unhelpful to the Chamber in resolving any issue. These arguments should be summarily dismissed:<sup>1363</sup>

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<sup>1354</sup> Judgment, Vol.III, para.1097.

<sup>1355</sup> Judgment, Vol.III, para.1132.

<sup>1356</sup> Judgment, Vol.III, para.1119.

<sup>1357</sup> Judgment, Vol.III, para.1119.

<sup>1358</sup> Lukić Brief, para.680.

<sup>1359</sup> Judgment, Vol.III, para.1089.

<sup>1360</sup> Judgment, Vol.III, para.1079.

<sup>1361</sup> Judgment, Vol.III, para.1082.

<sup>1362</sup> Judgment, Vol.III, para.141.

<sup>1363</sup> SD14.

- The Chamber failed to differentiate between “combat reports” which were not submitted to the MUP Staff, and reports on the security-related events that fall into the category of the knowledge of crimes.<sup>1364</sup>
- The Chamber erred in finding that the Rules of Internal Organization were a “reporting alternative” as these rules represented “the only basis of reporting that needed to be communicated through dispatches”.<sup>1365</sup>

(x) Lukić fails to explain the impact of the alleged error on the judgement.

436. In a number of his arguments, Lukić fails to explain how the alleged error would have any impact on the judgement. These arguments should be summarily dismissed:<sup>1366</sup>

- “Concerning the dispatch of 28.5.1999, as Gagić explained, the MUP Staff was used as an address to which he sent the dispatch on behalf of the Crime Police Administration to Crime Police Departments (OKPs) on the ground.” No reference is made in the dispatch to the Milošević indictment.<sup>1367</sup>
- Contrary to the Chamber’s finding, Lukić did not “instruct” heads of the Kosovo SUPs and PJP detachments “to prevent any forcible eviction of the Kosovo Albanian population.” Rather, he was simply relaying an order from the MUP in this regard, and only to the SUPs, not the PJP detachments.<sup>1368</sup>
- The Chamber improperly concluded (III/1095) that Louise Arbour’s letter to Milošević was the reason for the 4 May 1999 meeting in the villa in Belgrade.<sup>1369</sup>
- Lukić fails to show how the Chamber’s reliance on exhibits P1458,<sup>1370</sup> P1459<sup>1371</sup> or “Pavković’s report of 4.6.1999”<sup>1372</sup> had any impact on his conviction. The Chamber cites to P1458 only for the proposition that the ordered resubordination of the MUP to the VJ did not occur<sup>1373</sup> or in sections relating to the criminal responsibility of other

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<sup>1364</sup> Lukić Brief, para.662.  
<sup>1365</sup> Lukić Brief, para.663.  
<sup>1366</sup> SD7, SD10.  
<sup>1367</sup> Lukić Brief, para.674.  
<sup>1368</sup> Lukić Brief, paras.675–676.  
<sup>1369</sup> Lukić Brief, para.678.  
<sup>1370</sup> Lukić Brief, para.684.  
<sup>1371</sup> Lukić Brief, paras.686–690.  
<sup>1372</sup> Lukić Brief, para.691.  
<sup>1373</sup> Judgement, Vol.I, paras.1175, 1182, 1184.

accused.<sup>1374</sup> Lukić alleges error in the Chamber’s reliance on P1459 in three paragraphs in the Judgement, none of which relate to him or issues related to his conviction.<sup>1375</sup> Finally, Lukić cites to no paragraphs in the Judgement in which he alleges the Chamber erred in relying on “Pavković’s report of 4.6.1999” or on P1725.<sup>1376</sup>

### C. Conclusion

437. As Lukić’s role, responsibilities and actions as Head of the MUP Staff for Kosovo show, Lukić was “an important member”<sup>1377</sup> of the joint criminal enterprise the purpose of which was “to ensure continued control by the FRY and Serbian authorities over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population.”<sup>1378</sup> The MUP forces over whom he had command—and the VJ forces for whom he bears responsibility—executed the JCE’s plans with brutal efficiency, displacing at least 700,000 Kosovo Albanians from their homes between late March and early June 1999. All of this happened under the nose of Lukić who, as commander of the MUP forces in the province, was one of the best-informed men in Kosovo. When he was not in Belgrade meeting with his fellow JCE members and “policy planners”, he was in Priština, ensuring the day-to-day execution of their plans. In his numerous factual challenges, Lukić fails to demonstrate that of the Chamber’s findings regarding the MUP Staff were those that no reasonable trier of fact could have reached. Ground P of his appeal should be dismissed.

<sup>1374</sup> Judgement, Vol.III, paras.592 (Ojdanić), 741 (Pavković), 848 (Lazarević).

<sup>1375</sup> Lukić Brief, fns.997 (alleging error in Judgement, Vol.III, para.757, a paragraph relating to the criminal responsibility of Pavković), 998 (alleging error in Judgement, Vol.I, paras.1182, 1183, paragraphs explaining that the resubordination of the MUP to the VJ never occurred).

<sup>1376</sup> Lukić Brief, para.691.

<sup>1377</sup> Judgement, Vol.III, para.1131.

<sup>1378</sup> Judgement, Vol.III, para.1117.

## **XIV. THE CHAMBER PROPERLY ASSESSED THE LAW AND EVIDENCE RELEVANT TO THE CRIME BASE (GROUND Q)**

### **A. Overview**

438. The Chamber found Lukić responsible for the murder of 554 identified people in Đakovica/Gjakovo (307),<sup>1379</sup> Orahovac/Rahovec (170), Suva Reka/Suhareka (45), Srbica/Skenderaj (27), Vučitrn/Vushtrria (3) and Kačanik/Kaçanik (2).

439. The Chamber entered convictions only when murder was proven beyond reasonable doubt. In each locality, it established that killings took place in the context of VJ/MUP operations, and made individual findings as to the identities of murder victims.<sup>1380</sup> It was careful to distinguish between killings directly witnessed and killings circumstantially proven. The Chamber did not find all alleged victims' deaths proven.<sup>1381</sup> When it did, it relied upon either direct witness testimony or a combination of at least two sources (for example, a body, forensic analysis, missing person reports, etc). When the Chamber relied on a single witness to prove death,<sup>1382</sup> that witness was available for cross-examination. Appendix 1 of this Response summarises this information for each proven victim.

440. Lukić challenges these findings. His arguments should be summarily dismissed, both for their general defects and for the specific reasons identified below.

### **B. Lukić's claims should be summarily dismissed for their general defects**

441. Lukić consistently attempts (i) to substitute his own evaluation of the evidence for that of the Chamber, (ii) to make assertions unsupported by evidence, (iii) to challenge factual

<sup>1379</sup> Note that, although the Chamber refers to "275" unwitnessed victims at the Reka/Caragoj valley (Đakovica/Gjakovo), it names only 274: Judgement, Vol.II, para.238. See also para.233 (witnessed murder victims at the Reka/Caragoj valley (Đakovica/Gjakovo)).

<sup>1380</sup> Judgement, Vol.II, paras.148, 233, 238 (Đakovica/Gjakovo); 381–382, 433 (Orahovac/Rahovec); 538–543 (Suva Reka/Suhareka); 683–684 (Srbica/Skenderaj); 799 (Vučitrn/Vushtrria); 1149 (Kačanik/Kaçanik).

<sup>1381</sup> E.g. Judgement, Vol.II, paras.239 (Đakovica/Gjakovo), 335, 381, 434 (Orahovac/Rahovec), 544 (Suva Reka/Suhareka), 681, 685 (Srbica/Skenderaj), 1076–1077, 1117–1118, 1137, 1149 (Kačanik/Kaçanik).

<sup>1382</sup> Judgement, Vol.IV, paras.412, 415, 427, 467, 477, 509, 532, 545–546, 550–551, 576–579, 581–598, 832.

findings without proper argument, explanation or “precise”<sup>1383</sup> referencing, and (iv) to misrepresent the findings of the Chamber.<sup>1384</sup>

442. First, Lukić repeatedly argues his own “equally reasonable”<sup>1385</sup> interpretations of the evidence presented at trial. In so doing, he misunderstands and confuses the principle of *in dubio pro reo*.

443. Second, many of Lukić’s submissions are imprecise. For example, in several footnotes he alleges—without precise explanation—error in a total of more than 900 paragraphs.<sup>1386</sup> His submissions are vague, confusing, and poorly-organised.

444. Third, Lukić often misrepresents the Chamber’s reasoning and findings, confusing factual determinations that certain individuals were victims of certain crimes with the broader description of alleged victims in Volume IV of the Judgement.<sup>1387</sup> While the Chamber did find that “approximately 93 people” were killed at Izbica (Srbica/Skenderaj) in the general course of events, it only concluded beyond reasonable doubt that 27 victims were murdered in the manner described.<sup>1388</sup>

### **C. Lukić’s specific challenges are entirely without merit**

445. Lukić’s claims addressed hereafter relate to his convictions for murder. He also makes analogous arguments against his convictions for enforced displacement.<sup>1389</sup> These arguments have been addressed elsewhere in this Response.<sup>1390</sup>

#### **1. No “impermissible inference” was drawn as to “crime base locations” (Q.1)**

446. Lukić argues that the victims of murder in Đakovica/Gjakovo, Orahovac/Rahovec, Suva Reka/Suhareka, Srbica/Skenderaj, and Kačanik were KLA members, lawfully killed as combatants at a range of locations;<sup>1391</sup> that the victims of murder in Orahovac/Rahovec, Suva

<sup>1383</sup> Practice Direction (Written Submissions), para.17; Practice Direction, paras.4(b), 13.

<sup>1384</sup> SD2–4, 8, 10.

<sup>1385</sup> Lukić Brief, para.696. *See also* paras.695, 703, 738.

<sup>1386</sup> Lukić Brief, fns.1067, 1069–1070.

<sup>1387</sup> Lukić Brief, paras.725, 737, 745, 747.

<sup>1388</sup> Judgement, Vol.II, paras.681–685.

<sup>1389</sup> Lukić Brief, paras.708–709, 711.

<sup>1390</sup> *See* section VIII. C. 2. above, and section XVI. B. 1. below.

<sup>1391</sup> Lukić Brief, paras.692–699, 709.

