

**BASIC COURT OF PRISHTINË/PRIŠTINA (SERIOUS CRIME DEPARTMENT)**

Sitting in the Appeals Court building in Prishtinë/Priština

Case number: **P. no 448/2012**

Date: **7 June 2013**

**IN THE NAME OF THE PEOPLE**

**BASIC COURT OF PRISHTINË/PRIŠTINA (SERIOUS CRIMES DEPARTMENT)**

in the Trial Panel composed of EULEX Judge Jonathan Welford-Carroll, presiding, Republic of Kosovo Judge Shadije Gerguri, and EULEX Judge Cezary Dziurkowski, panel members, with the participation of EULEX Legal Officer Emiliya Viktorova, as court clerk, in the criminal case against:

**L.G., N.M., R.M.**

The Accused, **L.G., N.M., R.M.** charged under Count 8 of the Amended Indictment, Hep. No. 65/2002, dated 30 June 2003, limited to events alleged at the Llapashtica camp only, with the following criminal offences, prosecuted *ex officio*:

**Count 8:**

*War Crime Against the Civilian Population*, in particular, inhumane treatment, immense suffering or violation of bodily integrity or health, application of measures of intimidation and terror, and torture in violation of Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (Official Gazette SFRY No. 44 of October 8, 1976) (CCSFRY), in conjunction with Articles 22, 24, 26 and 30 of the CCSFRY, because from October 1998 until late April 1999, **L.G., N.M., R.M.**, with superior and personal liability, acting in concert with other unidentified individuals and pursuant to a joint criminal enterprise, ordered and participated in the beating and torture of Kosovo Albanian civilians illegally detained in the detention centre located at Llapashtica in an attempt to force those detainees to confess to acts of disloyalty to the KLA.

AFTER having held the pre-trial hearing on 26 February 2013 and main trial hearings open to the public on 25, 26 and 27 March 2013, 3, 4 and 11 April 2013, 7, 8, 10 and 22 May 2013 and 4 and 7 June 2013, as well as a partially closed session on 11 April 2013 when the personal details of protected witnesses I, C and P were recorded in the main trial minutes;

HAVING held the above hearings in the presence of the Accused **L.G.** and his Defence Counsel Mexhid Sylja or Bajram Tmava, the Accused **N.M.** and his Defence Counsel Fazli Balaj, the Accused **R.M.** and his Defence Counsel Aziz Rexha, or duly authorized substitute representatives and EULEX Special Prosecutor Charles Hardaway of the Special Prosecution Office of the Republic of Kosovo;

AFTER the Main Trial Panel's deliberation and voting, held on 6 June 2013;

PURSUANT to Article 3 paragraph 2 of the Criminal Code of the Republic of Kosovo (CCRK), No. 04/L-082, as promulgated on 20 April 2012, entering into force on 1 January 2013 and Article 351 Law on Criminal Proceedings (LCP) (Official Gazette No. 26/86), on this 7<sup>th</sup> day of June 2013, in open court and in the presence of the Accused, their Defence Counsel and the EULEX Special Prosecutor;

*renders the following*

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**VERDICT**

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1. **L.G., N.M., R.M.** each, with the personal details as above,

**ARE FOUND**, pursuant to Article 351 of the LCP:

**GUILTY** of *War Crime Against the Civilian Population*, in particular, inhumane treatment, immense suffering or violation of bodily integrity or health, application of measures of intimidation and terror, and torture in violation of Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (Official Gazette SFRY No. 44 of October 8, 1976) (CCSFRY), in conjunction with Articles 22, 24, 26 and 30 of the CCSFRY, because from October of 1998 until late April of 1999, **L.G., N.M., R.M.**, with superior and personal liability, acting in concert with other unidentified individuals and pursuant to a joint criminal enterprise, ordered and participated in the beating and torture of Kosovo Albanian civilians illegally detained in the detention center located at Llapashtica in an attempt to force those detainees to confess to acts of disloyalty to the KLA.

PURSUANT to Articles 41 and 42, of the CCSFRY and Article 351, paragraph 3 of the LCP, the Accused are sentenced as follows in relation to Count 8:

1. **L.G.**, with personal details as above, is sentenced to **5 years** of imprisonment.
2. **N.M.**, with personal details as above, is sentenced under Count 8 to **3 years** of imprisonment.
3. **R.M.**, with personal details as above, is sentenced under Count 8 to **4 years** of imprisonment.

CONSIDERING the separate punishments in relation to Count 5 (*War Crimes Against the Civilian Population contrary to Article 142 of the CCSFRY*), **L.G.** 2 years imprisonment, **N.M.** 1 year six months imprisonment, and **R.M.** 2 years imprisonment, and Count 14 (*War Crimes Against the Civilian Population contrary to Article 142 of the CCSFRY*), **L.G.** 2 years imprisonment, as determined by the District court of Prishtinë/Priština in its Judgment of 2 October 2009 and upheld by the Supreme Court of Kosovo in its Judgment of 26 January 2011;

NOTING that the Supreme Court of Kosovo in its Judgment of 26 January 2011 instructed this Trial Panel to determine the aggregate punishment to be imposed on **L.G.** in relation to Counts 5, 8 and 14, on **N.M.**, in relation to Counts 5 and 8, and on **R.M.**, in relation to Counts 5 and 8;

PURSUANT to Article 48, paragraph 2 of the CCSFRY and Article 357, paragraph 5 of the LCP, the aggregate punishments are determined, as follows:

1. **L.G.**, with personal details as above, shall serve an aggregate punishment under Counts 5, 8 and 14 of **6 years** of imprisonment.
2. **N.M.**, with personal details as above, shall serve an aggregate punishment under Counts 5 and 8 of **3 years** of imprisonment.
3. **R.M.**, with personal details as above, shall serve an aggregate punishment under Counts 5 and 8 of **4 years** of imprisonment.

Pursuant to Article 50 of the CCSFRY and Article 351, paragraph 1, subparagraph 6 of the LCP, the accused are entitled to credit for time spent in custody thus far.

## REASONING

### INTRODUCTION AND FORMALITIES

1. The Second re-trial panel heard sessions in the trial of **L.G.** et al on:
  - a. 26 February 2013 – pre-trial status conference.
  - b. Main Trial sessions
    - i. 25 March 2013 – opening case, personal data, introductory matters.
    - ii. 26 March 2013 – evidence of **L.G.** and **N.M.**.
    - iii. 27 March 2013 – evidence of **N.M.** (continued), of **R.M.**.
    - iv. 3 April 2013 – witness 4 failed to attend, Order to Compel issued.
    - v. 4 April 2013 – evidence of **R.B.** (previously known as Witness 7).
    - vi. 10 April 2013 – decision to permit the reading of the evidence of witness V issued on the grounds of the witness's death.
    - vii. 11 April 2013 – evidence of Witness I, Witness C, Witness P.
    - viii. 7 May 2013 – witness V.J. failed to attend. Agreement reached between the parties as to a list of witnesses to be read into the record (Namely witnesses H, J, D, E, G, F, V. J., M, F.M., K.H., G.Z., S.G.. Witness V read into the record on the grounds of his death (per order issued on 10/04/2012).
    - ix. 8 May 2013 – additional witnesses K.K. and N.I. read into the record by agreement (see minutes 08/05/2013 p29 and 10/05/2013, p14. Evidence of A.A. (previously known as Witness 4).
    - x. 10 May 2013 – evidence of A.A. (continued)
    - xi. 22 May 2013 – prosecution closing speech.
    - xii. 4 June 2013 – defence closing speeches.
    - xiii. 7 June 2013 – announcement of verdict

### LIST OF EVIDENCE

2. The following material was considered by the trial panel
  - a. District Court Judgment from 16 July 2003 - C. Nr 425/2001;
  - b. Supreme Court Judgment from 21 July 2005- AP. KZ 139/2004;
  - c. District Court Judgment from 2 October 2009 - P. Nr 526/05;
  - d. Supreme Court Judgment from 26 January 2011 - Ap. KZ 89/2010;

## **LEGAL RULINGS ISSUED IN THE CASE.**

1. Prior to the commencement of the 2<sup>nd</sup> re-trial, an issue was raised as to the correct form of indictment, and the scope of that indictment for the re-trial. The Prosecution sought to rely upon an amended indictment and the defence objected. The Presiding Judge issued a written Ruling dated 06/03/2013 which is attached hereto marked 'Annex A' and deemed to be fully incorporated into this reasoning.
2. An issue was also raised as to the correct Procedural Code to be applied to the re-trial. The Presiding Judge issued a written Ruling dated 06/03/2013 attached hereto marked 'Annex A' and deemed to be fully incorporated into this reasoning.
3. A Ruling was given by the Presiding Judge orally in court and in the presence of the parties rejecting the Prosecution application to exclude co-defendants from court whilst any defendant gave his statement. The full terms of the ruling are set out in the minutes of 26/03/2013, pp2-3.
4. A Ruling was issued regarding the reading of Witness V's evidence into the record on the grounds of the death of that witness. The Ruling dated 10/04/2013 is attached hereto marked 'Annex B'.
5. A decision was made by the Trial Panel to admit the written evidence of a number of witnesses [H, J, D, E, G, F, V.], M, F.M., K.H., G.Z., and S.G.] who were not available to attend court to be read into the trial record pursuant to a written and signed agreement dated 07/05/2013 to do so by the parties (LCP Article 333(2)). The signed agreement is annexed hereto marked 'Annex C'. The Panel decided to admit the evidence of two further witnesses [K.K. and N.I.] who were not available to attend court with the agreement of the parties (see minutes 08/05/2013, p29 and 10/05/2013, p14) Agreement annexed hereto 'Annex D'.
6. A Ruling regarding the initial police statements of the following witnesses: R.B. (statement of 20/08/2002), Witness C (statement of 03/06/2000), Witness D (statement 06/03/2000 and 17/08/2001), Witness E (statements 06/03/2000, 21/03/2000 and 17/08/2001), Witness F (statement 21/03/2000), Witness G (statement 17/08/2001), Witness H (statement 23/01/2000) and Witness P (undated).

The above identified witnesses in each case gave a short statement to the police before being examined subsequently by the Investigating Judge. At

the main trial session on 04/04/2013, Defence Counsel Mexhid Sylva objected to any use being made of the statement of R.B. on the grounds that it had never been made available at any stage in the proceedings to the Defence. The Trial Panel took the view that the statement of R.B. should be made available to the defence and the Prosecutor agreed. This was done but took extensive time to have the statement translated and considered by the Defence before hearing the witness. The Trial Panel therefore revised its initial decision and took the view that no use would be made of any statements given by any witness prior to a hearing of that witness by the Investigating Judge. This decision was taken with regard to fairness to the parties and economy of the trial process. (see minutes 04/04/2013, pp3-8, 11/04/2013, p9). For the avoidance of doubt every previous account given by any witness that was considered by the Trial Panel in reaching its verdict is fully set out within this written verdict.

7. Ruling upon the admissibility of the record of hearing of R.B. before the Investigating Judge on 23/08/2002 on the basis that the Investigating Judge's conduct of the hearing breached the LCP. The Trial Panel rejected that application and the full reasoning was delivered orally in the trial session in the presence of the parties (see minutes 04/04/2013, p7)
  
8. Ruling upon the admissibility of the minutes of evidence of A.A. (Previously known as Witness 4) before the investigating Judge on 14 May 2002 and 18 October 2002. At the hearing of A.A. (previously known as Witness 4) on 14 May 2002 before the Investigating Judge, no defence counsel were present or even summonsed. It follows that there was no opportunity afforded to the defence to cross examine the witness. On 18 October 2002, A.A. was again interviewed by the Investigating Judge. On this occasion, 7 defence counsel were summonsed, and three attended. At the main trial on 20 March 2003, the defence argued to exclude the record of hearing of 18 October 2002 on the basis that the witness appears to have made available to him records or notes from the 14 May hearing. The trial panel in 2002 rejected that application stating that any issues regarding the October minutes can be evaluated within the ordinary trial process. The trial minutes of 20 March 2002 do not indicate whether any specific argument was made or decision reached by the trial panel with regard to the 14 May record of interview, though by reference to the questioning of the witness by the 2002 panel, it appears that they only made reference to the October minutes.<sup>1</sup> At the 2009 main trial, the defence again raised the issue of the admissibility of the May and October minutes of A.A. before the investigating judge, along with issues relating

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<sup>1</sup> Minutes of main trial 20/03/2002, p4

to several others witnesses. The Presiding Judge issued a ruling which mixed all the issues together and was unclear, though he appeared to conclude that the 2002 panel had excluded the May minutes and admitted the October minutes. The 2009 panel decided accordingly, excluding the May record and admitting the October record.<sup>2</sup> Before the Trial Panel in 2013, the defence again raised the same objections relating to the records of hearing of A.A. before the investigating judge on 14 May and 18 October 2002.

- a. This Trial Panel both noted the previous decisions and considered the matter afresh. This Trial Panel also notes that the Prosecutor now before us accepts that previous ruling, does not intend to challenge it and agrees not to rely in any way upon the record of 14 May 2002. As for the 14 May 2002 record, it is clear that defence counsel were not present and had no opportunity to question the witness. LCP article 168(4) envisages circumstances in which defence counsel are present at the examination of witnesses, and article 168(8) enshrines the right for defence questions and clarifications to be recorded on the record. This Trial Panel is satisfied that the record of hearing before the investigating judge of A.A. on 14 May 2002 should be excluded from evidence, separated from the case file and not considered further.
- b. As for the record of hearing for 18 October 2002, the situation is entirely different. On that occasion, the witness was heard in the presence of defence counsel. The Trial Panel accepts that the record accurately states the presence of defence counsel. Defence counsel were entirely unlimited in their right to ask questions. The issues raised by defence counsel in objection to the admissibility of the record of 18 October 2002 go only to the questions of credibility and weight of A.A. evidence and not to the question of admissibility. There are no grounds to exclude this evidence and accordingly this trial panel rejects the defence motion and admits the evidence.<sup>3</sup>

#### 9. Ruling upon the missing diary of **L.G.**

- a. Mexhid Sylva on behalf of **L.G.** raised a complaint that a document that he regarded as important, namely **L.G.** War Diary, had been lost at some stage during the proceedings and was therefore not

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<sup>2</sup> Minutes of main trial 18/09/2009, pp4-5

<sup>3</sup> Minutes of main trial 08/05/2013, pp3-7

available to him to assist in his defence.<sup>4</sup> The Prosecution was ordered to submit a report to the Trial Panel setting out the detailed history of what happened to the diary and complied with that order on 18/04/2013.