Reka/Suhareka, Srbica/Skenderaj and Kačanik were killed by NATO air-strikes;<sup>1392</sup> that he had no knowledge of any murders which did take place;<sup>1393</sup> and that the Chamber erred by entering contradictory findings regarding his alleged participation in concealment of bodies.<sup>1394</sup>

(a) Victims were not lawfully killed in combat with the KLA<sup>1395</sup>

447. The Chamber carefully considered KLA activities in all five locations.<sup>1396</sup> Lukić fails to address its specific findings that relevant victims were “not engaged in combat operations at the time”,<sup>1397</sup> or its consideration of the evidence upon which he relies.<sup>1398</sup> He does not address the finding that murders were carried out in cold blood against unarmed people, including women, children, teenagers, the elderly, and the mentally and physically disabled.<sup>1399</sup> For these defects—and for his blank repetition of unsuccessful trial arguments<sup>1400</sup>—these claims should be summarily dismissed.<sup>1401</sup>

(b) Victims were not killed by NATO<sup>1402</sup>

448. Lukić fails to address either the Chamber’s findings that 244 people were murdered at Orahovac/Rahovec, Suva Reka/Suhareka, Srbica/Skenderaj, and Kačanik or the evidence upon which it relied (much of it eyewitness) demonstrating that the victims died at the hands of VJ/MUP forces and by means inconsistent with aerial attack.<sup>1403</sup> He merely makes unelaborated reference to 6 trial exhibits and 1 transcript reference. This claim should be summarily dismissed.<sup>1404</sup>

<sup>1392</sup> Lukić Brief, para.708.

<sup>1393</sup> Lukić Brief, paras.700–703, 710–711.

<sup>1394</sup> Lukić Brief, paras.704–706.

<sup>1395</sup> Lukić Brief, paras.692–699, 709.

<sup>1396</sup> Judgement, Vol.II, paras.109–115, 174, 192–194, 197–198, 228, 230 (Đakovica/Gjakovo), 293–294, 298–299, 304–305 (Orahovac/Rahovec), 473–477, 484, 488, 491, 524, 533 (Suva Reka/Suhareka), 561, 567, 570, 573–574, 585, 646, 671 (Srbica/Skenderaj), 1011–1020, 1022–1023, 1053, 1067, 1073, 1087, 1091, 1102, 1104, 1120, 1122, 1125–1127, 1141 (Kačanik/Kaçanik).

<sup>1397</sup> Judgement, Vol.II, paras.233, 236.

<sup>1398</sup> Judgement, Vol.II, paras.87–88, 109–113, 176.

<sup>1399</sup> Judgement, Vol.II, paras.381–382, 432, 538–543, 683–684, 1149.

<sup>1400</sup> Lukić Closing Brief, paras.1069–1120.

<sup>1401</sup> SD3.

<sup>1402</sup> Lukić Brief, para.708.

<sup>1403</sup> Judgement, Vol.II, paras. 341–372, 381–382, 402–429, 433 (Orahovac/Rahovec), 538–543 (Suva Reka/Suhareka), 573–593, 683–684 (Srbica/Skenderaj), 1144, 1149 (Kačanik/Kaçanik).

<sup>1404</sup> SD3.

(c) Lukić was on notice of murders taking place<sup>1405</sup>

449. The Chamber found that Lukić shared the intent to displace the Kosovo Albanian population by force. On the basis of his “detailed knowledge” of events in Kosovo in 1998 and 1999,<sup>1406</sup> and especially the killings at Gornje Obrinje/Abria e Epërme in October 1998,<sup>1407</sup> it was satisfied that he had the necessary *mens rea* for murder through JCE III liability.<sup>1408</sup> Lukić’s comparison with Milutinović<sup>1409</sup> fails to recognise their different circumstances.<sup>1410</sup>

450. Lukić does not contest the fact that his prior knowledge made the risk of murder reasonably foreseeable.<sup>1411</sup> His submissions, seeking to establish that he did not have actual knowledge, are irrelevant and should be summarily dismissed.<sup>1412</sup>

(d) The Chamber did not err regarding the concealment of bodies<sup>1413</sup>

451. The Chamber found that Lukić made sufficient contribution to the common purpose of the JCE I on bases other than concealment of bodies, and thus convicted him.<sup>1414</sup> Lukić again argues, irrelevantly, that he lacked actual knowledge of murder when he was convicted on the basis of the reasonable foreseeability of the risk (JCE III). This claim should be summarily dismissed.<sup>1415</sup>

2. No “improper reliance” was made upon the OMPF List of Missing Persons (Q.2)

452. Lukić challenges the Chamber’s admission and use of Exhibits P2454, P2798 created by the Office of Missing Persons and Forensics (OMPF), listing people who went missing in relevant circumstances, in supporting its identification of the victims murdered at

<sup>1405</sup> Lukić Brief, paras.700–703, 710–711.

<sup>1406</sup> Judgement, Vol.III, paras.1012–1015 (central role of MUP staff), 1051–1052 (Lukić’s leading role in MUP staff), 1024–1040, 1052–1059 (Lukić’s liaison functions with other high-level bodies), 1091–1096 (Lukić’s knowledge of criminal activity). *See also* section VIII. D. above.

<sup>1407</sup> Judgement, Vol.III, paras.1081–1086, 1134.

<sup>1408</sup> Judgement, Vol.III, para.1134.

<sup>1409</sup> Lukić Brief, paras.703, 706.

<sup>1410</sup> Judgement, Vol.III, paras.274–276, 284.

<sup>1411</sup> Lukić Brief, paras.702–703.

<sup>1412</sup> SD7.

<sup>1413</sup> Lukić Brief, paras.704–706.

<sup>1414</sup> Judgement, Vol.III, para.1131.

<sup>1415</sup> SD1, 7–8.

Đakovica/Gjakovo, Suva Reka/Suhareka and Srbica/Skenderaj.<sup>1416</sup> He raises four subsidiary claims warranting summary dismissal outright.<sup>1417</sup>

453. First, Lukić’s assertion that “very little or no”<sup>1418</sup> direct witness evidence was adduced in respect of the deaths of 274 of the 287 people identified as victims of murder in the Reka/Caragoj valley (Đakovica/Gjakovo) fails to articulate any error.<sup>1419</sup>

454. Second, Lukić’s assertion that the OMPF material is the “sole evidence” for “a vast majority of the named victims”<sup>1420</sup> misrepresents<sup>1421</sup> the Judgement.<sup>1422</sup>

455. Third, Lukić’s criticism of the Chamber’s reliance on evidence of bodies discovered in secondary graves<sup>1423</sup> ignores<sup>1424</sup> its finding that the bodies of those killed at Đakovica/Gjakovo were first buried at Brekovac/Brekoc and then exhumed and reinterred at Batajnica.<sup>1425</sup>

456. Fourth, Lukić’s attack on the reliability of witnesses<sup>1426</sup> is both irrelevant<sup>1427</sup> (Malaj, K73) and fails to articulate an error (Pnishi, Deda).<sup>1428</sup>

(a) The Chamber treated Exhibits P2454, P2798 properly

457. Lukić appears to criticise both the Chamber’s decision to admit the OMPF material into evidence,<sup>1429</sup> and its decision to give it any weight. However, as Exhibit P2798 was originally admitted into evidence without objection,<sup>1430</sup> this argument is waived.

458. Despite Lukić’s general attacks upon the reliability and credibility of the OMPF material,<sup>1431</sup> he does not show that no reasonable Chamber could have relied upon it.<sup>1432</sup> The

<sup>1416</sup> Lukić Brief, paras.712, 715–720.

<sup>1417</sup> Lukić Brief, paras.713–714, 721–725, 732.

<sup>1418</sup> Lukić Brief, paras.713, 723.

<sup>1419</sup> SD10.

<sup>1420</sup> Lukić Brief, paras.714,725, 732.

<sup>1421</sup> SD2.

<sup>1422</sup> Appendix 1.

<sup>1423</sup> Lukić Brief, paras.721–722.

<sup>1424</sup> SD2

<sup>1425</sup> Judgement, Vol.II, paras.237, 1270, 1274, 1283, 1295–1308, 1356–1357.

<sup>1426</sup> Lukić Brief, paras.723–724, fn.1042, citing Judgement, Vol.II, paras.233–234. *See also* paras.77, 80, 202.

<sup>1427</sup> SD4, 7.

<sup>1428</sup> SD10.

<sup>1429</sup> Lukić Brief, para.720, citing Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams.

<sup>1430</sup> Judgement, Vol.II, para.216.

<sup>1431</sup> Lukić Brief, paras.712, 715-720, 732.

material was never used solely relied upon<sup>1433</sup> and Lukić alleges no error in the Chamber's adoption of the correct legal principles.<sup>1434</sup> The Chamber holistically assessed the evidence presented for each victim throughout.

459. Lukić cites various instances in which the Chamber declined to find certain individuals murdered, in this context<sup>1435</sup> and with regard to his challenges to proof of death (Q.3–4).<sup>1436</sup> These findings merely confirm the Chamber's meticulous approach to the evidence.

460. Lukić's subjective assessment of the limitations of the OMPF material<sup>1437</sup> and his references to its "hearsay" nature<sup>1438</sup> are irrelevant. His unelaborated challenge to a finding in respect of an unidentified "victim"<sup>1439</sup> is incomprehensible.

### 3. Proof of death was properly ascertained (Q.3–4)

461. Lukić generally alleges that the wrong method was applied to proof of death.<sup>1440</sup> He argues the Chamber erred in identifying murder victims where the manner of death was "unascertained",<sup>1441</sup> where "forensic discrepancies" existed,<sup>1442</sup> or absent a body.<sup>1443</sup> He raises subsidiary claims with regard to which the Prosecution relies on its existing responses in this ground.<sup>1444</sup> His challenge to the Chamber's treatment of certain minor spelling discrepancies<sup>1445</sup> fails to articulate an error.<sup>1446</sup>

462. In determining proof of death, the Chamber properly treated it like any other factual determination.<sup>1447</sup> Lukić implies, incorrectly, that death may only be proven by some kind of

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<sup>1432</sup> Judgement, Vol.II, para.216.

<sup>1433</sup> Appendix 1.

<sup>1434</sup> Judgement, Vol.I, paras.36–37, 56–58. *See also Haraqija* AJ, para.61.

<sup>1435</sup> Lukić Brief, para.726.

<sup>1436</sup> Lukić Brief, paras.732, 734, 746; c.f. Judgement, Vol.II, paras.607, 621, 681–687; Vol.IV, paras.658, 676, 683, 685–686, 728, 749.

<sup>1437</sup> Lukić Brief, paras.715, 717–718.

<sup>1438</sup> Lukić Brief, para.718; c.f. Judgement, Vol.I, para.38.

<sup>1439</sup> Lukić Brief, para.716.

<sup>1440</sup> Lukić Brief, paras.727–747.

<sup>1441</sup> Lukić Brief, para.733.

<sup>1442</sup> Lukić Brief, paras.731–732, 734–735.

<sup>1443</sup> Lukić Brief, paras.743–747.

<sup>1444</sup> Lukić Brief, paras.727, 730, 736–738.