- b. This investigation and the first main trial was carried out under UNMIK. At some stage the files were handed over the EULEX. The Prosecutor cannot be held responsible for the contents of those files when under the possession and control of UNMIK. At the re-trial in 2009, it was clear then that the diary had been lost.<sup>5</sup> As a result of the 2013 Trial Panel's order, there was a thorough re-examination of all files currently in the possession of the prosecutor and the court. The diary was not found. It must be considered to have been lost at some stage between the first trial in 2003 and the re-trial in 2009.
- c. The Trial Panel concludes that everything possible to discover the diary has been done. Its absence does not give grounds to prevent the trial going ahead. The primary purpose of such a document would be an aide memoire to **L.G.** in giving his evidence. But in any event, **L.G.** has given detailed evidence which has been recorded on several previous occasions including as long ago as 2002. No substantial prejudice can be caused to **L.G.** by the absence of his diary. The Trial Panel also notes that **L.G.** also states that he began his diary in prison i.e. it is not a contemporaneous document, though he also asserted the opposite, so the true position is not clear.<sup>6</sup> The diary could not be considered as corroboration of **L.G.** account since he is the author of it. It is therefore not independent of him but is simply another source of his own account. The absence of the diary does not prevent a fair trial for **L.G.**

10. Ruling upon the admissibility of **R.M.** statement to the Investigating Judge on 13/08/2002. This statement was excluded by the original trial panel on 14/03/2003 for the serious procedural error of failing to give **R.M.** the correct warning as an accused before he gave his statement. The Investigating Judge wrongly issued to **R.M.** the witness warning pursuant to LCP Article 231(2) stating that he was obliged to tell the truth whereas he should have issued the Accused's rights according to LCP Articles 67 and 218(2) & (3). This was clearly wrong and to the potential significant disadvantage of the defendant. At both the re-trial in 2009 and in 2013

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<sup>4</sup> Minutes of main trial 25/03/2002, p12

<sup>5</sup> Minutes of main trial 18/09/2009, p6

<sup>6</sup> statement to investigating judge 24/06/2002 p6 & p10

there was no further specific argument about the point. Therefore this trial panel considers that the original decision of the 2003 main trial panel still stands. For that reason, the statement of **R.M.** to the Investigating Judge dated 13/08/2002 remains excluded from evidence and separated from the case file. This trial panel does not consider the statement at all in reaching its verdict.

11. Direction on written proposals for editing/ correcting of minutes. On several occasions **L.G.** raised complaints about the accuracy of the trial minutes or translations of trial minutes. His Defence Counsel conceded that none of any such errors were material and impacted on the overall accuracy and fairness of the minutes. The Presiding Judge issued a direction to the parties to submit any objections to/ proposals for corrections of the trial minutes in writing, identifying the relevant date, page and passage that was challenged. As at the date of drafting this verdict, no such written schedule of proposals has been received from any party. (see minutes of 10 May 2013)

## **PROCEDURAL HISTORY**

12. The original indictment was filed against **L.G.**, **N.M.** and **R.M.** on 19 November 2002 in the District Court of Pristina, subsequently amended on 4 February and 30 June 2003, alleging a number of counts of War Crimes Against the Civilian Population contrary to the Criminal Code of the Socialist Federal Republic of Yugoslavia (hereinafter the 'CCSFRY') Article 142 pursuant to UNMIK Regulation 1999/24 as amended by UNMIK Regulation 2000/59. It is the amended indictment of 30 June 2003, count 8 that is now placed before this re-trial panel, **L.G.** already being subject to a final guilty verdict on counts 5 and 14 and **N.M.** and **R.M.** both already being subject to a final guilty verdict on count 5 of the said amended indictment.
13. The first instance (original) trial was held at Pristina District Court which issued its verdict on 16 July 2003, which dismissed several charges completely and several elements of some charges and convicted all three Defendants on the remaining elements for the offence of War Crimes Against the Civilian Population (count 5, Count 8 [Llapashtica only] and Count 14), sentencing them as follows: **L.G.** 10 years, **N.M.** 13 years and **R.M.** to 17 years imprisonment.
14. After a Defence Appeal against all convictions and a Prosecution Appeal against sentence for **L.G. only**, the Supreme Court of Kosovo in case Ap Kz

139/2004 issued its decision dated 21 July 2005 in which it 'cancelled in their entirety' counts 1, 2, 3 and 12, acquitted on count 11 and the remaining counts were sent back for re-trial.

15. The First Re-Trial Panel in 2009 (P. 526/05) heard the re-trial, fully receiving evidence afresh on count 5, 9 and 14 of the amended indictment of 30 June 2003 [NOTE: there had been a proposed further amended indictment dated 8 July 2009, but that was rejected by the Re-Trial Panel and therefore requires no further comment]. On count 8 the First Re-Trial Panel determined that the evidence had already been properly and lawfully received (a position with which the Supreme Court at the first appeal fully agreed) and thus confined itself to re-consideration of sentence. During the proceedings, the Prosecutor withdrew Count 9. On 2 October 2009 (there is no explanation for the 4 years delay!), the First Re-Trial Panel convicted the defendants as follows:

- a. **L.G.** of War Crimes Against the Civilian Population on Count 5 (sentence 2 years imprisonment), Count 8 (sentence 5 years imprisonment) and Count 14 (sentence 2 years imprisonment) – aggregate sentence 6 years imprisonment.
- b. **N.M.** of War Crimes Against the Civilian Population on Count 5 (sentence 1 year 6 months imprisonment) and Count 8 (sentence 3 years imprisonment) – aggregate sentence 3 years imprisonment.
- c. **R.M.** of War Crimes Against the Civilian Population on Count 5 (sentence 2 years imprisonment) and Count 8 (4 years imprisonment) – aggregate sentence 4 years.

16. On 15, 16, and 18 February 2010, all three Defendants appealed convictions and sentence. The Prosecutor did not appeal against the sentences.

17. On 26 January 2011 (Ap-Kz 89/2010) the Supreme Court issued its verdict in which the First Instance Re-Trial decisions on Count 5 and 14 were confirmed. There was no additional appeal against that decision and so those convictions and sentences became final. The Supreme Court quashed the conviction on Count 8 and returned it to the District Court for a second re-trial. The basis of that decision was the failure of the First Re-Trial Panel to hear the witnesses afresh on Count 8. The original 2003 trial panel convicted upon Count 8 of the amended indictment of 30 June 2003 with regards to the events at Llapashtica detention centre only. The panel acquitted on those events within the count relating to Majac and Potok. That verdict was considered by the Supreme Court in its decision 21 July 2005 found that there was no merit in any of the appeal

complaints by the defence with regard to this verdict and in particular concluded that the evidence had been properly and lawfully received in accordance with the Procedural Code. Yet despite that, the Supreme Court remitted the count back to the first instance court for re-trial on the grounds that the original verdict 'treated the various counts in the indictment as one singular war crime as to each defendant'! The first re-trial panel with regard to this count considered its obligation pursuant to the Supreme Court's decision to be limited to the question of sentence, but that consideration of the count remains limited only to events at Llapashtica because the acquittal relating to events at Majac and Potok remains final. As a result of this stance, the first re-trial panel failed to hear the witnesses afresh, convicted the defendants and re-considered the sentences imposed. Bearing in mind that the first Supreme Court decision actually found nothing wrong with the original evidence nor the trial panel's understanding of that evidence, and found all defence complaints without merit and returned the case for re-trial only for highly technical reasons, it is perhaps entirely understandable that the first re-trial panel took that view. It is a matter of very considerable misfortune that witnesses who have already given clear and coherent admissible evidence about highly traumatic events should be required to do so again. However, the second Supreme Court decision dated 26 January 2011 requires exactly that.

18. Therefore, it is the task of the Second Re-Trial Panel to re-try count 8 alone, limited to the events at Llapashtica, and to re-examine the relevant witnesses again (subject to any agreement between the parties to read witnesses' records into the record, or to order witnesses' records into the record on grounds such as death or untraceability.) Furthermore, as the Prosecution never appealed the sentence imposed, the Second Re-Trial Panel is limited by way of maximum sentence to the sentence imposed on this count by the First Re-Trial Panel. Having undertaken that task, the second Re-Trial Panel must then consider the appropriate aggregate sentence for each defendant.

19. Finally, it is necessary for the second Re-Trial Panel to make some comment about the understanding of the written verdicts of both the First Re-Trial Panel and the Supreme Court decisions. This task has been hindered by the extensive and wholly unhelpful use of Latin expressions in the previous judgments. Judgments are intended primarily for the understanding of the parties, namely the defendants, injured parties and witnesses, the majority of whom are not trained lawyers. Extensive use of Latin simply hides and confuses the real meaning of the judgment from

those most affected by it and thus serving only to mystify the law and its proceedings.

## **LEGAL PREREQUISITES**

### **20. Jurisdiction of the Court and Constitution of the Trial Panel -**

Pursuant to the Law on Criminal Proceedings (Official Gazette No. 26/86) Chapter II "Jurisdictions of the Courts" Article 22, Article 23 and Article 29 (now CPC Article 20(1), Article 22(1)(1.28) and Article 25(3)) and the Law on the Jurisdiction Case Selection, Case Allocation of the EULEX Judges and Prosecutors in Kosovo (Law No. 03/L-053) Article 3(3.1) and (3.2) the panel of the Basic Court of Prishtinë/Priština (Serious Crime Department) has competent jurisdiction to adjudicate the case (previously District Court of Prishtinë/Priština).

21. In the present case the charge against the defendants is the criminal offence of War Crime Against the Civilian Population - Article 142 the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY) published in the Official Gazette of the Socialist Federal Republic of Yugoslavia No. 44/76; therefore, the District Court of Prishtinë/Priština has the subject-matter jurisdiction to adjudicate the case. The criminal offence, according to the indictment, was committed in Llapashtica, which is within the territory of the Basic Court of Prishtinë/Priština. Therefore, in accordance with CPC Article 20(1), the Basic Court of Prishtinë/Priština has the geographic jurisdiction to adjudicate the present case.

22. Since the present case was allocated to the competence of EULEX Judges by the decision of the Focal Point of EULEX Judges Mobile Unit dated on 28 January 2013, the panel was composed of two EULEX Judge and one Kosovo Judge pursuant to the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo Article 3(3.7).

23. None of the parties objected to the panel composition.

**24. State of war/ internal armed conflict** – CCSFRY Article 142<sup>7</sup> criminalises breaches of international law (including the Geneva

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<sup>7</sup> CCSFRY Article 142 War Crime Against the Civilian Population - Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to killings, torture, inhuman treatment, biological experiments, immense suffering or violation of bodily integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of

Conventions and Protocols) at 'the time of war, armed conflict or occupation.' It therefore must be established as a condition precedent that such a state of affairs existed at the material time of the indictment, namely between October 1998 until late April 1999. In a state of internal armed conflict the applicable rules are more restricted than international armed conflict. The essential features of internal armed conflict are:

- a. That protracted armed violence takes place between governmental authorities and organised armed groups or between such groups within a state,
- b. That those groups are under a responsible command, exercise such control over a part of the territory of the state as to enable them to carry out sustained and concerted military operations and to implement Protocol II to the Geneva Conventions of 1949, and
- c. That hostilities take place at a level in excess of that which could be characterized as merely internal disturbances and tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.<sup>8</sup>

There has been no dispute or challenge by the parties during this trial that a state of internal armed conflict existed at the material time of this indictment. Indeed, the evidence of the various defendants positively asserted that there was indeed a state of armed conflict in existence at the relevant time.<sup>9</sup> In addition to the views of the Defendants about being engaged in an armed conflict, the UN Security Council Resolution 1199 (1998) dated 23 September 1998 effectively acknowledges that from July 1998, 'the situation in Kosovo represents an armed conflict within the terms of the [ICTY] tribunal.' The Panel has no doubt that a relevant state of internal armed conflict applied at all material times to the circumstances of this indictment.

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

<sup>8</sup> Common Article 3 of the Geneva Conventions 1949 and Protocol II Geneva Conventions 1977, ICRC Commentaries

<sup>9</sup> See the trial statements of each defendant summarised below.

25. **Participant in the armed conflict & an organised armed force** - each defendant admitted that he was a participant member of the KLA actively engaged in war duties in furtherance of the war aims of the KLA. Equally the evidence of the defendants makes it clear that at all material times, the KLA was an organised military structure with a hierarchical command and control of geographical territories within Kosovo. **R.M.** admits being the KLA Commander of the Llap Zone, **L.G.** admits being the Chief of Military Intelligence for the Llap zone and **N.M.** admits being the Chief of Military Police for the Llap zone.
26. **Nexus** - to amount to a war crime, the individual criminal acts alleged must have been committed as part of and in furtherance of the war objectives. In other words, criminal acts committed out of personal reasons and wholly disconnected with the existence of an armed conflict do not become war crimes simply by the fact that an armed conflict exists at the time. In this case, again, the defendants themselves make it clear that detentions and questionings of Albanian civilians did occur and that the reason for them was connected to the conflict, namely because they were suspected Serbian collaborators, or that their conduct was such that it was not conducive to the public good/ interests of Kosovo Albanians at time of war. A clear nexus exists between the criminal acts that this trial panel find proved and the war objectives of the KLA.
27. **Status of the Victims** - to secure the protection given in an internal armed conflict of Common Article 3 of the Geneva Conventions 1949 and Article 4 of the Additional Protocol II, a person must be taking no active part in the hostilities. Article 5 of the fourth Geneva Convention states that a 'where, in a territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the state, such an individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such state.' However, in such circumstances, Article 5 goes on to state that 'In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention.' Article 4 of Additional Protocol II provides under the heading of 'Fundamental Guarantees' that '(1) All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, ... . They shall in all circumstances be treated humanely, without any adverse distinction.' And '(2) Without prejudice to the generality of

the foregoing, the following acts against the persons referred to in paragraph (1) are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life, health and physical or mental wellbeing of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment'. The phrase 'is definitely suspected of' in Article 5 of GC IV must be understood objectively. At the very least, this must mean that there is prima facie some real evidence, that is credible that would lead a reasonable and fair person to conclude that a person had engaged in proscribed conduct. And even where a person objectively falls into that category, there remains the absolute prohibitions as to ill treatment set out above. Though the essential defence allegation in this case is that those detained were all Serb collaborators, the evidence is such that the Trial Panel has no difficulty in concluding that it falls below the objective standard of the reasonable fair minded person. What is put forward as evidence of collaboration is in every case nothing more than gossip, rumour and innuendo, often motivated it seems by petty jealousies and with no objective impartial factual investigation by either police or judicial authority to establish even the basic supporting facts. Mere association past or present with Serbs could be sufficient to lead to a denunciation and detention. With regard to the specific victims heard as witnesses in this case, the Trial Panel has no hesitation to conclude that they fell into the category of 'protected persons' under the Conventions of 1949 and Additional Protocols.

## **EVIDENTIAL SUMMARY**

### **28. Evidence of L.G.**

- a. Statements to Investigating Judge 28/1/2002, 5/2/2002, 24/6/2002.
- b. Minutes of 1<sup>st</sup> instance trial 20/02/2003, 21/02/2003, 24/02/2003, 25/02/2003.
- c. Minutes of 1<sup>st</sup> re-trial 08/07/2009.
- d. Minutes of 2<sup>nd</sup> re-trial 26/03/2013.

29. Reviewing all of **L.G.** evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. His defence was essentially a denial of the facts alleged, a denial of improper treatment of detainees, and a denial of criminal responsibility.

- b. There is no dispute that **L.G.** accepts that his war time nickname was '**L.**' (see personal data).
- c. He was a founding member of the KLA in the Llap Zone. Command was divided in several sectors including: logistics, sanitary, financial, civilian defence, public information, military police, brigade commanders. Chiefs of each of these sectors were members of the Command Council, comprising approximately 12 people and **L.G.** was one of them. The first meeting was in either 15 or 16 May 1998.<sup>10</sup>
- d. Commander of Llap Zone was **R.M.** (known as '**R.**'), Deputy K.K.<sup>11</sup> **N.M.** was chief of sector of military police.<sup>12</sup>
- e. Initially, **L.G.** from May 1998 until about mid September was involved with logistics and health<sup>13</sup>. In around November 1998, **L.G.** was appointed by Headquarters of the Llap Operational Zone to be Director of Intelligence for the Llap Zone. This role also made **L.G.** a member of the zone Headquarters.<sup>14</sup> Despite that, **L.G.** denied that he ever participated in intelligence gathering during the war as he was too busy fighting.<sup>15</sup> He stated that 'there was no specific organisation, everyone would participate in gathering the information'.<sup>16</sup>
- f. **L.G.** accepts that the Zone HQ together with General HQ of KLA permitted detentions. However, he denies that he ever issued orders for any individual's detention, nor did he participate in questioning them or maltreating them.<sup>17</sup> However, he stated that 'regarding this issue of detentions, I agreed with all decisions of KLA HQ and one of these decisions also concerned detention. I said that HQ of the zone applied the decisions of the general HQ and I myself agreed with these decisions as a member of HQ.'<sup>18</sup> He

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<sup>10</sup> Statement to Investigating Judge 28/01/2002, p3; statement to Investigating Judge 24/06/2002, p3; minutes of main trial 26/03/2013, p5

<sup>11</sup> Statement to Investigating Judge 28/01/2002, pp3 & 6; statement to Investigating Judge 24/06/2002, p3

<sup>12</sup> Statement to Investigating Judge 28/01/2002, p6

<sup>13</sup> Minutes of Main Trial 20/03/2003, p11

<sup>14</sup> Statement to Investigating Judge 28/01/2002, p5; Statement to Investigating Judge 24/06/2002, p3; Minutes of main trial 20/02/2003 p10; minutes of main trial 26/03/2013,p5

<sup>15</sup> Statement to Investigating Judge 26/04/2002, p9; statement to Investigating Judge 24/06/2002, p5, p9; minutes of main trial 24/02/2003, p5

<sup>16</sup> Statement to Investigating Judge 28/01/2002, p6

<sup>17</sup> Minutes of main trial 20/02/2003, p10; minutes of main trial 24/02/2003, p2

<sup>18</sup> Minutes of main trial 20/02/2003, p2; minutes of main trial 24/02/2003, p2; minutes of main trial 26/03/2013, p5-6

admitted that he participated in discussions at meetings in the HQ 2 or 3 times regarding detainees.<sup>19</sup>

- g. **L.G.** stated that was engaged in fighting from about 15 September 1998 until 12 June 1999.<sup>20</sup> The Panel does not consider it necessary to list each engagement that **L.G.** states he was involved in, save that he asserts that from about 24 December 1998 until the end of the war, he was continuously involved in fighting in the area of Tabet e Llapashtice. During the months of October 1998 until end of April 1999, **L.G.** asserts that he was involved with preparing ditches, bunkers and mobile channels for supplies in all lines of defence between Majac and Dobrotin.<sup>21</sup> He gives further details as to his locations and activities in January 1999 until June 1999. During this part of his evidence, **L.G.** makes no reference to Llapashtica.<sup>22</sup>
- h. **L.G.** stated that the duties of the Military Police included responsibility for the security of the zone, meaning the security of the HQ and the commander and that they were responsible for communicating with any person who might have information. **L.G.** also states that it was the Military Police that had responsibility for the Detention centre and that **N.M.** was the acting leader.<sup>23</sup> **L.G.** denies that he had any command responsibility for **N.M.** or the Military Police.<sup>24</sup> He said that they 'did not really make arrests, they were informative talks'<sup>25</sup> **L.G.** then clarified this as follows: 'before the arrest there would be information on this person given by the person responsible in the village and the information would be sent to the command of the zone and discussed. Then if it was considered necessary the MPs would call the person for an informative talk, it would be registered in the book of Military Police and an order would be issued on the time to be spent in prison.' **L.G.** also stated that such persons could only be released upon the orders of the Command<sup>26</sup> and that **N.M.** did not have the authority to release prisoners without the permission of the Command.<sup>27</sup> **L.G.** states that he met **N.M.** in December 1998 but

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<sup>19</sup> Minutes of main trial 24/02/2003, p6

<sup>20</sup> Statement to Investigating Judge 28/01/2002, p3

<sup>21</sup> Minutes of main trial 20/02/2012, p12

<sup>22</sup> Minutes of main trial 21/02/2003, pp2-12

<sup>23</sup> Minutes of main trial 26/03/2013, p6

<sup>24</sup> Minutes of main trial 26/03/2013, p16

<sup>25</sup> Statement to Investigating Judge 28/01/2002, p7

<sup>26</sup> Statement to Investigating Judge 28/02/2002, p9-10

<sup>27</sup> Statement to Investigating Judge 28/01/2002, p12

that he was not **N.M.** superior.<sup>28</sup> As regards 'informative talks', **L.G.** later stated that this was a mistranslation. He said that 'when persons were invited or came to us this was not for us to talk to them specifically but that they were detained because of their activities. Our intent was to hold them as far as was necessary and this depended upon the indictment for individual cases.'<sup>29</sup> **L.G.** also states that 'the military police would question them and then release them, but prior to release they would consult with the command of the zone.'<sup>30</sup> The detainees were kept in a house near the Military Police in Llapashtica.<sup>31</sup> When asked to clarify the type of person detained, **L.G.** stated 'I heard command say that they were a mixed group of people, Serb collaborators, some thieves, some had hurt the Serbs'<sup>32</sup> and 'people were identified and detained as a result of information from local people who know them well.'<sup>33</sup> He also described the type of person detained as 'suspicious persons who damaged general interest by cooperating with the enemy to be detained and in that way their activity will be stopped.'<sup>34</sup> **L.G.** denied that any one person had overall command of the detention centre and stated that he went there 2 or 3 times with international observers. On other occasions **L.G.** stated that he was only present with the detainees and International Representatives once. On another occasion, **L.G.** denied that he ever entered the detention facility. He asserted that the prisoners were kept in accordance with the law and properly taken care of. It should also be noted that at one point **L.G.** referred to the detention centre as a 'prison'.<sup>35</sup> **L.G.** stated that the prisoners were charged with such offences as theft, threatening other families and collaboration with the enemy meaning Serbian Forces.<sup>36</sup> When asked if he ever participated in any of the 'informative talks' (interrogations) Gashi stated that 'No, I never sat during such talks but it would happen occasionally when I was in a meeting and

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<sup>28</sup> Minutes of main trial 25/02/2003, p3

<sup>29</sup> Minutes of main trial 24/02/2003, p6

<sup>30</sup> Statement to Investigating Judge 28/02/2002, p10

<sup>31</sup> Statement to Investigating Judge 28/02/2002, p10; minutes of main trial 26/03/2013,p5

<sup>32</sup> Statement to Investigating Judge 24/06/2002, p8

<sup>33</sup> Minutes of main trial 24/02/2003, p7

<sup>34</sup> Minutes of main trial 24/02/2003, p2

<sup>35</sup> Statement to Investigating Judge 28/02/2002, p11; Statement to Investigating Judge 24/06/2002, p7; minutes of main trial 21/02/2003, p6; minutes of main Trial 24/02/2003, p7; minutes of main trial 25/02/2003, p2

<sup>36</sup> Statement to Investigating Judge 28/02/2002, p13-14; minutes of main trial 26/03/2013, p8

listened to the Police Officer present his reports.' **L.G.** expressly denied ever meeting or questioning any detainees<sup>37</sup> and expressly denied ever using violence against any detainees.<sup>38</sup> Indeed, eventually, **L.G.** asserted that there was a command decision to never interview any detainees.<sup>39</sup>

- i. **L.G.** admitted being aware of the following detainees: H.J., A.K. and V.J.. **L.G.** stated that they were suspected of being collaborators but that there was no real evidence against them so they were questioned and released.<sup>40</sup>
- j. **L.G.** denied ever having heard of the following detainees: D.B. and I.S..<sup>41</sup>

### **30. Evidence of N.M.**

- a. Statements before Investigating Judge 28/01/2002. NOTE: **N.M.** asserts that he does not now stand by the answers that he gave during that interview alleging that at the time he had a headache and felt under pressure from the Investigating Judge. Therefore this statement is only relevant insofar as it provided the foundation for confrontation, together with the answers given by **N.M.** in response to such confrontation.
- b. Minutes of Main Trial – 25/02/2003, 26/02/2003, 27/02/2003, 10/03/2003, 11/03/2003.
- c. Minutes of Main Trial 9/07/2009 (or 10/7/2009 – the record is not clear providing both dates).
- d. Minutes of Main Trial 26/03/2013, 27/03/2013.

31. Reviewing all of **N.M.** evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. **N.M.** joined the KLA approximately 1 year after its formation,<sup>42</sup> later clarifying the date to 30 October 1999,<sup>43</sup> becoming a Military

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<sup>37</sup> Statement to Investigating Judge 28/02/2002, p11; minutes of main trial 26/03/2013, p15

<sup>38</sup> Statement to Investigating Judge 28/02/2002, p15; minutes of main trial 20/02/2003, p10; minutes of main trial 26/03/2013, p18

<sup>39</sup> Minutes of main trial 26/03/2013, p12

<sup>40</sup> Statement to Investigating Judge 28/02/2002, p15-16; minutes of main trial 24/02/2003, p8

<sup>41</sup> Statement to Investigating Judge 28/02/2002, p15

<sup>42</sup> Minutes of main trial 25/02/2003, p6

Policeman in October 1998. He was Acting (or Deputy) Commander of the Military Police for the Llap Zone.<sup>44</sup> He accepted that the Military Police wore black uniforms.<sup>45</sup> He accepts that he was known by the nickname **D.** (see personal data).

- b. The Military police were part of the Intelligence Service, and **N.M.** accepted before the Investigating Judge that he 'took orders from the command of SHIK' and that 'according to my hierarchy, I was accountable to the head of SHIK, **L.G.**. His nickname was Commander '**xxxx**' and that Commander '**xxxx**' and Commander '**xxxx**' would give **N.M.** orders.<sup>46</sup> This contrasts with what **N.M.** said during the 1<sup>st</sup> main trial when he asserted that he 'did not have any authority neither de facto nor de jure'<sup>47</sup> and 'our (meaning Military Police) competencies were separate from the intelligence service and I did not have contact with it. I received orders from the command and not from SHIK'.<sup>48</sup> It should be noted that **N.M.** asserted before the 1<sup>st</sup> main trial panel that the difference in account was because he was in a 'poor condition' at the time of the interview with the Investigating Judge. To the 2<sup>nd</sup> re-trial panel **N.M.** stated that he had had a headache when he was interviewed by the Investigating Judge, and also that she had been aggressive and that he felt under pressure during his interview with her. He also accepted that he was present with his experienced defence lawyer, Fazli Balaj, throughout the interview and that at no stage did either Mr Balaj or even **N.M.** ever put on record during the interview that he felt unwell, or that he felt under pressure. It was also pointed out to **N.M.** that upon the conclusion of his statement to the Investigating Judge on 28 January 2002, rather than complain about the conduct of that interview, on the contrary, **N.M.** said to the Investigating Judge 'I appreciate your patience.'<sup>49</sup> This Panel rejects his explanation as to giving mistaken or inaccurate evidence due to pressure and/or a headache. It is clear that **N.M.** was doing his best to give an accurate account during the interview to the Investigating Judge on 28/01/2002, and now seeks to resile from that account because

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<sup>43</sup> Minutes of main trial 10/07/2009, p3

<sup>44</sup> Minutes of main trial 25/02/2003, p7; minutes of main trial 10/07/2009, p3; minutes of main trial 26/03/2013, p22

<sup>45</sup> Minutes of main trial 26/02/2003, p9

<sup>46</sup> Statement to Investigating Judge, 28/01/2002, p4, Minutes of main trial 26/02/2003, p9

<sup>47</sup> Minutes of main trial 25/02/2003, p7

<sup>48</sup> Minutes of main trial 26/02/2003, p9-10

<sup>49</sup> Statement to Investigating Judge, 28/01/2002, p18

it incriminates himself and his co-defendants. However, because he now asserts that he does not stand by that interview, and bearing in mind the effect of LCP Article 347(1), the 2<sup>nd</sup> re-trial panel takes into account what was said during that 2002 interview only insofar as the defendant was expressly confronted with that statement during the 2<sup>nd</sup> re-trial main trial.