<sup>1445</sup> Lukić Brief, paras.728–729.

<sup>1446</sup> SD10.

<sup>1447</sup> *M.Lukić* Victim Decision, para.11. *See also* Judgement, Vol.I, para.39.

specialised test.<sup>1448</sup> The Appeals Chamber has affirmed that “[t]he fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber.”<sup>1449</sup>

463. Insofar as Lukić maintains that any particular indicator must be established (the existence of a body;<sup>1450</sup> evidence of manner of death;<sup>1451</sup> “proper biographical information”<sup>1452</sup>), he is incorrect. The Chamber need only consider that death is the only reasonable inference from all the evidence. Lukić’s claims that the Chamber erred in identifying certain murder victims whose cause of death was “unascertained”<sup>1453</sup> or absent a body<sup>1454</sup> are based on a mis-statement of the law.

464. The Chamber was scrupulous in its assessment of the evidence of death.<sup>1455</sup> Where it relied heavily on a single witness, it made express findings as to his or her reliability.<sup>1456</sup> Lukić misrepresents the Judgement with regard to 16 of the 27<sup>1457</sup> people murdered at Srbica/Skenderaj, where an identified body was in fact discovered.

465. For these reasons, his claims should be summarily dismissed.<sup>1458</sup>

#### 4. The Chamber did not err in entering findings for “unscheduled” victims (Q.5)

466. Lukić complains of a ‘surprise attack’ in respect of 47 people identified in Annex A to the Judgement as victims<sup>1459</sup> but not originally specified in the amended indictment.<sup>1460</sup> Of these 47 individuals, the Chamber only found 27 to be proven victims of murder.<sup>1461</sup> His submissions with respect to the other 20 are immaterial.

<sup>1448</sup> Lukić Brief, paras. 739–742.

<sup>1449</sup> *Kvočka* AJ, para.260; *Krnjelac* TJ, paras.326–327.

<sup>1450</sup> Lukić Brief, paras.742–745.

<sup>1451</sup> Lukić Brief, paras.722, 727, 733–734.

<sup>1452</sup> Lukić Brief, paras.729.

<sup>1453</sup> Lukić Brief, paras.733, 734(a).

<sup>1454</sup> Lukić Brief, paras.736–737, 743–747.

<sup>1455</sup> Appendix 1.

<sup>1456</sup> Judgement, Vol.II, paras.402–403.

<sup>1457</sup> See fn.1388 and accompanying text above.

<sup>1458</sup> SD2–3, 5.

<sup>1459</sup> Judgement, Vol.IV, paras.473–479, 581–599, 646–647, 767, 872, 891–902, 917–918, 941. The 47 victims relate to established incidents at Bela Crkva/Bellacërka (Schedule B), Mala Kruša/Krusha e Vogël (Schedule C), Suva Reka/Suhareka (Schedule D), Izbica (Schedule F), Gornja Sudimlja (Schedule I), and Kottlina/Kotllina, Vata/Vataj and Dubrava/Lisnaja (Schedule K).

<sup>1460</sup> Lukić Brief, paras.748–752.

<sup>1461</sup> Judgement, Vol.II, paras.382, 433, 539, 543, 799; Vol.IV, paras.473–477, 583–598, 646–647, 872.

467. In 22 cases, Lukić received timely<sup>1462</sup> notice<sup>1463</sup> of the unscheduled alleged victims before the close of the Prosecution case on 1 May 2007.<sup>1464</sup> Lukić has effectively waived his right to challenge the issue at this late stage.<sup>1465</sup> In any event, he has failed to substantiate the prejudice caused by any delay. He contends that “logic” would have demanded the prioritisation of scheduled deaths only in cross-examination and rebuttal<sup>1466</sup>—but there is no record that he sought any form of relief in the defence case in order to mitigate any prejudice he may have sustained.

468. With regard to the remaining 5 cases (where findings were made by the Chamber *proprio motu*),<sup>1467</sup> a conviction for murder may be sound even where the victim “was not listed in the Schedule to the Indictment nor in [subsequent] Clarifications, provided that all required material elements are proven.”<sup>1468</sup>

469. Lukić suggests that the Prosecution should have sought to amend the indictment to include “unscheduled” victim information.<sup>1469</sup> The Appeals Chamber has recalled that the materiality of an alleged fact “cannot be decided in the abstract”. Determination of the materiality of victim information is to be made:

[O]n a case-by-case basis, considering, *inter alia*, the “sheer scale of the alleged crimes” and the subsequent impracticability to require a high degree of specificity, and the proximity of the accused person to the events for which he is alleged to be criminally responsible.<sup>1470</sup>

470. In the present case, a high degree of specificity was impractical and the Accused was structurally remote from the events for which he is criminally responsible.<sup>1471</sup> The personal details of particular victims were thus not facts material to the murder charges.<sup>1472</sup> In any

<sup>1462</sup> *Gotovina* Interlocutory AD on Victims, paras.18, 20; *Gotovina* Second Decision on Victims, para.4.  
<sup>1463</sup> Clarification on Proof of Death. *See also* Amended Clarification on Proof of Death (references amended).

<sup>1464</sup> Judgement, Vol.I, para.25.

<sup>1465</sup> *Kunarac* AJ, para.61.

<sup>1466</sup> Lukić Brief, para.751.

<sup>1467</sup> Judgement, Vol.II, paras.382, 433; Vol.IV, paras.473, 581–583, 593. Evidence of the death of the victims concerned was contained in evidence relied upon by the Prosecution with respect to other victims: compare, for example, Vol.IV, para.473 with para.474; paras.581–583 with paras.584–586; para.593 with para.594.

<sup>1468</sup> *Gotovina* Second Decision on Victims, para.4, citing *Gotovina* Decision on Victims, para.12.

<sup>1469</sup> Lukić Brief, para.751.

<sup>1470</sup> *Gotovina* Interlocutory AD on Victims, para.17, citing *Kupreškić* AJ, paras.89–90; *Blaškić* AJ, paras.212–213; *Kvočka* AJ, para. 65; *Naletilić* AJ, para. 24; *Gacumbitsi* AJ, para. 50.

<sup>1471</sup> *Gotovina* Interlocutory AD on Victims, para.17.

<sup>1472</sup> *E.g.* *Gotovina*, Second Decision on Victims, para.7; *Gotovina* Decision on Victims, para.11.

event, Lukić has not demonstrated that his defence was materially impaired so as to challenge the indictment at this late stage.<sup>1473</sup>

## **XV. GROUNDS R, S AND T**

471. Grounds R, S and T from Lukić's notice of appeal have been "consolidated under Ground Q".<sup>1474</sup>

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<sup>1473</sup> *Niyitegeka* AJ, paras.195–200.

<sup>1474</sup> Lukić Brief, para.8.

## **XVI. LUKIĆ IS CRIMINALLY RESPONSIBLE FOR CRIMES COMMITTED IN PRIZREN MUNICIPALITY (GROUND U)**

### **A. OVERVIEW**

472. Lukić fails to show that no reasonable trial chamber could have found him responsible for the crimes committed in Prizren municipality. Contrary to Lukić's assertions in Ground U,<sup>1475</sup> the Chamber considered alternative explanations for the departure of Kosovo Albanians from Prizren municipality and rejected them.<sup>1476</sup> Lukić fails to show how no reasonable trial chamber could have found that "through the joint actions of the VJ and the MUP [...] Kosovo Albanian civilians were forced to leave Pirane/Pirana out of fear for their lives, caused by the actions of the FRY/Serbian forces, rather than the KLA",<sup>1477</sup> and that a large number of Kosovo Albanians from Dušanovo/Dushanova, a neighbourhood of Prizren town, were expelled from their homes by MUP and VJ forces.<sup>1478</sup>

473. Lukić's unsupported assertions that the Chamber failed to give sufficient weight to evidence or failed to interpret evidence favourably to him constitute grounds for summary dismissal.<sup>1479</sup>

### **B. The Chamber did not err in finding MUP/VJ forces and Lukić responsible for the crimes in Prizren**

474. Lukić essentially argues that the Chamber should have found that there were "satisfactory alternative reasons for persons to leave their homes and displace towards the border."<sup>1480</sup> Lukić repeats his trial arguments that either KLA activity<sup>1481</sup> or NATO

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<sup>1475</sup> Lukić Brief, paras.753–755.

<sup>1476</sup> Judgement, Vol.II, para.285.

<sup>1477</sup> Judgement, Vol.II, para.259.

<sup>1478</sup> Judgement, Vol.II, para.286.

<sup>1479</sup> SD3.

<sup>1480</sup> Lukić Brief, para.756.

<sup>1481</sup> Lukić Brief, paras.758–768; Lukić Closing Brief, paras.168–183, 282, 284–288, 301–302. *See also* section VIII. C. 2. (b) above.

bombings<sup>1482</sup> caused the mass displacements of Kosovo Albanians without showing an error,<sup>1483</sup> attempting to substitute his evaluation of the evidence for that of the Chamber.<sup>1484</sup>

1. Lukić fails to show that the Chamber erred in its evaluation of evidence

(a) The Chamber reasonably concluded that the mass displacement of Kosovo Albanian civilians was caused by MUP and VJ activity, not KLA presence in Prizren

475. The Chamber did not err in rejecting Lukić’s argument that the KLA caused the mass displacement of Kosovo Albanian civilians. The Chamber was in the best position to evaluate the credibility of its witnesses. It was entitled to accept certain parts of a witness’s testimony and reject others.<sup>1485</sup> Lukić merely points to other evidence<sup>1486</sup> in order to undermine individual witnesses relied upon by the Chamber and to support his argument concerning the KLA. His arguments fail because the Chamber considered evidence from a number of sources and did not rely solely on the testimony of individual witnesses,<sup>1487</sup> or it drew appropriate inferences in favour of the Appellant.<sup>1488</sup>

476. For example, the testimony of three Prosecution witnesses in addition to Rahim Latifi<sup>1489</sup> was considered by the Chamber in relation to the Prizren municipality and found to be reliable.<sup>1490</sup> The Chamber also considered the evidence of at least three Defence witnesses in this regard, two of whom were not found to be generally credible.<sup>1491</sup>

<sup>1482</sup> Lukić Brief, paras.769–773; Lukić Closing Brief, paras.282, 284, 289–300, 303–304. *See also* section VIII. C. 2. (a) above.

<sup>1483</sup> SD9.

<sup>1484</sup> SD3.

<sup>1485</sup> *Blagojević* AJ, para.82.

<sup>1486</sup> Lukić Brief, paras.762–766. *See also* Lukić Brief, fn.1075 in which Lukić incorrectly cites to statements or testimonies of Witnesses Popaj, Dashi and Vojnović, as well as to an unadmitted exhibit (3D98) to support the statement that “Ognjenović, Delić and Glončak testified as to the KLA in Prizren.” There is not a single citation to the evidence of the three witnesses Lukić mentions at para.762.