- c. **N.M.** accepted that it was part of his role as acting head of the Military Police, and part of the role of the Military Police to guard the buildings in which the detainees were kept. In effect, the MPs under **N.M.** direct command were the jailors for the detainees, and this included in particular at the Llapashtica detention camp.<sup>50</sup>
- d. **N.M.** considers that the Llapashtica Detention Centre was operating by November 1998 and ended on 24 March 1999.<sup>51</sup>
- e. **N.M.** stated to the investigating judge in 2002 that arrests were usually carried out by Civil Defence Teams of the villages, but that the right to order an arrest belonged to the SHIK Commander (**L.G.**), the Commanders of the Brigades, or the Commander of a Zone.<sup>52</sup> At the 2<sup>nd</sup> re-trial main trial, **N.M.** denied any recollection of this, asserting that his original account was unreliable for the reasons set out above. The Panel rejects that explanation as inherently incredible and unreliable and finds that his initial 2002 account was accurate and reliable on this point.<sup>53</sup> **N.M.** expressly denies that he or the MPs under his control ever ordered or participated in any arrest of any person mentioned in the indictment. **N.M.** accepts that the mentioned people were detained but asserts that the initial arrests were by other units. **N.M.** also asserts that as an MP, he had no competence to question the arrest decisions of others and therefore he denied having any command responsibility.<sup>54</sup>
- f. **N.M.** also stated to the Investigating Judge in 2002 that in Llapashtica, very few people were interviewed, but that 'as I remember, **L. (L.G.)** once interviewed.'<sup>55</sup> In 2009 **N.M.** denied that any questioning at all by anyone took place.<sup>56</sup> In 2013, he repeated that questioning had never taken place.<sup>57</sup> Again, it is noted that **N.M.** denies that his first account is reliable for the reasons given

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<sup>50</sup> Minutes of main trial 26/03/2013

<sup>51</sup> Minutes of main trial 26/02/2003, p10

<sup>52</sup> Statement to Investigating Judge 28/01/2002, p4

<sup>53</sup> Statement to Investigating Judge, 28/01/2002, p4

<sup>54</sup> Minutes of main trial, 26/02/2003, p2

<sup>55</sup> Statement to Investigating Judge, 28/01/2002, p5

<sup>56</sup> Minutes of main trial 10/07/2009, p8,

<sup>57</sup> Minutes of main trial 26/03/2013, p23, pp30-31

above (i.e. pressure from the Investigating Judge). This re-trial panel rejects that denial and considers that the 2002 account is accurate and reliable. On other occasions he has stated that detainees were never interviewed in Llapashtica nor were any taken anywhere for interview.<sup>58</sup> **N.M.** considered that it was surprising that no interviews occurred. **N.M.** knew that the detainees were detained for general charges and for cooperation with the enemy.<sup>59</sup>

- g. With regard to the specific count at issue in this 2<sup>nd</sup> re-trial, namely count 8 from the 2003 amended indictment, **N.M.** denies any criminal responsibility. He asserts that no witness other than anonymous witness 7 gives evidence of beating and torture. He asserts that no person named in Count 8 was arrested by **N.M.** or any MP under his command. Neither **N.M.** nor MPs under his command had knowledge of the reasons of arrest and detention other than it was related to 'cooperation with the enemy' and he specifically denied that either he, or MPs under his command engaged in beatings or torture or interrogation of prisoners.<sup>60</sup> **N.M.** asserted that he ran his unit with strict military discipline. **N.M.** states that he has 'no personal knowledge about anyone being tortured in Llapashtica detention centre'<sup>61</sup> nor did he ever receive any complaints of beating of detainees before they came to Llapashtica.<sup>62</sup> **N.M.** confirms that he prohibited torture. He said that this did not because of any problems and he only ever had one soldier ask if he could slap a detainee in the face but that he, **N.M.**, stated that this was not allowed.<sup>63</sup> Whereas **N.M.** was confronted by the prosecutor at the trial on 27/03/2013 with the answer he gave to the investigating judge: 'I banned torture, which stirred some problems for me. I prohibited soldiers to enter without my permission. ... This did not apply to SHIK because they were my superiors.'<sup>64</sup> When challenged by the Presiding Judge that in 2002 **N.M.** gave a detailed comprehensive explanation to the Investigating Judge as to the need to ban torture and the consequential difficulties that it caused **N.M.**, if that detailed account was either a mistake or untrue how could that error be explained by either 'pressure' or a 'headache', **N.M.** replied that 'I

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<sup>58</sup> Minutes of main trial 26/02/2003, p10

<sup>59</sup> Minutes of main trial 26/02/2003, p10

<sup>60</sup> Minutes of main trial 26/02/2003, p4; minutes of main trial 10/07/2009, p3

<sup>61</sup> Minutes of main trial 26/02/2003, p5

<sup>62</sup> Minutes of main trial 27/02/2003, p3

<sup>63</sup> Minutes of main trial 26/02/2003, p11

<sup>64</sup> Statement to Investigating Judge 28/01/2002, p6

have no answer to that question.’<sup>65</sup> **N.M.** I denies that there was any rule about detainees having to stand and face the wall when supervisors entered the room, though he agreed that they would have to stand to be counted.<sup>66</sup>

- h. **N.M.** confirmed the presence of detainees called D.B. and A.M. at Llapashtica detention centre.<sup>67</sup>
- i. The detention room at Llapashtica would hold up to a maximum of between 10 to 12 people.<sup>68</sup>
- j. International Observers would attend twice at the detention centre to inspect the health and welfare of detainees.<sup>69</sup>
- k. There were no incidents of having to break up fights between detainees.<sup>70</sup>
- l. **N.M.** states that no one ever complained about their detention.<sup>71</sup>

### 32. Evidence of **R.M.**

- a. Statement to Investigating Judge 13/08/2002
  - i. NOTE: this statement was declared inadmissible and not considered by the trial panel in reaching its verdict. See Paragraph 10 above.
- b. Minutes of Main Trial 14/03/2003, 17/03/2003, 18/03/2003
- c. Minutes of Main Trial 09/07/2009 (or possibly 10/07/2008, the original record is not clear giving both dates).
- d. Minutes of Main Trial 27/03/2013.

33. Reviewing all of **R.M.** evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. **R.M.** confirmed that his nickname during the war was ‘**xxxx**’ (see personal data). **R.M.** accepted being the Commander of the KLA for the Llapashtica area,<sup>72</sup> from the beginning of September 1997<sup>73</sup>

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<sup>65</sup> Minutes of main trial 27/03/2013, p3

<sup>66</sup> Minutes of main trial 27/02/2003, p3

<sup>67</sup> Minutes of main trial 26/02/2003, p11; statement to investigating judge 28/01/2012, p14

<sup>68</sup> Minutes of main trial 27/02/2003, p3; minutes of main trial 10/07/2009, p4

<sup>69</sup> Minutes of main trial 27/02/2003, p3

<sup>70</sup> Minutes of main trial 27/02/2003, p4

<sup>71</sup> Minutes of main trial 10/07/2009, p12

<sup>72</sup> Minutes of main trial 14/03/2003, p5, p6; minutes of main trial 09/07/2009, p16; minutes of main trial 27/03/2013, p7

<sup>73</sup> Minutes of main trial 14/03/2003, p7

and being responsible for the actions of those under his command.<sup>74</sup> **R.M.** stated that **L.G.** and **N.M.** reported directly to HQ. **L.G.** was higher than **N.M.** because **L.G.** was a member of the Command. **R.M.**, his deputy and his chief of staff all had command over **R.M.**.<sup>75</sup> **R.M.** denies that he bears either personal or command responsibility for and illegal abduction, detention, beating or torturing of Albanian civilians, and, by implication denies that any such incidents occurred at all.<sup>76</sup> **R.M.** stated that there was a general decision by himself and the Llap zone HQ to order the detention of certain individuals at Llapashtica. This was for military reasons in that the people detained were alleged 'Fifth columnists/ collaborators'.<sup>77</sup>

- b. The decision to arrest/ detain was implemented by services that 'we created, military police, the brigades, civil defence and other units.' Most of the detainees were brought by support groups, also by the military police or other brigade units. In many cases they (alleged collaborators) turned up by themselves. **R.M.** asserts that the total number of detainees was very small.<sup>78</sup> Individual decisions about who to detain could be taken at HQ level, Brigade level, or even lower unit commanders could issue verbal orders to detain. 'We undertook our actions before the collaborator themselves could act but we are certain that they were going to act (i.e. **R.M.** admits that alleged collaborators could be arrested by the KLA before they had in fact committed any act of collaboration. Thus it must be concluded that rumour and innuendo could be sufficient to result in a person's detention.) **R.M.** also concedes that 'we were unable to organise efficiently a system to find out what they were doing'. When seeking clarification of this, **R.M.** replied 'we knew it was difficult to get information as this is never easily obtained from people. There were hearings for these people but they were not effective' which **R.M.** then modified to say 'there was no such system for questioning but questioning happened'. However **R.M.** then asserted that 'it was a general principle that people would not be interrogated as we were unable to organise it during the period.'<sup>79</sup>

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<sup>74</sup> Minutes of main trial 27/03/2013, p10

<sup>75</sup> Minutes of main trial 17/03/2003, p4

<sup>76</sup> Minutes of main trial 14/03/2003, p6

<sup>77</sup> Minutes of main trial 14/03/2003, p6, p9; minutes of main trial 09/07/2009, pp16-17

<sup>78</sup> Minutes of main trial 14/03/2003, p8

<sup>79</sup> Minutes of main trial 14/03/2003, p10; minutes of main trial 09/07/2009, pp23-24; minutes of main trial 27/03/2013, p10, p12

- c. **R.M.** accepts that there was a detention centre in Llapashtica.<sup>80</sup> The Detention Centre was close to the Zone HQ, between 100 metres to 200 metres.<sup>81</sup> It was the job of the Military Police to secure the detainees. BUT, **R.M.** admits that ‘I kept myself informed about detainees but I was not always informed about everything’. **N.M.** was Chief of Military Police in the Llap zone, assigned to that role by **R.M.**.<sup>82</sup> It was **R.M.** duty to report to HQ about detainees. **R.M.** denies ever entering the Detention Centre in Llapashtica.<sup>83</sup> **R.M.** stated that he permitted visits by International organisations to the detention centre but does not know whether any such visits in fact occurred.<sup>84</sup> **R.M.** accepts that as zone commander he was ultimately responsible for the detainees under the zone’s control and care.<sup>85</sup>
- d. **R.M.** asserts that when the holding of Llapashtica became untenable due to Serb military action, he/ HQ ordered the release of all detainees. He denied knowledge of any detainee dying.<sup>86</sup> In addition, **R.M.** accepted that he ‘personally reached decisions as to release or continuing to detain someone based on the references of my subordinates.’ He went on to clarify this meant ‘my chief of staff or my deputy. They had the relevant information but I don’t know where from.’<sup>87</sup>
- e. **R.M.** stated that **L.G.** was appointed chief of intelligence for the zone and that it was his job to discover potential threats to the army and the people. **R.M.** appointed **L.G.** to that role. **R.M.** asserted that collaborators did not have important information regarding the enemy.<sup>88</sup> **R.M.** did not explain how it was that he or his subordinates knew that the detainees did not have relevant information. The trial panel considers that at least one method of knowing for certain that detainees did not have relevant information is to question the detainees. Equally, in determining which detainees were safe for release and which needed further

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<sup>80</sup> Minutes of main trial 14/03/2003, p8, p9

<sup>81</sup> Minutes of main trial 14/03/2003, p10; minutes of main trial 09/07/2009, p18; minutes of main trial 27/03/2013, p8

<sup>82</sup> Minutes of main trial 09/07/2009, p21; minutes of main trial 27/03/2013, p8

<sup>83</sup> Minutes of main trial 14/03/2003, p9; minutes of main trial 09/07/2009, p26

<sup>84</sup> Minutes of main trial 17/03/2003, p2

<sup>85</sup> Minutes of main trial 27/03/2013, p10

<sup>86</sup> Minutes of main trial 14/03/2003, pp8-9

<sup>87</sup> Minutes of main trial 14/03/2003, p10

<sup>88</sup> Minutes of main trial 14/03/2003, p10; minutes of main trial 09/07/2009, pp20-21; minutes of main trial 27/03/2013, p8

detention, the Trial Panel concludes that such obvious decisions could not be made without some measure of questioning.