<sup>1487</sup> *Contra* Lukić Brief, paras.759–761.

<sup>1488</sup> *Contra* Lukić Notice, p.26, para. 3.

<sup>1489</sup> *Contra* Lukić Brief, paras.759–761.

<sup>1490</sup> Judgement, Vol.II, para.244 (finding the evidence of Prosecution witnesses Hysni Kryeziu, Rexhep Krasniqi and Halil Morina to be credible, and Latifi’s evidence in general “worthy of close scrutiny”). *See also* Judgement, Vol.II, para.256 (finding that “there is no reason to doubt Latifi’s evidence that the forces involved in burning the houses were members of the police”).

<sup>1491</sup> Judgement, Vol.II, para.244 (finding the evidence of Defence witnesses Franjo Glončak and Nebojša Ognjenović not to be generally credible).

477. Lukić protests<sup>1492</sup> the Chamber’s rejection of Ognjenović’s testimony concerning the subject of the mass displacement from the town of Prizren<sup>1493</sup> but ignores the Chamber’s finding that Ognjenović’s evidence was not generally credible.<sup>1494</sup>

478. Contrary to Lukić’s complaint that “there was no mention of [...] Vojnović”,<sup>1495</sup> the Chamber in fact occasionally referred to his testimony but found that he “stretched credulity during his testimony on several occasions.”<sup>1496</sup> The Chamber also specifically noted that Vojnović, Delić, Glončak and Tomislav Mitić did not mention a KLA presence in Prizren or in the neighbourhood of Dušanovo/Dushanova.<sup>1497</sup>

(i) The Chamber reasonably concluded the KLA did not cause mass displacement

479. The Chamber was entitled to conclude that the KLA was present in Prizren municipality, while also finding there is an “absence of evidence of KLA activity,”<sup>1498</sup> and that the MUP and VJ forces were responsible for the mass displacement of the Kosovo Albanian civilian population from Prizren municipality.<sup>1499</sup> The mere fact that the Chamber stated that it heard evidence that “the border area between Prizren and Albania was the site of significant KLA movement and activity and combat actions undertaken by MUP and VJ forces in response”<sup>1500</sup> and found that it was the MUP and VJ forces working together who caused the mass displacement of the Kosovo Albanians from Prizren municipality,<sup>1501</sup> does not show error.<sup>1502</sup> The Defence witnesses he cites in support of this alleged error<sup>1503</sup> were either found not to be generally credible<sup>1504</sup> or did not mention the presence of KLA in the area.<sup>1505</sup>

480. The assertion that the Chamber failed to interpret evidence in a particular manner, instead of supporting Lukić’s preferred interpretation, warrants summary dismissal.<sup>1506</sup> Lukić

<sup>1492</sup> Lukić Brief, para.757.

<sup>1493</sup> Judgement, Vol.II, para.285.

<sup>1494</sup> Judgement, Vol.II, para.244.

<sup>1495</sup> Lukić Brief, para.763.

<sup>1496</sup> Judgement, Vol.III, para.960.

<sup>1497</sup> Judgement, Vol.II, para.278.

<sup>1498</sup> Judgement, Vol.II, para.285.

<sup>1499</sup> Judgement, Vol.II, para.286.

<sup>1500</sup> Judgement, Vol.II, para.245.

<sup>1501</sup> Judgement, Vol.II, para.286.

<sup>1502</sup> *Contra* Lukić Brief, para.768.

<sup>1503</sup> *See* Lukić Brief, paras.758–768.

<sup>1504</sup> Judgement, Vol.II, paras.244, 285; Judgement, Vol.III, para.960, *contra* Lukić Brief, para.762.

<sup>1505</sup> Judgement, Vol.II, para.278, *contra* Lukić Brief, para.763.

<sup>1506</sup> SD3.

merely re-argues the KLA's alleged activity as the reason for the mass displacement. His arguments should be summarily dismissed.<sup>1507</sup>

(b) The Chamber reasonably concluded that NATO bombings did not cause the mass displacement of Kosovo Albanian civilians from Prizren municipality

481. Lukić reargues his trial submissions about NATO's alleged responsibility for the mass displacement.<sup>1508</sup> He fails to show any error by the Chamber in rejecting those arguments.<sup>1509</sup>

482. In attempting to demonstrate such an error, he argues that there was "significant evidence" of NATO's attacks which would have influenced the decision of the Kosovo Albanian civilians to leave Prizren in 1999.<sup>1510</sup> However, Lukić only cites to Vojnović's evidence to support this broad allegation, and in particular his 92<sup>ter</sup> statement.<sup>1511</sup> He states that "Vojnović testified as to his personal knowledge of Albanians in buses having been struck by NATO".<sup>1512</sup> In fact, the relevant paragraph from Vojnović's statement states:

I have personal knowledge of a case from the beginning of the bombing when a group of Muslim civilians were headed towards the Albanian border travelling in buses. Having talked to employees of the Prizren SUP they returned home.<sup>1513</sup>

483. Lukić attempts to substantiate his claim that the Chamber "ignores" evidence concerning NATO's bombing of Kosovo Albanian civilians by referring to an incident at Koriša/Korisha.<sup>1514</sup> In fact, the Chamber did refer to and consider this incident.<sup>1515</sup> The Chamber further devoted a section of the Judgement to an analysis of the overall pattern of events, and cited to the evidence of witnesses whose broadly consistent accounts confirmed that fear reigned in towns and villages across Kosovo because of the actions of the VJ and MUP forces, not NATO bombing.<sup>1516</sup> It noted that "none of the Kosovo Albanians who

<sup>1507</sup>

SD9.

<sup>1508</sup>

Lukić Brief, paras.769–773; Lukić Closing Brief, paras.282, 284, 289–300, 303–304.

<sup>1509</sup>

SD9.

<sup>1510</sup>

Lukić Brief, para.770.

<sup>1511</sup>

Lukić Brief, para.771.

<sup>1512</sup>

Lukić Brief, para.771.

<sup>1513</sup>

Exh.6D1532 (public), para.37.

<sup>1514</sup>

Lukić Brief, para.769.

<sup>1515</sup>

Judgement, Vol.I, para.1214 and note 3318. The Chamber specifically referred to NATO bombings of "the village of Koriša/Korisha (Đakovica/Gjakovo/Gjakova municipality) on 14 May 1999." While the municipality referred to should in fact be the Prizren municipality, the Chamber is referring to the same incident referred to by Lukić. See also Judgement, Vol.II, para.279 and note 763 (citing to Exh.5D914, 549<sup>th</sup> Motorised Brigade Combat Report to PrK, dated 14 May 1999, in relation to the Koriša/Korisha bombing).

<sup>1516</sup>

Judgement, Vol.II, para.1156.

testified cited the NATO bombing as among the reasons for their departure,”<sup>1517</sup> and found that “the NATO bombing was not the primary reason for the mass displacement of Kosovo Albanians from Kosovo.”<sup>1518</sup>

2. The Chamber reasonably concluded that Lukić was responsible for crimes committed in Prizren municipality

484. Lukić appears to make two disconnected arguments concerning his knowledge or awareness of crimes taking place in Prizren. He argues that: (1) because there was “ample evidence” that the MUP Staff in Priština did not have the ability during the war to communicate with the field, he “could only have had the same/less knowledge”;<sup>1519</sup> and (2) he could not know about the taking of identity documents and mistreatment of civilians at the Vrbnica Border crossing given that he had no control of the Border Police.<sup>1520</sup> In both instances he attempts to reargue his case from trial that he had no knowledge that crimes were taking place. Repeating previous trial submissions without a showing of error warrants summary dismissal,<sup>1521</sup> as does challenging a factual finding where the relevance of such a finding is unclear and has not been explained by him.<sup>1522</sup>

485. Lukić ignores the Chamber’s findings that he was frequently informed of the crimes committed by the MUP and VJ members against Kosovo Albanian civilians throughout Kosovo<sup>1523</sup> and that “as Head of the MUP Staff, [he] had detailed information about the activities of the MUP in Kosovo during the Indictment period, including the commission of crimes.”<sup>1524</sup>

486. In addition, Lukić only partially cites to the Chamber’s conclusion on his responsibility,<sup>1525</sup> and ignores the Chamber’s specific conclusion that, while it had not been proved Lukić had control over the border police station in Kosovo, this “does not [...] affect

<sup>1517</sup> Judgement, Vol.II, para.1175.

<sup>1518</sup> Judgement, Vol.II, para.1176.

<sup>1519</sup> Lukić Brief, paras.774–778; Lukić Closing Brief, paras.539–596.

<sup>1520</sup> Lukić Brief, paras.779–781; Lukić Closing Brief, paras.451–463.

<sup>1521</sup> SD9.

<sup>1522</sup> SD8.

<sup>1523</sup> Judgement, Vol.III, para.1123.

<sup>1524</sup> Judgement, Vol.III, para.1097.

<sup>1525</sup> See Lukić Brief, para.781 (only partially citing to the Chamber’s finding concerning his control over the border police, and arguing that, based on its finding that “the Border Police stations did not come under the purview and jurisdiction of Appellant as head of the MUP Staff, and thus they did not report to him,” it is illogical for the Chamber to attribute any knowledge of the situation to Lukić).

the findings relating to his criminal responsibility.”<sup>1526</sup> Ignoring or misrepresenting relevant factual findings warrants summary dismissal.<sup>1527</sup>

### **C. CONCLUSION**

487. None of Lukić’s arguments in Ground U undermine the Chamber’s findings concerning his responsibility for the forcible displacement of the Kosovo Albanian civilians from Prizren municipality. Ground U should be dismissed in its entirety.

### **XVII. GROUNDS V, W, X, Y, Z, AA, BB, CC, DD, EE AND FF**

488. Grounds V, W, X, Y, Z, AA, BB, CC, DD, EE and FF from Lukić’s Notice have been “consolidated under Ground Q”.<sup>1528</sup>

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<sup>1526</sup> Judgement, Vol.III, para.1075.

<sup>1527</sup> SD2.

<sup>1528</sup> Lukić Brief, para.8.