- f. **R.M.** confirmed that the Military Police wore black uniforms.<sup>89</sup>
- g. **R.M.** confirms that he issued 3 amnesties.<sup>90</sup> **R.M.** does remember an occasion when detainees were released and then re-arrested. The reason for this is that the release had been unauthorised and that they should not have been released at all.<sup>91</sup> It is implicit from these assertions that ultimate control of the releases at Llapashtica were subject to the overall control and decision making of **R.M.**.
- h. **R.M.** denied knowledge of any maltreatment occurring and denied that he personally had ever maltreated any person.<sup>92</sup>
- i. **R.M.** asserted that family visits were allowed to detainees.<sup>93</sup>
- j. **R.M.** confirmed that he was aware of the arrests of A.K., A.M., D.B.<sup>94</sup>, I.S., E.S..<sup>95</sup> He was also aware that A.M. was released and the re-arrested by KLA soldiers.<sup>96</sup>

#### **34. Evidence of Anonymous Witness 7 (R.B. waived anonymity)**

- a. Statement to Investigating Police Officers dated 20/08/2002 – See Ruling in para 6 above: this statement has not been considered by the trial panel in reaching its conclusion, nor has any question or answer based upon that statement been considered.
- b. Statement to Investigating Judge dated 23/08/2002
- c. Minutes of Main Trial 31/03/2003, 1/04/2003
- d. Minutes of Main Trial 15/09/2009
- e. Minutes of Main Trial 4/04/2013

35. Reviewing all of R.B. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. On or about 25 or 26 November 1998, R.B. was travelling from Pristina to Podujeva when he was stopped by 3-5 uniformed, armed members of KLA in the village of **xxxxxxxxx**. They asked for his name together with the name of the person he was travelling

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<sup>89</sup> Minutes of main trial 17/03/2003, p3

<sup>90</sup> Minutes of main trial 17/03/2003, p3

<sup>91</sup> Minutes of main trial 17/03/2003, p4

<sup>92</sup> Minutes of main trial 17/03/2003, p6, minutes of main trial 18/03/2003, p2

<sup>93</sup> Minutes of main trial 17/03/2003, p5

<sup>94</sup> Statement to Investigating Judge 13/08/2002, p12

<sup>95</sup> Minutes of main trial 17/03/2003, p5

<sup>96</sup> Minutes of main trial 17/03/2003, p5

with, and then was informed by the KLA members that they had orders to arrest them. The KLA members were S.S., I.M. and S. They were wearing military uniform. He was taken by car with a sack over his head to Llapashtica arriving on about 25 or 26 November 1998. He slept the night in the stable where 7 to 8 other detainees were also held.<sup>97</sup>

- b. The following morning, R.B. was taken to a building 20-30 metres away for questioning. The building was a house with 3 or 4 rooms. R.B. was escorted to the building by guards wearing a sack over his head. He recalls being taken to this building three times. During the first interrogation, he was told 'You are a spy. Why do you get along with Serbs? Why do you spend time with them?' The first interrogation lasted about 2 hours and he was not threatened or maltreated during this interrogation. He did not get to know who interrogated him during this first occasion. Afterwards he was taken back to the stable. He was not told how long he would be detained for.<sup>98</sup>
- c. R.B. was interrogated for the second time approximately one week after the first. Again he was taken from the stable with a sack over his head. He was made to wear the sack throughout the interview. Despite wearing the sack, R.B. was able during the interrogation to remove the sack from his eyes from time to time to see who was assaulting him. He saw **L.G.** and **N.M.**. They were wearing uniforms, **L.G.** wore an army camouflage uniform and **N.M.** wore a black uniform.<sup>99</sup> At the second interrogation, 'xxxx' was interviewing me and **N.M.** had me beaten up.'<sup>100</sup> It should be noted that R.B. is dependent on what the other detainees told him to know the identity of the interrogators, though he claims also to recognise the voices. He also stated that he knew them only by their nicknames but learnt their real names after the war.<sup>101</sup> He was questioned by 'xxxx' who he got to know was called **L.G.** and was a Commander and by 'xxxx' who he got to know was called **N.M.** and was a Military Policeman.<sup>102</sup> R.B. believes that the persons interrogating at the second interview were the same ones who interrogated at the first interview.<sup>103</sup> They were asking the

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<sup>97</sup> Statement to Investigating Judge 23/08/2002, pp2-3; Minutes of main trial 31/03/2003, p2-3,

<sup>98</sup> Statement to Investigating Judge 23/08/2002, pp5-6

<sup>99</sup> Statement to Investigating Judge, 23/08/2002, p9

<sup>100</sup> Statement to Investigating Judge 23/08/2002, pp6-7

<sup>101</sup> Statement to Investigating Judge 23/08/2002, p7 lines 10-15

<sup>102</sup> Statement to Investigating Judge 23/08/2002, p4

<sup>103</sup> Statement to Investigating Judge 23/08/2002, p7 lines 19-21

same questions as the previous interrogation asking him to admit to things that he did not accept. It was during the second interview that they started to beat him.<sup>104</sup>

- d. R.B. states that there were two people in the room and the guard that escorted him from the stable remained stood outside the door. He states that it was **N.M.** who beat him, and **L.G.** who did the questioning. The beating was administered using a stick and an 'electric stick' (cattle prod) and lasted for 1 hour before a rest of 30 minutes and then continuing. Although he was made to wear a sack over his head throughout, he was able to look underneath the sack while scratching his head to see who was beating and questioning. R.B. was beaten on his legs, arms and back while he was seated. The electric prod was applied to his neck and knees for a long time causing loss of senses and trembling. It was extremely painful. In total, it seemed to last for about 3 hours.<sup>105</sup> R.B. stated that he never really understood why or what they wanted from him. As a result of the beating, R.B. stated that he was covered in bruises and in 2002 claimed to still suffer with his back. He was not able to walk unaided after that beating and was assisted by the guard back to the stable.<sup>106</sup>
- e. R.B. was released on 31 December 1998. Two days before that he was interrogated for the third time. Again he was asked the same questions. On this occasion his head was not covered by a sack and it was **L.** and **N.M.** who conducted the interrogation. R.B. is certain that these were the same people who had interrogated him previously. The interrogation lasted for less than one hour and he was beaten. It was **N.M.** that beat him with a stick all over and it lasted for 15 minutes non-stop. R.B. describes **N.M.** as being out of control. **L.G.** was questioning while **N.M.** was beating. As a result, R.B. could not walk for a day and could not stand up until the day he was released.<sup>107</sup>
- f. Upon his release, R.B. was given a letter by **N.M.** and signed by him which accused him of being an enemy collaborator without any justification or reasoning.<sup>108</sup>
- g. In all R.B. was detained for approximately 37 days, with between 7-10 other detainees in the stable, during which he was interrogated 3 times and beaten twice. The other detainees

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<sup>104</sup> Statement to Investigating Judge 23/08/2002, p7

<sup>105</sup> Statement to Investigating Judge 23/08/2002, p10

<sup>106</sup> Statement to Investigating Judge 23/08/2002, p11

<sup>107</sup> Statement to Investigating Judge 23/08/2002, p7, pp11-13; Minutes of main trial 31/03/2003, p3 (ref date of release)

<sup>108</sup> Statement to Investigating Judge 23/08/2002, pp13-14

included H.H., I.S., A.T.M., N.H., M. A.X and two brothers whose names R.B. did not know. R.B. confirms that these other detainees were beaten too. Beatings would also sometimes occur within the stable from other KLA soldiers, and the detainees were sometimes made to beat each other.<sup>109</sup>

- h. Despite the detailed testimony to the Investigating Judge about events in Llapashtica, in particular that on 3 occasions he had been interrogated by 'xxxx' (L.G.) and 'xxxx' (N.M.) and on the last two occasions he was substantially beaten by N.M. while L.G. was asking questions, at the Main Trial in 2003, R.B. denied that he was ever beaten or even that he had been questioned apart from on the first night of detention. When asked why he previously said the contrary, R.B. simply denied that he had ever said such a thing to the Investigating Judge. Later he asserted that the account given to the Investigating Judge was 'imposed upon me by the Police and the Public Prosecutor' meaning that 'I was taught to speak that way by the police and Prosecutor' and 'I had been told to say that I had been interrogated by L.G. and that N.M. had beaten me.'<sup>110</sup> The potential explanations for the substantial differences between the two fundamentally different accounts are as follows: i/the signed transcripts of the statements to the investigating judge were fictitious in the sense that the Investigating Judge simply created a false record, or ii/ there were monumental translation errors to the extent that it created a detailed account which was in fact false or iii/ R.B. did give the account to the Investigating Judge in 2002 as recorded but that account was untruthful, or iv/ his statement to the Main Trial Panel in 2003 had to be a lie. There is no room for both the version to the Investigating Judge and the account to the original and later main trial panels to be correct.<sup>111</sup>
- i. In the first re-trial of 2009, R.B. confirmed the fact of his detention between 27 or 28 November 1998 and 31 December 1998 and that he was questioned on the first night by N.M. and xxxx.<sup>112</sup> He denied that he had been beaten in the detailed ways he had described before the Investigating Judge and he seemed to suggest that were the minutes had recorded that he had been beaten that this was a misunderstanding. He was instead complaining that it was cold and there was no heating.<sup>113</sup> He then somewhat

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<sup>109</sup> Statement to Investigating Judge 23/08/2002, pp16-19

<sup>110</sup> Minutes of main trial 1/04/2003, p2

<sup>111</sup> Minutes of main trial 31/03/2003, p3-4

<sup>112</sup> Minutes of main trial 15/09/2009, p31

<sup>113</sup> Minutes of main trial 15/09/2009, p32

inconsistently asserted that he had told the truth to the Investigating Judge.<sup>114</sup>

- j. In the second re-trial on 2013, after a confusing passage when it was not clear whether the witness accepted or rejected his previous statement before the Investigating Judge, the Panel takes the view that he in essence stood by his account to the first and second trial panels but not by his account to the Investigating Judge. There was an extensive process of confrontation of the witness by the prosecutor regarding his previous inconsistent statements. R.B. did confirm that he was questioned by **N.M.**, who he knew as 'xxxx' but denied seeing **L.G.**, who he knew as 'xxxx', stating that 'I was told he was there but I don't know as I had a sack on my head.'<sup>115</sup> R.B. did confirm that **N.M.** was questioning him and accusing him of being a Serbian collaborator.<sup>116</sup> He again denied that there were any beatings in Llapashtica.<sup>117</sup> He said that references to beatings were misinterpretations about complaints about the weather.<sup>118</sup> He asserted that the account given to the Investigating Judge was untrue and/ or inaccurate and he variously blamed translation errors,<sup>119</sup> that he was put under pressure by UNMIK Police &/or Judge and offered an inducement of relocation.<sup>120</sup>
- k. It is not necessary to rehearse the process of confrontation here. Suffice it to say that the witness was given every opportunity to explain such inconsistencies and verify his credibility. The Panel reaches the following conclusions. R.B. account to the main trial panels in 2003, 2009 and 2013 in which he denies that any improper treatment, beatings or torture occurred at Llapashtica detention centre is manifestly false. Even in 2013, R.B. did confirm that he was detained against his will by KLA soldiers and was taken to Llapashtica Detention Centre. He confirmed at a minimum that he was questioned on the first night by **N.M.** who accused R.B. of being a Serb collaborator. He admits that he knew **N.M.** by the nickname of 'xxxx', a nickname that **N.M.** admits to using. R.B. confirms at a minimum that he was told by others that **L.G.** was present using the nickname of 'xxxx', a nickname that **L.G.** admits to using. Insofar as R.B. seeks to deny the truth of his account

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<sup>114</sup> Minutes of main trial 15/09/2009, p33

<sup>115</sup> Minutes of main trial 4/04/2013, p27

<sup>116</sup> Minutes of main trial 4/04/2013, p29

<sup>117</sup> Minutes of main trial 4/04/2013, p12, pp29-30

<sup>118</sup> Minutes of main trial 4/04/2013, pp13-14

<sup>119</sup> Minutes of main trial 4/04/2013, p12

<sup>120</sup> Minutes of main trial 4/04/2013, pp20-21, p33

given to the Investigating Judge, his explanations of the inconsistencies are simply absurd and incapable of belief. Even allowing for translation errors, it is not possible to arrive at such a close and detailed account of events, people, clothing, words said and beatings and injuries if all such matters are incorrect and untrue by mere translation errors. Such a suggestion is preposterous. The alternative proposal is that R.B. was deliberately lying as a result of pressure and/ or inducements from UNMIK Police, Prosecutors or Judges. Firstly, we consider that unlawful inducements were not made. Secondly, the only reference to an actual inducement is the possibility of relocation. As R.B. was an anonymous witness at the time, it is entirely possible that reference was made to the possibility of R.B. being relocated. Such a comment is entirely proper and legitimate and falls far short of an improper inducement, and simply cannot amount to pressure to give a false account. The third possibility is that the Investigating Judge allowed a wholly improper, untruthful record to be created full of lies and untruths which were never said by the witness. That is plain nonsense. This would require a conspiracy between Judge, Prosecutor, Court reporters and interpreters. In any event, Defence Counsel was present at the Investigating Judge interview and if such a false record was created, the Defence Counsel would have immediately recorded their objections. The only possible understanding of the account given by R.B. to the Investigating Judge with its essential details is that it is true and that is the finding of the Panel. Furthermore, the evidence that R.B. gave in his original account is corroborated by the accounts of other witnesses who the Panel accepts as truthful. Therefore the facts as set out above in paragraphs 35(a) to (g) are found to be proved.

**36. Evidence of Witness I (Note Witness I is a protected witness and NOT an anonymous witness, as his identity and personal data was taken in court in the presence of the parties and their advocates)**

- a. Statement to Investigating Judge 20/02/2002
- b. Minutes of main trial 20/06/2003
- c. Minutes of main trial 23/06/2003
- d. Minutes of main trial 11/04/2013

37. At the Main Trial 11/04/2013, Witness I confirmed that he fully stood by his evidence to the Investigating Judge and to the first main trial panel in 2003.<sup>121</sup>
38. Witness I gave evidence with regard to events that happened to his **xxxx** A.M. (T.).
39. Reviewing all of Witness I's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:
- a. On or about 23/02/1999, Witness I was at home at around midnight when he became aware of unidentified people around his house. Witness I therefore crossed the 30 metres from his house to his **xxxx** A.M. house. On route, he came across armed KLA soldiers in black uniform. Witness I recognised one of them as H.B. from **xxxx** village. He recognised two others as **xxxx** friends. One of them, J.E. said to him 'I am sorry for you but I have an order from above. We have to send your **xxxx** to the HQ'. Witness I replied that his **xxxx** had previously been there for 60 days and had suffered a lot. J.E. and J.Z. from **xxxx** village stated that we have no option other than to obey the orders that have been given to us.' After a radio discussion which confirmed the order to bring A.M. to HQ that night, the KLA soldiers stated that they would take A.M. to Llapashtica.<sup>122</sup> The arrest on 23 February was A.M. second detention by the KLA and was the last time Witness I saw A.M. alive.<sup>123</sup>
  - b. Witness I stated that A.M. had previously been detained at Llapashtica from about 28-29 November 1998 for about 60 days. On this occasion, Witness I had taken his brother there by car and on arrival **L.G.** said to them 'Send him downstairs, because I am going to join you soon.' They went to another building about 500 metres away. The house of the Military Police was about 100 metres from the KLA HQ.<sup>124</sup>

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<sup>121</sup> Minutes of main trial 11/04/2013, p4

<sup>122</sup> Statement to Investigating Judge 20/02/2002, p2; Minutes of main trial 20/06/2003, pp3-4; minutes of main trial 11/04/2013, pp4-5

<sup>123</sup> Minutes of main trial 11/04/2013, p6, p8 (although said expressly at these references, it was also clearly implicit on the other occasions that Witness I gave evidence)

<sup>124</sup> Statement to Investigating Judge 20/02/2002, pp3-4; minutes of main trial 20/06/2003, p4

- c. After about 10 minutes **L.G.** came along with two other KLA soldiers. They were all armed. Witness I was able to recognise **L.G.** as he knew **L.G.** from **xxxx**.<sup>125</sup>
- d. Witness I estimated that there were up to 24 prisoners detained in the barn/ stable at Llapashtica.<sup>126</sup>
- e. Throughout the period of A.M. first detention at Llapashtica, Witness I regularly attended to speak to KLA Commanders. He spoke to **N.M.** (who was called '**xxxx**') directly. **L.G.** ('**xxxx**') refused to meet with Witness I. On one occasion, Witness I was permitted into the Military Police building and he spoke again directly to **N.M.** who was wearing a black uniform. **N.M.** was described as being 'the deputy of **xxxx**' by another soldier known to Witness I as G.Z. ('**xxxx**'). **N.M.** told Witness I that it was not possible for him to visit A.M. because A.M. was under investigation. On a further visit, Witness I was told by a KLA soldier in a black uniform known as S.G. that Witness I could not see A.M. because 'he is still in the investigating stage'. It also became clear to Witness I from his various discussions with **L.G.**, **N.M.** and others that the reason for A.M. detention was that he was suspected of collaborating with Serbs.<sup>127</sup>
- f. Eventually, it was Commander **xxxx** who ordered A.M. release (thereby establishing that Commander **xxxx** both knew of the fact of detentions and had the command authority to order releases).<sup>128</sup>
- g. A.M. told Witness I about the detention in Llapashtica. He had held in a cow shed with approximately 23-24 other people. Witness I referred to a list of 14 names. A.M. had been tortured and all had been emotionally and physically maltreated. A.M. had scars and bruises on his front and back. A.M. said that **L.G.** had beaten him. A.M. stated that he had been accused of running prostitution with Serb Police Officers and had been told by **xxxx (L.G.)** that to 'free himself from this sin' he had to kill a Serb Police Officer to prove himself a patriot.<sup>129</sup>

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<sup>125</sup> Statement to Investigating Judge, 20/02/2002, p4

<sup>126</sup> Statement to Investigating Judge 20/02/2002, p4; minutes of main trial 11/04/2013, pp5-6

<sup>127</sup> Statement to Investigating Judge 20/02/2002, pp5-6; minutes of main trial 20/06/2003, pp4-5; minutes of main trial 11/04/2013, p8

<sup>128</sup> Statement to Investigating Judge 20/02/2002, p7

<sup>129</sup> Statement to Investigating Judge 20/02/2002, p7; minutes of main trial 20/06/2003, p5; minutes of main trial 20/06/2003, p5; minutes of main trial 11/04/2013, pp7-8

- h. After the war, Witness I found the body of A.M. buried in a shallow grave with others near Majac. The exact circumstances of the death whilst in the custody of the KLA is outside the scope of this trial as defined by the Supreme Court.

40. In summary, Witness I gave a clear, concise, coherent and compelling account of his **xxxx** being detained twice by the KLA at the Llapashtica detention centre, that this was on the orders of **L.G.** and that **L.G.** and **N.M.** knew of and were participants in persistent bouts of beatings on the grounds that A.M. was suspected of being a Serb collaborator. The evidence of Witness I was wholly supported and corroborated by Witness J (see para 41 below). The Panel accepts Witness I's evidence as set out in paragraph 39 (a) to (h) above as true.

**41. Evidence of Witness J (Note Witness J is a protected witness and NOT an anonymous witness. Witness J was unable to attend court [lives in xxxx and was not currently traceable] and was read subject to the agreement between the parties dated 07/05/2013, attached hereto at annex C).**

- a. Statement to Investigating Judge 19/02/2002

42. Witness J was a **xxxx** of the deceased A.M. and Witness I (above). Essentially, the evidence of Witness J supports that of Witness I and need not be set out extensively.

43. In summary, Witness J states as follows:

- a. On 23/02/1999, A.M. (T.) was taken from his home by up to 8 KLA soldiers. Some wearing military uniform, some wearing black and all armed. It was a forcible arrest and A.M. did not surrender voluntarily.<sup>130</sup>
- b. Witness J made enquiries of who she had to speak to within the KLA to discover the fate of her brother. She was given the name **L.G.**<sup>131</sup> Witness J was aware that A.M. had previously been arrested at the orders of **L.G.** in November 1998 and had been detained in Llapashtica.<sup>132</sup> During that detention, A.M. told Witness J that he and all of the other detainees had been maltreated by **L.G.**

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<sup>130</sup> Statement to investigating Judge 19/02/2002, p2

<sup>131</sup> Statement to investigating Judge 19/02/2002, p3

<sup>132</sup> Statement to investigating Judge 19/02/2002, p5

and A.M. showed his family his injuries.<sup>133</sup> A.M. told Witness J that other detainees included I.S., A.K., H.J. and others.<sup>134</sup> Witness J stated that A.M. was released from that first detention with orders to kill a Serb Policeman, which his family refused to permit him to do.<sup>135</sup> In due course she was able to speak to L.G. who questioned her about the alleged relationship between A. and a friend who was a Serb Policeman.<sup>136</sup> Witness J was aware that L.G. was also known as 'xxxx' and "xxxx".<sup>137</sup> After the 02/1999 detention began, L.G. refused to speak to Witness J. Other KLA soldiers told her that A.M. was being detained in a stable with other prisoners. Witness J & xxxxxxxx I were able to speak to a high ranking police officer who introduced himself as N.M., but he simply had them ejected from the prison yard by other police officers.<sup>138</sup>

- c. The family did not see A.M. alive again. He was recovered in due course from the same grave as D.B.. The exact circumstances of that death are outside the scope of this trial as a result of the ruling of the Supreme Court.

44. This trial panel finds the evidence of Witness J clear, concise and compelling and corroborated by the evidence of Witness I. The facts set out in para 43 (a) to (c) are proved.

**45. Evidence of Witness C (Note Witness C is a protected witness and NOT an anonymous witness, as her identity and personal data was taken in court in the presence of the parties and their advocates, thereafter she gave evidence in open public court but continued to use the pseudonym of Witness C)<sup>139</sup>**

- a. Statement to the Investigating Judge 7/02/02
- b. Minutes of Main Trial 29/04/03
- c. Minutes of Main Trial 11/04/2013

46. At the Main Trial 11 April 2013, Witness C confirmed that she fully stood by xxx evidence to the Investigating Judge and to the first main trial panel in 2003.<sup>140</sup>

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<sup>133</sup> Statement to investigating Judge 19/02/2002, p7

<sup>134</sup> Statement to investigating Judge 19/02/2002, p7

<sup>135</sup> Statement to investigating Judge 19/02/2002, pp5-6

<sup>136</sup> Statement to investigating Judge 19/02/2002, p4

<sup>137</sup> Statement to investigating Judge 19/02/2002, p8

<sup>138</sup> Statement to investigating Judge 19/02/2002, p8

<sup>139</sup> Minutes of main trial 11/04/2013, p10

<sup>140</sup> Minutes of main trial 11/04/2013, p11

47. Reviewing all of Witness C's evidence and extracting those parts that are relevant to the only remaining charge before the court, her evidence can be summarised as follows:

- a. Witness C's evidence was in relation to **xxxxx**, H..
- b. On about 30/01/1999, H. received a summons from the KLA 31/01/1999, he attended at HQ. He ended up at Llapashtica. After 4 days, he had not returned home so Witness C attended at Llapashtica to discover what had happened. **xxx** asked to meet Commander **xxxx**. After 10 minutes she was taken to a 2 storied house in which there was a room like an office with two people that she thought were policemen. She was introduced to them. One was **L.G.**, who was wearing military uniform. She was able to accurately describe the physical appearance of **L.G.**. The other was **N.M.** who was dressed in black. She was able to accurately describe the physical appearance of **N.M.**<sup>141</sup> Later, Witness C identified **L.G.** to the Investigating Judge through identification photographs.<sup>142</sup>
- c. Witness C told them that she wanted to see **xxxx**. The two men told her that he was to be accused. They asked her if she knew that he was married to a Serb woman which she declared to be ridiculous. **xxxx** was brought into the room and accusations were made against him in her presence. She described his condition: 'he was very gray faced, and he was trying to hold himself erect even though he could barely move. He tried to go into the room very slowly with his body stiff and he sat down very slowly and he was trying to not let me see that he was not feeling well.' He appeared to be in pain. He did not have such signs of pain/ injury prior to his detention in Llapashtica. Witness C also [physically demonstrated H. movements in such a way that is clear she was indicating pain and discomfort.<sup>143</sup> Although Witness C initially did not particularise the accusations she observed that the allegations were made by S.H. against whom some 3 or 4 years before there had been an inter **xxxx** dispute. By inference, the witness was stating that the allegation leading to the arrest was a petty inter family squabble resulting in false accusations. Later in her interview, Witness C confirmed that H. was also being accused of

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<sup>141</sup> Statement to Investigating Judge 07/02/2002, pp1-4; minutes of main trial 29/04/2003, p8

<sup>142</sup> Statement to Investigating Judge 07/02/2002, p15

<sup>143</sup> Statement to Investigating Judge 07/02/2002, pp12-13; minutes of main trial 11/04/2013, p12

having worked with Serbian Police, though she denied that was true stating he had only worked at **xxxxx**.<sup>144</sup> When he arrived in the room he was escorted by armed police officers. When he left the room, H. stated that he would not be forced to admit something he had not done and they can never label me a collaborator.<sup>145</sup> Witness C was not allowed to speak to H.. When Witness C challenged **L.G.** and **N.M.** they responded with threats stating that they had the right to 'exterminate' her. The two men then demanded that she surrendered a weapon that was held by her family and that if she didn't 'your son who is in exile would be in danger if you support your husband or you don't obey'.<sup>146</sup>

- d. Witness C attended to the same place 2 or 3 days later and surrendered the weapon, though she was not allowed to see her husband. Again she dealt with **L.G.** and **N.M.**. However she was told that the investigations into her husband were continuing.<sup>147</sup>
- e. Later Witness C received a message from an unidentified person stating that her husband was in a grave condition. This lead to her making a statement to A.D., the KLA Political Representative in Pristina.<sup>148</sup> Ultimately, H. died in circumstances that appear to be related to his detention by the KLA but that is outside the scope of this trial as defined by the Supreme Court.

48. The trial panel concludes that Witness C gave evidence in a calm, collected and measured way. Where something was outside her knowledge or her memory was uncertain she made proper concessions to that fact. There is no sign of exaggeration in her evidence, in that she is able to describe that her husband was detained against his will, that he showed signs of injury within 4 days of his detention that he did not have when he presented himself to the KLA and that both **L.G.** and **N.M.** were acting together with a clear intention to investigate, question and continue the detention of H. The Panel finds her evidence to be credible, compelling and coherent, without exaggerations. Accordingly the facts given at para 47 (a) to (e) above are proved.

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<sup>144</sup> Statement to Investigating Judge 07/02/2002, p12

<sup>145</sup> Statement to Investigating Judge 07/02/2002, p12; minutes of main trial 29/04/2003, p10, pp15-16

<sup>146</sup> Statement to Investigating Judge 07/02/2002, pp5-6; minutes of main trial 11/04/2013, pp12-13

<sup>147</sup> Statement to Investigating Judge 07/02/2002, p7; minutes of main trial 29/04/2003, p12

<sup>148</sup> Statement to Investigating Judge 07/02/2002, p8; minutes of main trial 29/04/2003, pp10-11

**49. Evidence of Witness P (Note Witness P is a protected witness and NOT an anonymous witness, as his identity and personal data was taken in court in the presence of the parties and their advocates, thereafter she gave evidence in open public court but continued to use the pseudonym of Witness P)**

- a. Statement to Investigating Judge 07/03/2002
- b. Minutes of main trial 06/05/2003
- c. Minutes of main trial 11/04/2013

50. At the Main Trial 11 April 2013, Witness P confirmed that he fully stood by his evidence to the Investigating Judge and to the first main trial panel in 2003.