## XVIII. LUKIĆ IS CRIMINALLY RESPONSIBLE FOR CRIMES COMMITTED IN GNJILANE/GJILAN MUNICIPALITY (GROUND GG)

### A. OVERVIEW

489. The Chamber found that VJ reservists ordered the residents of Prilepnica/Përlepnicica to leave the village on 6 and 13 April 1999 and that “a convoy of around 3,000 people was formed and was escorted by police to the Macedonian border”<sup>1529</sup>; that “the VJ and MUP [...] drove Kosovo Albanians from the village [of Žegra/Zhegra] by the use of threats, beating and killings, creating a climate of fear”; and that “Kosovo Albanians [from Vladovo/Lladova] fled to the mountains and eventually left for Macedonia, escorted by MUP and VJ personnel” after their “houses were burned and villagers killed by VJ soldiers.”<sup>1530</sup> The Chamber further found that “the mosque in Vlaštica/Lhastica was burned down by VJ soldiers and armed locals, some of whom were wearing dark blue police uniforms”<sup>1531</sup> and that Kosovo Albanians from the Gnjilane/Gjilan municipality were “mistreated at VJ checkpoints before the border with Macedonia,” while “Serbian police searched them and took their identification papers and passports.”<sup>1532</sup> It concluded that it had been established beyond reasonable doubt that Lukić was responsible for crimes committed in this municipality.<sup>1533</sup>

490. Ground GG contains arguments which repeat Lukić’s previous trial arguments and/or his arguments under Ground U.<sup>1534</sup> It is replete with unsupported assertions that the Chamber erred in both fact and law in its findings on Gnjilane/Gjilan by *inter alia* misrepresenting evidence,<sup>1535</sup> ignoring evidence, relying upon unreliable testimony,<sup>1536</sup> and being biased.<sup>1537</sup>

<sup>1529</sup> Judgement, Vol.II, para.943.

<sup>1530</sup> Judgement, Vol.II, para.944.

<sup>1531</sup> Judgement, Vol.II, para.946.

<sup>1532</sup> Judgement, Vol.II, para.948.

<sup>1533</sup> Judgement, Vol.III, para.1138.

<sup>1534</sup> *Compare* Lukić Brief, paras.791, 819–821, with paras.779–781 and Lukić Closing Brief, paras.451–463 (concerning Lukić’s alleged lack of notice and/or control over Border Police). *Compare also* Lukić Brief, paras.792–796, 811, with paras.769–773 and Lukić Trial Brief, paras.282, 284, 289–300, 303–304 (concerning NATO bombings being responsible for mass displacements); *compare* Lukić Brief, paras.815–817, with paras.774–778 (concerning Lukić’s alleged lack of knowledge of crimes due to no access to MUP or VJ reports in Prizren or Gnjilane/Gjilan municipalities, respectively).

<sup>1535</sup> Lukić Brief, para.790 (arguing that the Chamber ignored a witness’s evidence, which resulted in the Chamber’s “misrepresent[ing] an order as being issued by the [Joint Command], when it obviously originates from PrK”). Other than failing to explain the relevance of the challenged factual finding, and partially misrepresenting it, Lukić’s argument does not in fact contradict the Chamber’s findings. *See* Judgement, Vol I, paras.1121–1124, 1128–1144 (finding that the source of the order was the Priština Corps). This argument should be summarily dismissed. SD8, SD2, SD7.

<sup>1536</sup> Lukić Brief, paras.783–784.

<sup>1537</sup> Lukić Brief, para.789.

Such arguments are subject to summary dismissal, particularly because in most instances Lukić merely seeks to substitute his own evaluation of the evidence for that of the Chamber.<sup>1538</sup> Unless it can be shown that the Chamber specifically ignored evidence, it is presumed to have considered the evidence.<sup>1539</sup>

491. Lukić's point-by-point analysis of instances where the Chamber did not make a finding with which he agrees<sup>1540</sup> repeatedly ignores the relevant evidence considered and cited by the Chamber. This warrants summary dismissal.<sup>1541</sup> For example, in arguing that he is not liable for the forcible displacement of civilians from Gnjilane/Gjilan, Lukić focuses on a location where forcible displacement had not been established,<sup>1542</sup> while ignoring the Chamber's finding that thousands of people were displaced from Prilepnica/Përlepnica,<sup>1543</sup> Žegra/Zhegra and Vladovo/Lladova.<sup>1544</sup>

492. Lukić fails to show that the Chamber's findings were those that no reasonable trier of fact could have made.

#### **B. The Chamber did not err in finding MUP/VJ forces and Lukić responsible for the crimes in Gnjilane/Gjilan municipality**

493. Amidst numerous disjointed and largely incomprehensible assertions in Ground GG, Lukić appears to make two main arguments: (1) that the Chamber ignored evidence that NATO bombings could have caused the mass displacement of Kosovo Albanians from the village of Prilepnica/Përlepnica;<sup>1545</sup> and (2) that the Chamber erred in finding him responsible for forcible displacement of civilians from Žegra/Zhegra, when underlying crimes were committed by the VJ and paramilitaries, and investigated or prosecuted by the MUP.<sup>1546</sup>

<sup>1538</sup> SD3, SD 4, SD6, SD13.

<sup>1539</sup> *Kvočka* AJ, para.23.

<sup>1540</sup> Lukić Brief, paras.789-814.

<sup>1541</sup> SD2.

<sup>1542</sup> Lukić Brief, para.785. *See also* Judgement, Vol.II, para.947 (referring to the village of Nosalje/Nosala). *See also* Lukić Brief, para.814.

<sup>1543</sup> Judgement, Vol.II, para.943. *See also* Judgement, Vol.III, para.1138.

<sup>1544</sup> Judgement, Vol.II, paras.944, 947. *See also* Judgement, Vol.III, para.1138.

<sup>1545</sup> Lukić Brief, paras.792–795. *See* section XVI. B. 1. (b) above.

<sup>1546</sup> Lukić Brief, paras.797–809, 812.

1. The Chamber reasonably concluded that NATO bombings did not cause the mass displacement of Kosovo Albanian civilians from Prilepnica/Përlepnica

494. With respect to NATO bombings, Lukić merely repeats arguments based on the evidence of his witness Gavranic,<sup>1547</sup> and makes unsupported allegations about the Chamber's alleged "bias in finding a lack of evidence about NATO bombing."<sup>1548</sup> The fact that a Chamber does not list every fact and circumstance it considered does not mean that it "ignored or failed to evaluate the factor in question."<sup>1549</sup> His arguments should be dismissed as they seek to substitute his evaluation of the evidence for that of the Chamber.<sup>1550</sup>

495. Lukić argues that important parts of Gavranic's testimony were not mentioned in the Judgement,<sup>1551</sup> and that, because it is allegedly un rebutted, his testimony must prevail.<sup>1552</sup> Lukić disregards or ignores that the Chamber took into account the evidence of Prosecution and Defence witnesses, including Shaqiri, Shabani, K81 and Smiljanic.<sup>1553</sup> Based on all the evidence, the Chamber reasonably concluded that it:

does not accept that fear of the NATO bombing was the reason why so many people left their homes in Gnjilane/Gjilan municipality at this time, as there is no evidence of NATO targeting areas inhabited by civilians, neither K81 nor Shabani cited fear of NATO as among the reasons for their and their families flight, and the municipality was not the site of intense NATO bombardment, as explained by Smiljani}.

496. Lukić asserts that the Chamber's acceptance of Shaqiri's testimony that Prilepnica/Përlepnica locals were not scared of NATO bombing is "illogical".<sup>1555</sup> Mere assertions unsupported by any evidence are grounds for summary dismissal.<sup>1556</sup> He fails to show any error in the Chamber's reasoning accepting Shaqiri's testimony that the reason for the Prilepnica/Përlepnica population's mass displacement was the order from VJ members Palamarević and Mladenović.<sup>1557</sup> Lukić also claims that the Chamber omitted portions of

<sup>1547</sup> Lukić Brief, paras.794–796.

<sup>1548</sup> Lukić Brief, para.793.

<sup>1549</sup> *Kupreškić* AJ, para.458.

<sup>1550</sup> SD3.

<sup>1551</sup> Lukić Brief, para.795.

<sup>1552</sup> Lukić Brief, para.796.

<sup>1553</sup> Judgement, Vol.II, paras.894, 915, 941–942.

<sup>1554</sup> Judgement, Vol.II, para.942. *See also* paras.908–909.

<sup>1555</sup> Lukić Brief, para.792.

<sup>1556</sup> SD4.

<sup>1557</sup> Judgement, Vol.II, para.908. *See also* paras.909-916; T.2930 (open).

Smiljanić’s testimony, and argues, without support and contrary to Smiljanić’s testimony, that “Gnjilane Municipality was not exempt from NATO action.”<sup>1558</sup>

497. The Chamber properly addressed the evidence before it on the issue of NATO bombing.<sup>1559</sup> Lukić fails to show the Chamber’s reliance on evidence in addition to Gavranić’s testimony was unreasonable and that its findings were those that no reasonable trial chamber could have made.

2. The Chamber reasonably concluded that Lukić was responsible for the forcible displacement of Kosovo Albanian civilians from Žegra/Zhegra

498. Lukić’s argument that the Chamber ignored exculpatory evidence,<sup>1560</sup> and that it incompletely analysed or misconstrued evidence<sup>1561</sup> with respect to Lukić’s responsibility for the crimes in Žegra/Zhegra lacks merit. He apparently argues that the Chamber erred in finding him responsible for crimes: (1) committed by VJ and paramilitaries, but not by the MUP;<sup>1562</sup> (2) of which he had no knowledge, given lack of access to VJ reports;<sup>1563</sup> and (3) which the police in fact investigated or prosecuted, while providing protection for the Kosovo Albanian civilians.<sup>1564</sup> Lukić consistently ignores<sup>1565</sup> the Chamber’s finding that, as a JCE member, he is liable for the crimes of the VJ and the MUP.<sup>1566</sup>

499. To construct his argument that (a) civilians from Žegra/Zhegra fled from Donja Stubla/Stublla e Poshtme voluntarily, and not because of VJ or MUP activities, and (b) the Chamber erred by disregarding such “voluntary leaving,”<sup>1567</sup> Lukić improperly cites to only a

<sup>1558</sup> Lukić Brief, para.794.

<sup>1559</sup> See sections VIII. C. 2. (a) and XVI. B. 1. (b) above.

<sup>1560</sup> Lukić Brief, para.801.

<sup>1561</sup> Lukić Brief, paras.797–800, 802,809.

<sup>1562</sup> Lukić Brief, paras.797–800, 809. He similarly argues that he cannot be responsible for crimes in Vladovo/Lladova where “perpetrators were not described as MUP.” Lukić Brief, para.807.

<sup>1563</sup> Lukić Brief, para.816. He similarly argues that he cannot be responsible for crimes in Prilpenica/Përlepnica, given that he would have had no “knowledge or suspicion that criminal activity was underway.” Lukić Brief, para.817.

<sup>1564</sup> Lukić Brief, paras.801–802, 805–806, 810–812.