51. Reviewing all of Witness P's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. Witness P is the **xxxx** of I.S.. I.S. was arrested by the KLA on 2/11/1998. On 3/11/1998, Witness P discovered that **xxxx** had not been taken by the Serbs, as he initially feared, but by the KLA Military Police for informative talks.<sup>149</sup> Further enquiries revealed that I.S. was being held in Llapashtica.<sup>150</sup>
- b. As a result of that information, Witness P together with his father attended at Llapashtica and spoke to **L.G.** at the zone HQ. At the time **L.G.** was using the nickname '**xxxx**' which is another nickname that has been ascribed by various witnesses to **L.G.**. When asking **L.G.** why I.S. had been arrested, L.G. replied 'in a very rude way. He did not want to tell us why **xxxx** had been arrested and he told me to get lost from here.' **L.G.** did not confirm that I.S. was detained in Llapashtica. However, a nearby soldier informed Witness P where **xxxx** was detained.<sup>151</sup>
- c. The following day, Witness P and other relatives again returned to Llapashtica with food and clothes for I.S.. They were not allowed to visit him. Despite regular frequent further visits, Witness P did

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<sup>149</sup> Statement to Investigating Judge 07/03/2002, pp2-3; minutes of main trial 06/05/2003, pp2-3; minutes of main trial 11/04/2013, p22

<sup>150</sup> Statement to Investigating Judge 07/03/2002, p3; minutes of main trial 06/05/2003, p3

<sup>151</sup> Statement to Investigating Judge 07/03/2002, p3; minutes of main trial 06/05/2003, p4, p9; minutes of main trial 11/04/2013, p24

not get to visit I.S.. On about 23 November at such a visit, **L.G.** again saw Witness P and again issued threats of death to him.<sup>152</sup>

- d. At some stage, I.S. was able to smuggle a letter out from the detention centre to his family. Witness P stated that the letter read '**L.G.** is maltreating and abusing him (meaning I.S.),' beating and torturing and he begged witness P to go to A.D. for help to secure I.S. release.<sup>153</sup>
- e. Postwar when trying to locate **xxxx**, Witness P spoke to a KLA commander called 'L' (I.S.). He told Witness P to speak to **L.G.** because P's **xxxx** had been in **L.G.** hands.<sup>154</sup> I.S. was found in a grave in Majac. Though he had probably died at the hands of the KLA, that is outside the scope of this trial as defined by the Supreme Court.

52. When Witness P gave his evidence, he was clearly still very emotional and prone to argument with the defence counsel and defendants. However, a careful analysis of his evidence shows that despite his emotion, what he in fact said was measured, limited and not prone to exaggeration. The Panel finds his evidence convincing and truthful and the facts in para 51 (a) to (e) above are proved.

**53. Evidence of A.A. (originally an anonymous witness known as Witness 4, A.A. chose to waive his anonymity at trial - see minutes 08/05/2013, p 7)**

- a. Statement to Investigating Judge 14/05/2002 (ruled inadmissible and therefore not considered by the trial panel - see para 8 above).
- b. Statement to investigating judge 18/10/2002
- c. Minutes of main trial 20/03/2003, 21/03/2003
- d. Minutes of main trial 18/09/2009
- e. Minutes of main trial 08/05/2013, 10/05/2013

54. Reviewing all of Witness A.A. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. A.A. stated that he did not stand by the answers given to the Investigating Judge on 18/10/2002, but did stand by the answers

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<sup>152</sup> Statement to Investigating Judge 07/03/2002, pp3-4; minutes of main trial 11/04/2013, p23; minutes of main trial 11/04/2013, p25

<sup>153</sup> Statement to Investigating Judge 07/03/2002, p4; minutes of main trial 06/05/2003, p4, p6

<sup>154</sup> Statement to Investigating Judge 07/03/2002, p5

given at the main trial in 2003. As this is a matter for credibility to be determined by this trial panel, both versions given by the defendant are examined.

- b. A.A. states that he was abducted by the KLA in November 1998, taken to HQ in Bradash and questioned about his association with Serbs and beaten (the defendants in this case are not accused of being party to that beating). Later “**xxxx**’ [**L.G.**] who A.A. knew previously attended in a jeep with two soldiers and took A.A., blindfolded to Llapashtica. In Llapashtica, A.A. was handed to Military Police and imprisoned.<sup>155</sup>
- c. A.A. states that he was immediately beaten by the Military Police by kicks, hands and rifles for about 20 minutes. He does not think that **L.G.** personally took part.<sup>156</sup>
- d. He was then placed in a detention room. Other prisoners present included: N.H., H. from **xxxx**, B. from **xxxx**, I.S., A.M., M. from **xxxx**, M. from **xxxx** and M. from **xxxx**. The cell was a barn with a cement floor with just 2 or 3 mattresses for all. None could sleep well due to wounds received from beatings, some of which A.A. witnessed himself.<sup>157</sup>
- e. After several days, A.A. was beaten again by the Military Police with batons and electricity whilst being questioned about collaboration with Serbs.<sup>158</sup> A.A. witnessed others being taken for questioning and saw and discussed their injuries from the beatings.<sup>159</sup>
- f. There was a Red Cross visit to the detention centre. Before that visit, A.A. states that the Military Police told the detainees that they were being well treated by the Military Police. In response to that direction, A.A. stated that the prisoners did as they were directed.<sup>160</sup>
- g. ‘**xxxx**’ real name was **L.G.**. Other than the one occasion described above, A.A. denies seeing **L.G.** at Llapashtica. He denies seeing **N.M.** at Llapashtica. A.A. denies ever knowing which person was responsible for the prisoners.<sup>161</sup>
- h. A.A. was released on about 23 March. At that time, the prisoners included V.J., A.K., H., D. and others. At about the same time, A.A.

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<sup>155</sup> Statement to Investigating Judge 18/10/2002, p3

<sup>156</sup> Statement to Investigating Judge 18/10/2002, pp3-4

<sup>157</sup> Statement to Investigating Judge 18/10/2002, pp4-5

<sup>158</sup> Statement to Investigating Judge 18/10/2002, pp5-7

<sup>159</sup> Statement to Investigating Judge 18/10/2002, pp9-10

<sup>160</sup> Statement to Investigating Judge 18/10/2002, p19

<sup>161</sup> Statement to Investigating Judge 18/10/2002, p11

heard from others that A.T., I.S. and D. were made to dig holes and were killed.<sup>162</sup>

- i. At the Main Trial on 20/03/2003, A.A. presented a completely contrary story. He stated that he attended at Llapashtica voluntarily because there were false stories about him and he would get protection by the KLA at Llapashtica. In this new version of events, A.A. was at all times free to come and go as he wished. He stayed at Llapashtica voluntarily. The conditions were described as good as the soldiers and he would work freely on military necessary tasks. He confirmed the presence of other detainees including 'A' and 'H.'. He expressly denied being arrested or detained against his will. When confronted by the Presiding Judge in 2002 about his testimony to the Investigating Judge, A.A. stated 'that everything I said before to the police and the investigating judge happened after the police had told me that I had to cooperate and I could earn 100,000 euros and could go to live in any country.'<sup>163</sup> He even accused the Investigating Judge of having told him how to give his evidence and to say that he had known **xxxx** since before **xxxx** joined the army. He denied having previously seen **xxxx** until after he had been arrested by KFOR. When it was pointed out to him that if he had been told to implicate **xxxx**, he had in fact told the Investigating Judge that he did not know whether **xxxx** had been present at the beatings, A.A. had no sensible answer to that point stating simply that he couldn't accuse **xxxx** if it was not true, whereas he was in fact accusing the judge and police of instructing him to exaggerate allegations against **xxxx**.
- j. A.A. also stated that when interviewed by the Investigating Judge on 18 October no defence counsel were present. This assertion was clearly wrong as established by two facts i/ the minutes of record of the hearing of 18 October 2002 show that 3 defence counsel were present and ii/ those same defence counsel were also present at the main trial in front of the present panel in 2013 and did not state the 2002 record to be wrong. Therefore it is A.A. evidence that must be wrong, either because he is lying or mistaken. A.A. further asserts that he was presented with a pre-written statement by the investigating judge which was false. The Trial Panel reject that assertion as a lie. A.A. asserts that A.K. also told him that he came to Llapashtica for his own protection.<sup>164</sup>

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<sup>162</sup> Statement to Investigating Judge 18/10/2002, pp12-13

<sup>163</sup> Minutes of main trial 20/03/2003, pp5-6

<sup>164</sup> Minutes of main trial 21/03/2002, pp1-2

That assertion flies in the face of other evidence regarding A.A. forcible detention and beatings.

- k. At the main trial in 2013, A.A. gave an account essentially similar to that given before the trial panel in 2003, that he had surrendered voluntarily to the KLA for protection, that he was well treated and there were no beatings and that he was free to leave whenever he wished. He was extensively confronted by the Prosecutor about his previous account in October 2002 in which he stated that he had been involuntarily detained by the KLA, kept prisoner and repeatedly questioned and beaten and that he had seen other detainees being beaten and witnessed their injuries. It is not necessary here to record each and every confrontation. A.A. was highly evasive in his answers and at times seemed wholly incapable of giving a straight answer to a simple question. In essence when confronted with any difference between accounts, he asserted that the first account was inaccurate. Various, the following reasons were given:
- i. 'The UNMIK Police convinced me to give a statement and said I would be a protected witness and they would take me abroad. The statements I gave were never given to me to look at and to see what was recorded.'<sup>165</sup>
  - ii. 'Whatever the translator translated there is completely different.' [i.e. translation errors]<sup>166</sup>
  - iii. That he was offered "100,000 euros and to go to another country."<sup>167</sup>
  - iv. Despite stating in 2003 that he was forced by UNMIK police and/ or the Investigating Judge to give false evidence, before the trial panel in 2013, he denied being under pressure to give answers.<sup>168</sup> This contrasts with what A.A. stated in cross examination in 2013 when he stated 'I was told about some statements when I would go to court and knowing that I didn't have anything or much to say I was given a statement that I would have to read or say' and 'I told the investigation judge those things because she told me it is better if you speak this way so I gave the statement without my wish...' 'She told me to say that I knew xxxx and I knew him before he joined the KLA and that I saw him at

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<sup>165</sup> Minutes of main trial 08/05/2013, p13; minutes of main trial 10/05/2013, p3

<sup>166</sup> Minutes of main trial 08/05/2013, p22

<sup>167</sup> Minutes of main trial 08/05/2013, p23, p28; minutes of main trial 10/052013, p4

<sup>168</sup> Minutes of main trial 08/05/2013, p23

the army and that he mistreated me and the others.'<sup>169</sup>  
When challenged by the Presiding Judge in 2013 specifically whether he was alleging that his statement to the Investigating Judge was intentionally false, A.A. replied 'my statement was already prepared, what the translator translated they already knew themselves.'<sup>170</sup>

55. In conclusion, the trial panel was wholly unimpressed with A.A. as a witness. He was evasive, difficult and, based upon the most spurious and ridiculous of explanations tried to persuade this panel that the substantial, complex and detailed account that he originally gave to the Investigating Judge was not at all accurate and was the result of dishonest and unlawful conduct by the investigating judge, UNMIK police and UNMIK translators acting together to create a substantially false account of events in Llapashtica. The alternative scenario put forward by A.A. is equally unconvincing, namely that he voluntarily surrendered to the KLA at Llapashtica for his personal protection and that he was never arrested and detained, and was at all times well treated and never saw signs of ill treatment to himself or other detainees. The trial panel concludes that the first account given by the witness to the investigating judge on 18 October 2002 was truthful. However, because generally A.A. is such a poor witness, the trial panel does not find any single fact proved at all based on A.A. word alone. Insofar as A.A. evidence is supported and corroborated by other witnesses, that fact can be considered proved. Insofar as any fact is dependent on A.A. evidence alone, unsupported by others, it is considered unproved. Therefore, from A.A. evidence, the following facts are considered to be proved:

- i. That there was a KLA detention camp in Llapashtica;
- ii. That A.A. was detained in it,
- iii. That others were detained with A.A., including at least A. and H., and that detainees were beaten and suffered injury.

As no independent evidence can support or deny that A.A. was beaten in Llapashtica, that fact cannot be considered proved.

**56. Evidence of Witness D (This witness is NOT an anonymous witness but IS a protected witness. This witness now lives in xxxxx and cannot now be found. The previous evidence was read according to**

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<sup>169</sup> Minutes of main trial 10/05/2013, pp3-4

<sup>170</sup> Minutes of main trial 10/05/2013, p4

**the agreement between the parties of 7 May 2013 [Annex C attached hereto]).**

- a. Statement to Investigating Judge 12/02/2002
- b. Minutes of main trial 07/04/2003
- c. Minutes of main trial 09/04/2003

57. This witness was the wife of A.K.

58. Reviewing all of Witness D's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. A.K. was an elderly man in ill health. He had been a **xxxx** for **xxx** years. He was kidnapped/ arrested by the KLA on 07/02/1999. KLA soldiers entered when A.K. and witness D were asleep. The soldiers were in military uniform and armed. A.K. and witness D were woken and told to dress and the arresting soldier was violent towards A.K. The soldiers also requested that weapons in A.K. possession be surrendered to them. Witness D handed a handgun and hunting rifle over. The soldiers told A.K. that he was to be taken to Llapashtica. A.K. daughters were present in the house during his arrest and were distressed.<sup>171</sup>
- b. The following day, Witness D and a male relative attended at KLA HQ Llapashtica to ask for A.K.. Whilst there, Witness D saw and recognised **L.G.** who she knew from before the war.<sup>172</sup> Witness D stated that **L.G.** was referring to himself as '**xxxx**' or '**xxxx**'.<sup>173</sup> She was unable to get information at Llapashtica and so went to Bradash. For reasons that don't matter for a while, Witness D was lead to believe that A.K. was detained there. That was not true, and in due course, about a month after A.K. detention, at a meeting with Commander **xxxx** [S.R.] she was told that Alush was detained in Llapashtica and was in the hands of **L.G.** and **N.M.**<sup>174</sup> "**xxxx**" also told Witness D that A.K. was suffering in prison. He was being questioned about collaboration and was being maltreated and beaten.<sup>175</sup>

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<sup>171</sup> Statement to Investigating Judge 12/02/2002, pp4-7; minutes of main trial 07/04/2002, pp5-6

<sup>172</sup> Statement to Investigating Judge 12/02/2002, pp8-9

<sup>173</sup> Statement to Investigating Judge 12/02/2002, pp14

<sup>174</sup> Statement to Investigating Judge 12/02/2002, p10

<sup>175</sup> Statement to Investigating Judge 12/02/2002, p11; minutes of main trial 07/07/2002, pp8-9

- c. On a later occasion, **xxxx** was able to arrange a secret meeting between witness D and A.A.. A.A. was very sick. A.A. told Witness D that he was detained in Llapashtica, that the conditions were very bad and that **L.G.** 'is killing him.' A.K. was tired, pale, and had bruises. He asked Witness D to help him by speaking to **L.G.** family, to Commander **xxxx** and Commander **xxxx**.<sup>176</sup>
- d. Witness D did not see her husband again, though her daughters met him one more time.<sup>177</sup> He was later found in a grave with H.J.. The exact circumstances of the death are beyond the scope of this trial as a result of the Supreme Court Ruling.