<sup>1565</sup> Lukić Brief, paras.791, 797–800, 807, 809–813, 819–821. When arguing that Shabani changed his testimony at trial to state for the first time that police were present in Žegra/Zhegra, Lukić misstates Shabani’s evidence. See Lukić Brief, paras.797–800 (arguing that Shabani did not mention police). *But see* Exh.P2264 (public), [REDACTED].

<sup>1566</sup> Judgement, Vol.III, paras.1130–1132. Lukić’s argument that he is not responsible for the burning of the Vlačica/Llhastica mosque since only the VJ burned it fails for the same reason. Lukić Brief, paras.786, 814(c). He also ignores or misrepresents the Chamber’s finding that the mosque was burned by “VJ soldiers and armed locals, some of whom were wearing dark blue police uniforms”, which warrants summary dismissal. See Judgement, Vol.II, para.946; SD2.

<sup>1567</sup> Lukić Brief, paras.803–804.

portion of Shabani's statement.<sup>1568</sup> He ignores Shabani's statement that "We feared the Serb forces, that they would arrive one day and commit a massacre in the village."<sup>1569</sup> Lukić fails to show any error by the Chamber, which properly referred to Shabani's evidence as a whole.<sup>1570</sup> Misrepresenting evidence warrants summary dismissal.<sup>1571</sup>

500. Lukić appears to argue that he should have been acquitted for the murders and destruction of property in Žegra/Zhegra<sup>1572</sup> and in other villages described by Shabani,<sup>1573</sup> when in fact he was not convicted for those crimes.<sup>1574</sup> Lukić was found guilty only of deportation and forcible transfer for Žegra/Zhegra and Vladovo/Lladova, and not of murder and destruction of property. These arguments should be summarily dismissed as challenges to findings on which Lukić's conviction does not rely.<sup>1575</sup>

501. Lukić also argues that the Chamber committed a "grave and discernible" error by finding him guilty based on his knowledge that VJ reservists were committing crimes in Žegra/Zhegra, while acquitting Milutinović, who allegedly had the same knowledge.<sup>1576</sup> This argument misstates the Chamber's findings and disregards the basis upon which Lukić was convicted, thus warranting summary dismissal.<sup>1577</sup>

### C. CONCLUSION

502. None of Lukić's arguments undermine the Chamber's findings concerning his responsibility for the forcible displacement of the Kosovo Albanian civilians from Gnjilane/Gjilan municipality. Ground GG should be dismissed in its entirety.

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<sup>1568</sup> Lukić Brief, para.804.

<sup>1569</sup> P.2263 (public), p.5. *See also* P.2280 (public), p.4, T.2719–2722 (open).

<sup>1570</sup> Judgement, Vol.II, para.926.

<sup>1571</sup> SD2.

<sup>1572</sup> Lukić Brief, paras.801–802, 806.

<sup>1573</sup> Lukić Brief, para.805.

<sup>1574</sup> Judgement, Vol.III, para.1138 (see all convictions for Gnjilane, which do not include murder). *Contra* Lukić Brief, para.801.

<sup>1575</sup> SD1.

<sup>1576</sup> Lukić Brief, para.818, citing Judgement, Vol.III, paras.261, 284. *See* section VIII. D. above.

<sup>1577</sup> SD2.

## **XIX. GROUNDS HH, II AND JJ**

503. Grounds HH, II and JJ from Lukić's notice of appeal have been "consolidated under Ground Q".<sup>1578</sup>

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<sup>1578</sup> Lukić Brief, para.7.

## XX. LUKIĆ'S SENTENCE WAS NOT MANIFESTLY EXCESSIVE: IT WAS TOO LENIENT (GROUND KK)

### A. Overview

504. Far from being excessive,<sup>1579</sup> Lukić's sentence is manifestly inadequate.<sup>1580</sup> The Appeals Chamber should increase Lukić's sentence because the Chamber failed to individualise it. As *de facto* commander of the MUP in Kosovo, Lukić was an important member of the JCE and directly ensured that the ethnic cleansing operation was carried out on the ground. As a bridge between the policy-planners in Belgrade and those on the ground in Kosovo, Lukić ensured that day-to-day operations were conducted by the MUP forces in accordance with those plans.<sup>1581</sup> As a JCE member, he shared the common purpose to forcibly displace the Kosovo Albanian population, executed by VJ and MUP forces. Over 700,000 Kosovo Albanians were forced to leave their homes and at least 554 were murdered.<sup>1582</sup> The 22-year sentence fails to reflect the gravity of crimes for which Lukić was convicted and fails to account for Lukić's critical role in these crimes.<sup>1583</sup> The sentence should be increased accordingly.

505. Lukić's arguments that his sentence should be decreased on the grounds that the Chamber 1) ignored relevant sentencing practices in former Yugoslavia; 2) did not consider relevant mitigating factors; and 3) inappropriately weighed the aggravating factors should be dismissed.

### B. The Chamber properly considered the sentencing practices of the former Yugoslavia

506. Lukić incorrectly claims that the Chamber violated the principle of *nullem crimen sine lege* because it failed to consider the sentencing practices of the former Yugoslavia.<sup>1584</sup> The Chamber is not bound by the law of the former Yugoslavia when determining sentences.<sup>1585</sup> The Appeals Chamber has held:

<sup>1579</sup> Lukić Brief, para.822-842.

<sup>1580</sup> See Prosecution Brief, paras.120-170, 181-185, 194-198.

<sup>1581</sup> Judgement, Vol.III, para.1131.

<sup>1582</sup> See section XIV. above, and Appendix 1.

<sup>1583</sup> See Prosecution Brief

<sup>1584</sup> Lukić Brief, paras.839-840.

<sup>1585</sup> *D.Nikolić SAJ*, para.69.

[T]he International Tribunal can impose a sentence in excess of that which would be applicable under relevant law in the former Yugoslavia [...] [T]his sentencing practice does not violate the principle of *nulla poena sin lege* because an accused must have been aware that the crimes for which he is indicted are the most serious violations of international humanitarian law, punishable by the most severe of penalties.<sup>1586</sup>

507. The Chamber, in any event, did consider the former Yugoslavia's sentencing practices.<sup>1587</sup> Lukić fails to show how the Chamber abused its discretion. His claim should be dismissed accordingly.

### C. The Chamber properly considered mitigating factors

508. Lukić claims that the Chamber failed to consider the following factors in mitigation: 1) the complexity of the situation in Kosovo during the NATO bombing; 2) Lukić's efforts to promote justice in Kosovo; 3) Lukić's health condition; and 4) Lukić's purported surrender to the Tribunal.

#### 1. The complexity of the situation in Kosovo during the NATO Bombing

509. Lukić's argument that the Chamber failed to consider that he was acting in a complicated and harsh situation<sup>1588</sup> should be dismissed. The Chamber acknowledged that Lukić was acting in the midst of a complicated situation, including the defence of the country against NATO and bombing and some combat operations against the KLA.<sup>1589</sup> However, it found that despite this, Lukić abused his superior position to commit crimes. Lukić fails to show why this finding was unreasonable.

510. In support of his challenge Lukić inappositely cites *Čelebići*.<sup>1590</sup> In *Čelebići*, the "harsh environment" considered as a mitigating factor for Landžo related to his poor family background, his age (19) at the time of the crimes, and his involvement in an armed conflict "clearly not of [his] own choosing".<sup>1591</sup> In contrast, the Chamber found that Lukić was a man of senior stature who, in his official capacity, contributed significantly to the "widespread and

<sup>1586</sup> *Blaškić* AJ, para.681.

<sup>1587</sup> Judgement, Vol.III, paras.1153–1160.

<sup>1588</sup> Lukić Brief, paras.828, 830.

<sup>1589</sup> Judgement, Vol. III, para.1201.

<sup>1590</sup> Lukić Brief, para.830.

<sup>1591</sup> *Čelebići* TJ, paras.1283–1284.

systematic campaign of terror and violence” in Kosovo.<sup>1592</sup> The Chamber further found that Lukić continued to instruct the MUP to co-ordinate with the VJ in Kosovo “despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations”.<sup>1593</sup> Lukić’s claim should be dismissed accordingly.

## 2. Efforts to Promote Justice

511. Contrary to Lukić’s submission, the Chamber did consider Lukić’s “contribution to law and order”<sup>1594</sup> as well as his post-conflict efforts to promote justice in Kosovo<sup>1595</sup> and found that “on the balance of probabilities Lukić contributed to law and order in a number of cases connected the crimes in the Indictment, and therefore will take this into account in mitigation when determining his sentence.”<sup>1596</sup> Lukić’s claim should be dismissed.

## 3. Health Condition

512. Lukić incorrectly claims that the Chamber did not adequately consider his health condition.<sup>1597</sup> To the contrary, the Chamber carefully considered his state of health and reasonably concluded that it did not rise “to the level that would warrant mitigation of his sentence”.<sup>1598</sup> Lukić fails to explain why the Chamber erred by so finding. His claim should be dismissed accordingly.

## 4. Purported Surrender to the Tribunal

513. Lukić claims that the Chamber did not lend appropriate mitigating weight to his purported surrender to the Tribunal.<sup>1599</sup> He raises this claim for the first time on appeal, which is “not the appropriate forum in which mitigating circumstances, evidence of which was readily available at trial, should be presented for the first time”.<sup>1600</sup> In any event, the Chamber did consider this issue *proprio motu* and properly exercised its discretion in finding that Lukić’s surrender was not a mitigating factor.<sup>1601</sup>

<sup>1592</sup> Judgement, Vol.III, paras.1173, 1201.

<sup>1593</sup> Judgement, Vol.III, para.1201.

<sup>1594</sup> Judgement, Vol.III, para.1202. *Contra* Lukić Brief, para.828(b).

<sup>1595</sup> Judgement, Vol.III, para.1202. *Contra* Lukić Brief, para.829.

<sup>1596</sup> Judgement, Vol.III, para.1202.

<sup>1597</sup> Lukić Brief, paras.831–835.

<sup>1598</sup> Judgement, Vol.III, para.1203.

<sup>1599</sup> Lukić Brief, para.838.

<sup>1600</sup> *See Bralo SAJ*, para.18.

<sup>1601</sup> Judgement, Vol.III, para.1204.

514. [REDACTED]<sup>1602</sup> [REDACTED].<sup>1603</sup> Given these circumstances, the Chamber was entitled not to treat this factor in mitigation of his sentence. Lukić fails to show that the Chamber abused its discretion in reaching this conclusion.

5. Abuse of Authority as an Aggravating Factor

515. Lukić claims that the Chamber erred by citing his “superior position” as an aggravating factor since he “did not have *de jure* powers to punish/discipline [sic]”.<sup>1604</sup> Lukić misrepresents the Chamber’s findings and the law.<sup>1605</sup> He was convicted under a JCE theory of liability.<sup>1606</sup> Given that a position of authority is not an element of JCE, the Chamber did not “double-count” such authority when it considered it as an aggravating factor.

516. In addition, it is not the position of authority *per se* that is considered as an aggravating factor in sentencing, but rather the abuse of such authority.<sup>1607</sup> The Chamber made this distinction in Lukić’s case and reasonably found that Lukić’s abuse of his authority aggravated his sentence.<sup>1608</sup> The Chamber found that even after he learned that the Tribunal Prosecutor Louise Arbour sent a letter of warning, Lukić, in his official capacity as Head of the MUP staff, continued to instruct the MUP to engage in joint operations with the VJ in Kosovo, despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations.<sup>1609</sup> The Chamber reasonably concluded that this constituted an abuse of his superior position that aggravates his sentence. Lukić fails to show error.

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<sup>1602</sup> [REDACTED] Lukić Provisional Release Decision 2, para. 6. *See* Judgement, Vol.III, fn.2971.

<sup>1603</sup> [REDACTED].

<sup>1604</sup> Lukić Brief, para.842.

<sup>1605</sup> *See* Lukić Brief, paras.841–842.

<sup>1606</sup> Judgement, Vol.III, para.1212.

<sup>1607</sup> *Milošević* AJ, para.302.

<sup>1608</sup> Judgement, Vol.III, para.1201.

<sup>1609</sup> Judgement, Vol.III, para.1201.

**XXI. CONCLUSION**

517. For all the reasons above, the Appeals Chamber should dismiss Sreten Lukić's appeal.

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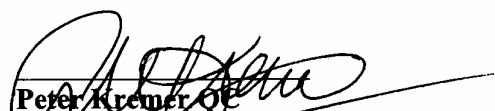


**Peter Kremer QC**  
**Chief of Appeals Division**

Dated this 2<sup>nd</sup> day of February 2010  
At The Hague, The Netherlands

**XXII. DECLARATION PURSUANT TO RULE 112**

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As at the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to the Appellant all material under Rule 68(i) which has come into his actual knowledge and, in addition, has made available to him, under Rule 68(ii), collections of relevant material held by the Prosecutor.



**Peter Kremer, QC**  
**Chief of Appeals Division**

Dated this 2<sup>nd</sup> day of February 2010  
At The Hague, The Netherlands

### XXIII. GLOSSARY

**Pleadings, Orders, Decisions, etc. from Prosecutor v. Nikola Šainović et al., Case No. IT-05-87-A**

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Decision on Pavković's Second Motion to Amend Notice	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Decision on Nebojša Pavković's Second Motion to Amend His Notice of Appeal, 22 September 2009 (public)
Lukić 115 Motion	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Sreten Lukić's Motion to Present Additional Evidence Before Appeals Chamber, 15 December 2009 (public)
Lukić Brief	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Defense Appellant's Brief Refiled, 7 October 2009 (public with confidential annexes)
Lukić Notice	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Sreten Lukić's Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit, 27 May 2009 (public)
Prosecution Brief	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Prosecution Appeal Brief, 21 August 2009 (public)
Prosecution Notice	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Prosecution Notice of Appeal, 27 May 2009 (public)
Prosecution Response	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Public Redacted Refiled Prosecution Response to Appeal of Sreten Lukić, 2 February 2010 (public redacted)
Prosecution Response to Lukić 115 Motion	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Prosecution Response to Lukić Motion to Present Additional Evidence, 14 January 2010 (public)

**Pleadings, Orders, Decisions, etc. relating to the trial of Prosecutor v. Milan Milutinović et al., Case No. IT-05-87-T**

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Amended Clarification on Proof of Death	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Prosecution's Submission of Proof-of-Death Charts, 27 July 2007 (public)
Bar Table Reply Application	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Motion of the Defence of the Accused Sreten Lukic for Leave to File Reply in Support of Bar Table Motion with Exhibits A and B, 27 May 2008 (public)
Clarification on Proof of Death	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Prosecution Submission of Proof of Death Charts in Relation to Individuals Listed in the Schedules to the Indictment, 28 March 2007 (public)
Decision on Admission from Bar Table	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Defence Motions for Admission of Documents from Bar Table, 11 June 2008 (public)
Decision on Court Schedule	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Motion for Alteration of Court Schedule, 20 February 2008 (public)
Decision on Leave to File Replies	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Defence (1) First, Second, Third, and Fourth Motions for Further Enlargement of Time in Relation to Motions for Admission of Documents from Bar Table and (2) Motion for Leave to File Replies, 2 June 2008 (public)
Decision on Lukić Objection to the Admission of P948	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Request for Reconsideration of the Trial Chamber's Admission into Evidence of his Interview with the Prosecution (Exhibit P948), 22 May 2008 (public)
Decision on Objection to Report on Time-Use	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Defence Objection to February 2008 Report on Use of Time, 16 April 2008 (public)
Decision on Pavković First Motion	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005 (public)
Decision on Pavković Second Motion	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Nebojša Pavković's Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 2 December 2005 (public)
Decision on Pavković Third	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T,

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Motion	T.Ch., Second Decision on Motions to Delay Proposed Date for Start of Trial, 28 April 2006 (public)
Decision on Postponing Trial Schedule	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Joint Defence Motion to Postpone Trial Schedule, 23 May 2007 (public)
Decision on Reconsideration of Bar Table Decision	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, 2 July 2008 (public)
Decision on Reconsideration for Leave to File Replies	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Defence Motion for Reconsideration of Denial of Extension of Time and Leave to File Replies, 10 June 2008 (public)
Decision on Remaining Defence Time	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Use of Time Remaining for Defence Phase of Trial, 21 November 2007 (public)
Decision on Request for Information on Report on Time-Use	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Defence Request for Information on February 2008 Report on Use of Time, 18 March 2008 (public)
Decision on Time-Use	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Use of Time, 9 October 2006 (public)
Decision to Amend Indictment	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-PT, T.Ch., Decision on Motion to Amend Indictment, 11 May 2006 (public)
First Decision on Ojdanić Motion to Stay	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Ojdanić Motion for Stay of Proceedings, 9 June 2006 (public)
Indictment	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-PT, T.Ch., Third Amended Joinder Indictment, 21 June 2006 (public)
Joinder Decision	<i>Prosecution v. Milan Milutinović, Nikola Šainović &amp; Dragoljub Ojdanić and Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević &amp; Sreten Lukić</i> , Cases Nos. IT-99-37-PT and IT-03-70-PT, Decision on Prosecution Motion for Joinder, 8 July 2005 (public)

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Judgement	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Judgement (volumes 1-4), 26 February 2009
Lazarević Provisional Release Decision	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lazarević Motion for Provisional Release, 22 May 2007 (public)
Lukić 65 <sup>ter</sup> Exhibit Decision 1	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić First Motion to Amend Rule 65 <sup>ter</sup> Exhibit List, 31 January 2008 (public)
Lukić 65 <sup>ter</sup> Exhibit Decision 2	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Second Motion to Amend Rule 65 <sup>ter</sup> Exhibit List, 8 February 2008 (public)
Lukić 65 <sup>ter</sup> Exhibit Decision 3	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Third Motion to Amend Rule 65 <sup>ter</sup> Exhibit List, 15 February 2008 (public)
Lukić 65 <sup>ter</sup> Exhibit Decision 4	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Fifth Motion to Amend Rule 65 <sup>ter</sup> Exhibit List, 4 March 2008 (public)
Lukić 65 <sup>ter</sup> Exhibit Decision 5	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Sixth Lukić Motion to Amend Rule 65 <sup>ter</sup> Exhibit List, 7 March 2008 (public)
Lukić Closing Brief	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Motion to Replace Public Redacted Version of Final Trial Brief, 7 August 2008 (public redacted)
Lukić Motion in Support of Pavković Second Motion	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Sreten Lukić's Response in Support of Pavković's Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 7 November 2005 (public)
Lukić Motion to Delay	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Sreten Lukić's Motion to Delay Start of Trial or in the Alternative to Grant a Severance of the Proceedings Against this Accused, 24 April 2006 (public)
Lukić Objection to Revised Translation of P948	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Objection to Translation of Revised Exhibit P948, 22 May 2008 (public)

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Lukić Pre-Trial Brief	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Sreten Lukić's Pre-trial Brief Pursuant to Rule 65ter (F), 6 June 2006 (public)
[REDACTED]	[REDACTED]
Lukić Provisional Release Decision 2	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Lukić Motion for Temporary Provisional Release, 7 December 2007 (public with confidential annex)
Lukić Response to Prosecution Motion to Admit Documentary Evidence	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Sreten Lukić's Response in Objection to the "Prosecution's Second Submission with Annex in Response to 6 June 2006 Order on Prosecution's Motion to Admit Documentary Evidence", 4 August 2006 (public)
Order on Close of Prosecution Case	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Order on Close of Prosecution Case, Rule 98bis Proceedings and Defence Rule 65ter Filings, 5 March 2007 (public)
Order on Procedure and Evidence	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Order on Procedure and Evidence, 11 July 2006 (public)
Order on Prosecution Submission	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Order Arising from Prosecution's Submission Regarding the Order of Pre-Trial Judge from Status Conference, 21 November 2005 (public)
Order on the Admission of P948	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Order on the Admission into Evidence of Revised Version of Lukić Interview with the Prosecution (Exhibit P948), 22 May 2008 (public)
Pavković Second Motion	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 7 November 2005 (public)
Pre-Trial Judge Order	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Order of Pre-Trial Judge Arising from Status Conference, 1 September 2005 (public)
Pre-Trial Work Plan	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Pre-Trial Order and Appended Work Plan, 5 April 2006 (public)

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Prosecution Notice of Compliance	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-PT, T.Ch., Prosecution's Notification of Compliance With the Trial Chamber's Oral Orders at the Status Conference, 7 April 2006 (public)
Prosecution Submissions on Pre-Trial Judge Order	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-PT, T.Ch., Prosecution's Submissions Regarding the Order of Pre-Trial Judge Arising from Status Conference, 30 September 2005 (public)
Prosecution Submission on 65 <sup>ter</sup> Order	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-PT, T.Ch., Prosecution's Submission Regarding the Order of Pre-Trial Judge Arising From 65 <sup>ter</sup> Conference, 28 April 2006 (public)
Prosecution Sur-Reply	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Prosecution Sur-Reply to Sreten Lukić's Reply in Support of his Objection to Exhibit P948 (Lukić Interview), 19 May 2008 (public)
Registrar's Decision 1	<i>Prosecutor v. Nebojša Pavković et al.</i> , Case No. IT-03-70-I, Registrar, Decision, 6 April 2005 (public)
Registrar's Decision 2	<i>Prosecutor v. Sreten Lukić</i> , Case No. IT-03-70-I, Registrar, Decision, 2 May 2005 (public)
Registrar's Decision 3	<i>Prosecutor v. Sreten Lukić</i> , Case No. IT-05-87-PT, Registrar, Decision, 16 May 2006 (public)
Registrar's Decision 4	<i>Prosecutor v. Sreten Lukić</i> , Case No. IT-05-87-PT, Registrar, Decision, 29 May 2006 (public)
Rule 54 <sup>bis</sup> Decision	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Sreten Lukić's Amended Rule 54 <sup>bis</sup> Application, 29 September 2006 (public)
Second Decision on Lukić Objection to the Admission of P948	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Second Decision on Lukić Request for Reconsideration of the Trial Chamber's Admission into Evidence of his Interview with the Prosecution (Exhibit P948), 2 June 2008 (public)
Winter Recess Order	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Order on Timing of Motions Prior to Winter Recess and Presentation of Lukić Defence Case, 14 November 2007 (public)
Decision on Evidence Tendered Through Sandra Mitchell and	<i>Prosecutor v. Milan Milutinović, et al.</i> , Case No. IT-05-87-T, T.Ch., Decision on Evidence Tendered Through Sandra

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Frederick Abrahams	Mitchell and Frederick Abrahams, 1 September 2006 (public)

**Other ICTY authorities**

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
<i>Ojdanić</i> Access Decision	<i>Prosecutor v. Dragoljub Ojdanić &amp; Nikola Šainović</i> , Case No. IT-02-54-T/IT-99-37-PT, T.Ch., Decision on Defence Motions for Access to Transcripts and Documents and for Disclosure of <i>Ex Parte</i> Filing, 14 June 2002 (public)
Čelebići AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić &amp; Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
Čelebići TJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić &amp; Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-T, T.Ch., Judgement, 16 November 1998
Blaškić AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
Blagojević AJ	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
Brdanin AJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
Bralo SAJ	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, App.Ch., Judgement on Sentencing Appeal, 2 April 2007
D.Nikolić SAJ	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-02-A, App.Ch.

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
	Judgement on Sentencing Appeal, 4 February 2005
<i>Furundžija</i> AJ	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, App.Ch., Judgement, 21 July 2000
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Gotovina</i> Decision on Victims	<i>Prosecutor v. Ante Gotovina, Ivan Čermak, &amp; Mladen Markač</i> , Case No. IT-06-90-T, T.Ch., Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 9 October 2008 (public)
<i>Gotovina</i> Interlocutory AD on Victims	<i>Prosecutor v. Ante Gotovina, Ivan Čermak, &amp; Mladen Markač</i> , Case No. IT-06-90-AR73.3, App.Ch., Decision on Joint Defence Interlocutory Appeal against Trial Chamber's Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 26 January 2009 (public)
<i>Gotovina</i> Joinder AD	<i>Prosecutor v. Ante Gotovina, Ivan Čermak &amp; Mladen Markač</i> , Case Nos. IT-01-45-AR73.1, IT-03-73-AR73.1, IT-03-73-AR73.2, Decision on Interlocutory Appeals Against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006 (public)
<i>Gotovina</i> Second Decision on Victims	<i>Prosecutor v. Ante Gotovina, Ivan Čermak, &amp; Mladen Markač</i> , Case No. IT-06-90-T, T.Ch., Second Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of the Identity of Victims, 2 March 2009 (public)
<i>Hadžihasanović</i> AJ	<i>Prosecutor v. Enver Hadžihasanovic &amp; Amir Kubura</i> , Case No. IT-01-47-A, App.Ch. Judgement, 22 April 2008
<i>Halilović</i> TD	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, T.Ch., Decision on Admission into Evidence of Interview of the Accused, 20 June 2005 (public)
<i>Karadžić</i> Count 11 AD	<i>Prosecutor v Radovan Karadžić</i> , Case No. IT-95-5/18-AR72.5, App. Ch., Decision on Appeal of Trial Chamber's Decision on Preliminary Motion to Dismiss Count 11 of the Indictment, 9 July 2009 (public)
<i>Karadžić</i> Trial Commencement AD	<i>Prosecutor v. Radovan Karadžić</i> , Case No.IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009 (public)

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
<i>Kordić</i> AJ	<i>Prosecutor v. Dario Kordić &amp; Mario Čerkez</i> , Case No. IT-95-14/2-A, App.Ch., Judgement, 17 December 2004
<i>Krajišnik</i> Adjournment AD	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No.IT-00-39-AR73.1, Decision on Interlocutory Appeal of Decision on Second Defence Motion for Adjournment, 25 April 2005 (public)
<i>Krajišnik</i> AJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No.IT-00-39-A, App.Ch., Judgement, 17 March 2009
<i>Krnojelac</i> TJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, T.Ch., Judgement, 15 March 2002
<i>Kunarac</i> AJ	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač &amp; Zoran Vuković</i> , Case Nos. IT-96-23 and IT-96-23/1-A, App.Ch., Judgement, 12 June 2002
<i>Kupreškić</i> AJ	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić &amp; Vladimir Šantić, a.k.a. "Vlado"</i> , Case No. IT-95-16-A, App.Ch., Judgement, 23 October 2001
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić &amp; Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>M.Lukić</i> Victim Decision	<i>Prosecutor v. Milan Lukić &amp; Sredoje Lukić</i> , Case No. IT-98-32/1-T, T.Ch., Public Decision on Milan Lukić's Notice of Verification of Alleged Victim Survivors and Application for Stay of Proceedings with Exhibits A through H, 12 March 2009 (public)
<i>Martić</i> AJ	<i>Prosecutor v. Milan Martić</i> , Case No.IT-95-11-A, App.Ch., Judgement, 8 October 2008
<i>Martić</i> TJ	<i>Prosecutor v. Milan Martić</i> , Case No.IT-95-11-T, T.Ch., Judgement, 12 June 2007
<i>Martić</i> Avramov Decision	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, T.Ch., Decision on Defence's Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94bis, 9 November 2006 (public)
<i>Milošević</i> AJ	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Judgement, 12 November 2009

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
<i>Mrksić</i> AJ	<i>Prosecutor v. Mile Mrksić &amp; Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Naletilić</i> AJ	<i>Prosecutor v. Mladen Naletilić &amp; Vinko Martinović</i> , Case No. IT-98-34- A, App.Ch., Judgement, 3 May 2006
<i>Orić</i> AD	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005 (public)
<i>Pandurević</i> Joinder AD	<i>Prosecutor v. Vinko Pandurević &amp; Milorad Trbić</i> , Case No. IT-05-86-AR.73.1, App.Ch. Decision on Vinko Pandurević's Interlocutory Appeal against the Trial Chamber's Decision on Joinder of Accused, 24 January 2006 (public)
<i>Popović</i> Butler Decision	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero &amp; Vinko Pandurević</i> , Case No. IT-05-88-AR73.2, T.Ch., Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008 (public)
<i>Popović</i> TD	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero &amp; Vinko Pandurević</i> , Case No. IT-05-88-T, T.Ch., Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 <sup>ter</sup> Exhibit List, 25 October 2007 (public)
<i>Prlić</i> AD	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, Berislav Pušić</i> , Case No. IT-04-74 AR73.2, App.Ch., Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross Examination By Defence and Association of Defence Counsel's Request for Leave to File an <i>Amicus Curiae</i> Brief, 4 July 2006 (public)
<i>Šešelj</i> Audio Disclosure Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-PT, T.Ch., Decision on Provision of Previous Testimony in Audio Format, 22 November 2006 (public)
<i>Šešelj</i> Disclosure AD	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR73.5, App.Ch., Decision on Vojislav Šešelj's Interlocutory Appeal Against the Trial Chamber's Decision on Form of Disclosure, 17 April 2007 (public)

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
<i>Šešelj</i> Disclosure Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-PT, T.Ch., Decision on Form of Disclosure, 4 July 2006 (public)
<i>Stanišić</i> Joinder TD	<i>Prosecutor v. Mićo Stanišić &amp; Stojan Župljanin</i> , Case Nos. IT-04-79-PT and IT-99-36/2-PT, T.Ch., Decision on Prosecution's Motion for Joinder and for Leave to Consolidate and Amend Indictments, 23 September 2008 (public)

**ICTR authorities**

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
<i>Akayesu</i> AJ	<i>Prosecutor v Jean-Paul Akayesu</i> , Case No. ICTR-96-4-A, App.Ch., Judgement, 1 June 2001
<i>Gacumbitsi</i> AJ	<i>Prosecutor v Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Nahimana</i> AJ	<i>Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza &amp; Hassan Ngeze</i> , Case No. ICTR-99-52-A, App.Ch., Judgement, 28 November 2007
<i>Niyitegeka</i> AJ	<i>Eliézer Niyitegeka v. Prosecutor</i> , Case No. ICTR-96-14-A, App.Ch., Judgement, 9 July 2004
<i>Rutaganda</i> AJ	<i>Prosecutor v Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-A, App.Ch., Judgement, 26 May 2003
<i>Semanza</i> AJ	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, App.Ch., Judgement, 20 May 2003

**Other Abbreviations**

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Art.	Article
Chamber	Trial Chamber in <i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (European Convention of Human Rights)
ECtHR	European Court of Human Rights
Exh.	exhibit
Exhs.	exhibits
fn.	footnote
fns.	footnotes
MUP	Ministry of the Interior Police ( <i>Ministarstvo unutrašnjih poslova</i> )
p.	page
para.	paragraph
paras.	paragraphs
pp.	pages
Practice Direction	Practice Direction on Formal Requirements for Appeals from Judgement (IT-201) Rev.1, 7 March 2002
Practice Direction (Written Submissions)	Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT-155) Rev.3, 16 September 2005
Rules	Rules of Procedure and Evidence
SD1	First Summary Dismissal category—see Paragraph 5 in

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
	Prosecution Response
SD2	Second Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD3	Third Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD4	Fourth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD5	Fifth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD6	Sixth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD7	Seventh Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD8	Eighth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD9	Ninth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD10	Tenth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD11	Eleventh Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD12	Twelfth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD13	Thirteenth Summary Dismissal category—see Paragraph 5 in Prosecution Response
SD14	Fourteenth Summary Dismissal category—see Paragraph 5 in Prosecution Response
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827 (1993)
SU	Secretary of Internal Affairs ( <i>Sekretarijat unutrašnjih poslova</i> )
T.	Trial Transcript

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
Vol.	Volume (I-IV) of Judgement