59. The Trial Panel reminds itself that extra care is needed when assessing the evidence of a witness which the panel itself has not seen and heard. Indeed it adopts this approach with every witness read in this case. However, the evidence of witness D is clear, concise and compelling of itself. It is corroborated by the evidence of Witnesses E, F and G below and fits together with other witnesses generally in this case. The Trial Panel therefore accept it as true and the facts set out in para 58 (a) to (d) above are proved.

**60. Evidence of Witness E (This witness is NOT an anonymous witness but IS a protected witness. This witness now lives in xxxxx and cannot now be found. The previous evidence was read according to the agreement between the parties of 7 May 2013 [Annex C attached hereto]).**

- a. Statement to Investigating Judge 13/02/2002
- b. Minutes of main trial 08/04/2003
- c. This witness was the **xxxx** of A.K.. This witness essentially corroborates the account given by witness D and therefore can be summarised shortly.

61. Reviewing all of Witness E's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. Her father A.K. was taken by the KLA on 07/02/1999 at night. There were a number of KLA soldiers in uniform and armed. They

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<sup>176</sup> Statement to Investigating Judge 12/02/2002, pp12-13; minutes of main trial 07/07/2002, pp8-9

<sup>177</sup> Statement to Investigating Judge 12/02/2002, p14

behaved in an aggressive and violent manner including hitting her father.<sup>178</sup>

- b. Witness E went repeatedly to Llapashtica to gain information about her father. Eventually they were assisted by Commander **xxxx** who told her that **L.G.** was the one who held her father.<sup>179</sup> **xxxx** arranged a secret meeting between A.K. and his family. Witness E describes the condition of her father as very bad, all swollen, he was trembling and his hands were covered in blood. He was crying, saying that 'they are beating me, they are killing me, **L.G.** is beating me and making others beat me.'<sup>180</sup>

62. The trial panel consider the evidence of Witness E convincing and the facts at para 61 (a)-(b) are proved.

**63. Evidence of Witness F (This witness is NOT an anonymous witness but IS a protected witness. This witness failed to attend court and could not be found. The previous evidence was read according to the agreement between the parties of 7 May 2013 [Annex C attached hereto]).**

- a. Statement to Investigating Judge 13/02/2002
- b. Minutes of main trial 29/04/2003

64. This witness was the nephew of A.K.. This witness essentially corroborates the account given by witness D and therefore can be summarised shortly.

65. Reviewing all of Witness F's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. At some stage after A.K. had been taken by the KLA Witness F attended in the Potok area with witnesses E and G looking for A.K.. They were able to meet A.K.. His hands were black (bruised) and he looked as if he had been beaten. During this meeting A.K. stated that Commander **xxxx** would not release him.<sup>181</sup>

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<sup>178</sup> Statement to Investigating Judge 12/02/2002, pp2-4; minutes of main trial 08/04/2003, pp2-4

<sup>179</sup> Minutes of main trial 08/04/2002, p5

<sup>180</sup> Statement to Investigating Judge 12/02/2002, pp5-6; minutes of main trial 08/04/2003, pp5-8

<sup>181</sup> Statement to investigating Judge 13/02/2002, pp2-4

66. Although the trial panel consider that witness was an honest witness trying his best to give accurate evidence, his recollection of events is only vague. Whilst there are no inconsistencies with the evidence of Witnesses D, E and G to the extent as to undermine their evidence, the trial panel takes Witness F's evidence into account only to the limited extent that it provides general corroboration of other evidence of what happened to A.K..

**67. Evidence of Witness G (This witness is NOT an anonymous witness but IS a protected witness. This witness failed to attend court and could not be found. The previous evidence was read according to the agreement between the parties of 7 May 2013 [Annex C attached hereto]).**

- a. Statement to Investigating Judge 14/02/2002
- b. Minutes of main trial 08/04/2003

68. This witness was the **xxxx** of A.K.. This witness essentially corroborates the account given by witness D and therefore can be summarised shortly.

69. Reviewing all of Witness G's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. KLA soldiers attended at the home of A.K. and this witness on 07/02/1999 to arrest A.K.. They wore uniforms and were armed.<sup>182</sup>
- b. Witness G went to Llapashtica looking for A.K. without success.
- c. Eventually witness G met with Commander **xxxx** who told her that her father was being kept for no reason and confirmed that he had been beaten. **xxxx** had a private conversation with Witness D (Witness G's mother) as a result of which they learned that **L.G.** was keeping A.K..<sup>183</sup>
- d. Witness G was present when **xxxx** arranged a secret meeting for A.K. and his family. A.K. confirmed that he was ill, that he had been beaten **L.G.** was the main person keeping him supported by **xxxx**.

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<sup>182</sup> Statement to investigating Judge 14/02/2002, p2; minutes of main trial 08/04/2003, pp13-14

<sup>183</sup> Statement to Investigating Judge 14/02/2002, pp7-8

His hands had wounds. A.K. was crying. A.K. confirmed that he had been questioned and accused when in detention.<sup>184</sup>

70. The trial panel consider the evidence of Witness G convincing and the facts at para 69 (a)-(d) are proved.

**71. Evidence of Witness H (This witness is NOT an anonymous witness but IS a protected witness. This witness could not be found. The statement was read according to the agreement between the parties of 7 May 2013 [Annex C attached hereto])**

- a. Statement to Investigating Judge 06/02/2002
- b. Minutes of main trial 05/05/2003

72. This witness was a witness to the arrest and detention of D.B. who was the witness's mother.

73. Reviewing all of Witness H's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. On a date in 1998/1999, D.B. and her son had been visiting a family member. Shortly after leaving that relative's house, a person approached from behind with a handgun and ordered them into a car. They entered the car as a result of the threat/ order and were taken against their will, blind folded and hooded. In due course they were taken to Llapashtica.<sup>185</sup> The kidnappers were wearing KLA uniform.<sup>186</sup>
- b. In Llapashtica, H and his mother were in the control of soldiers in black uniform who H believed to be Military Police. They were placed 'into a dark cell, like a cellar'. H was detained for three days and nights and then released. When he was released, his mother was not.<sup>187</sup>
- c. During his detention, H and his mother were questioned. Before the questioning, H heard the name **L.G.** being mentioned by the soldiers. He also saw the face of the person addressed as **L.G.**.

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<sup>184</sup> Statement to Investigating Judge 14/02/2002, pp8 & 13; minutes of main trial 08/04/2003, pp15-17

<sup>185</sup> Statement to investigating Judge 05/02/2002, p2; minutes of main trial 05/05/2002, p4

<sup>186</sup> Statement to investigating Judge 05/02/2002, p8

<sup>187</sup> Statement to investigating Judge 05/02/2002, p2; minutes of main trial 05/05/2002, p4

When D.B. was questioned, the person questioning her said 'I am L.G.' Another soldier referred to L.G. as 'xxxx'. L.G. had a distinctive mole on his cheek. When D.B. was questioned, H was able to see from his room and look through a window. He saw L.G. holding a gun to his mother.<sup>188</sup> He saw another male 'bald with mid-sized body. After the war, he recognised this person to be N.M.. After his mother had been interviewed, she was returned to the cell and was crying. His mother told H that she had been accused of spying for the Serbs, that she had had a handgun put to her head and in her mouth and that they said she was a traitor to her country. L.G. had told her that she would be taken to a 'grave hill'.<sup>189</sup> During the detention, H formed the impression that L.G. was the person in charge of the soldiers that H saw.<sup>190</sup> H saw another detainee at the detention centre called I.S. who he recognised because he knew previously.<sup>191</sup>

- d. H did not see his mother alive again after he had been released.<sup>192</sup> In due course, her body was recovered from the same grave as I.S..

74. This witness delivered a clear, comprehensive, consistent and compelling account which the trial panel accepts as true and accurate. The facts as set out in para 73 (a) to (d) are proved.

**75. Witness M (This witness was an anonymous witness heard by the Investigating Judge only. This witness could not be found. The statement was read according to the agreement between the parties of 7 May 2013 [Annex C attached hereto])**

- a. Statement to Investigating Judge 14/03/2002

76. Reviewing all of Witness M's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. Witness M describes being taken by people in civilian clothes in Ramadan 1999. He was initially detained in a shop until KLA soldiers came. He was then beaten and taken to Llapashtica were

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<sup>188</sup> Statement to investigating Judge 05/02/2002, p10; minutes of main trial 05/05/2002, p4

<sup>189</sup> Statement to investigating Judge 05/02/2002, pp3-5; Statement to investigating Judge 05/02/2002, p16; minutes of main trial 05/05/2002, p5

<sup>190</sup> Statement to investigating Judge 05/02/2002, p11

<sup>191</sup> Statement to investigating Judge 05/02/2002, p11

<sup>192</sup> Statement to investigating Judge 05/02/2002, p6

he was detained in a stable. He states that he was detained for 2 months with between 10 to 20 other people. During that time he was interviewed by KLA soldiers wearing black uniforms. The interviews related to accusing him of collaboration with Serbs. M denied that either he was beaten or that others were beaten.<sup>193</sup>

- b. M was unable to remember the names of other detainees save for his brothers. In particular, M was unable to name any of the other detainees who gave clear and credible evidence in this case of the extensive maltreatment that they suffered in Llapashtica. That may be because Witness M did not see such treatment, or the other detainees that were beaten were not detained at the same time as M. Or it may be that M simply does not wish to say. In any event, whilst accepting that M may genuinely not have been beaten and may genuinely not have seen or been aware that others were beaten, that does not undermine the credibility of the other witnesses who the panel have accepted as truthful and accurate.

77. The Trial Panel accept Witness M's evidence insofar as it corroborates that there was a KLA run Detention Centre at Llapashtica in which M and others were detained and questioned regarding allegations of collaboration with Serbs. With regards to beatings, the Panel considers that M may not have been beaten or seen others beaten but that does not undermine the evidence of other witnesses on the grounds set out above.

**78. Witness V (This witness was an anonymous witness heard by the Investigating Judge only. The record was read into the main trial record because of the witness's death (see para 4 above and annex B))**

- a. Statement to Investigating Judge 01/03/2002

79. Reviewing all of Witness V's evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. Witness V was arrested on 06/01/1999 by KLA soldiers, wearing black uniforms. He was given a summons requiring him to attend at Llapashtica. He went to Llapashtica with his son and his father. Having identified himself to the soldiers he was put into a room with 12-13 other detainees. He was beaten on the first night. He was interviewed on at least 4 occasions. The person that

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<sup>193</sup> Statement to Investigating Judge 14/03/2002, pp2-9

interviewed him had a black uniform but V did not know the name. The detention room and the interview room were about 10-15 metres away in the same yard. All the prisoners were Albanian and the cell doors were kept locked. V suffered bruises but not more serious injuries. V remembers A.A. was detained with him. Even when shown photographs, V insisted that he could not remember the people who had detained and beaten him. After 12 days he was released with a warning that it was better not to associate with Serbs.<sup>194</sup>

80. The Trial Panel notes that the witness gave evidence only before the Investigative Judge, in the presence of Defence Counsel. Though V's account is brief, it is consistent with other evidence on the record and should be regarded as corroboration of that other evidence. It is credible and accepted as accurate by the trial panel. The facts set out in Para 79 (a) above are proved.

**81.V.J. (This witness was read into the record pursuant to the agreement dated 07/05/2013 attached hereto at annex C)**

- a. Statement to Investigating Judge 11/07/2002
- b. Minutes of main trial 12/06/2003 pp2, 3 & 10 – previous testimony of V.J. was read into record with agreement of defence counsel
- c. Minutes of main trial 10/09/2009

82. Reviewing all of V.J. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. V.J. accepted that before the war, he would have close liaison with Serbs in that he specialized in obtaining documents necessary for Albanians for personal profit. As a result of this activity, V.J. was arrested by the KLA, receiving a summons on 11/03/1999 and surrendering to the HQ at Bradash on the same day. He surrendered to KLA soldiers in uniform and was taken to Llapashtica. In Llapashtica, he was put into a cell in a barn in the yard of a house. There were about 20 other detainees there.<sup>195</sup>

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<sup>194</sup> Statement to Investigating Judge 01/03/2002, p5

<sup>195</sup> Statement to Investigating Judge 11/07/2002, pp2-5, minutes of main trial 10/09/2009, pp10-11

- b. V.J. was detained until about the end of March 1999. He did not know or recognise any of the other detainees.<sup>196</sup>
- c. Upon arrival and for the first two days, V.J. was interrogated. He denied that he was beaten or badly treated and he denied seeing other detainees being beaten: 'I never saw it but was afraid that it might happen. I was thinking that was the most probable thing to happen.'<sup>197</sup> The interrogations occurred in an office within the same yard, about 20 metres away. The police wore black uniforms and the interrogator had a baton. He accepts that during the interrogations, threats of violence against him were made, but he was in fact never beaten. During the interrogation, V.J. appears to have made full and comprehensive admissions to the KLA about his conduct.<sup>198</sup> At the main trial in 2009, V.J. in fact denied that interrogations occurred at all.<sup>199</sup>
- d. V.J. states that although he knew of **L.G.** and **N.M.** from others and that they were important he denies seeing them in Llapashtica.
- e. V.J. agrees that there was a person called A. in detention but did not know for certain that it was A.K. He also knew that H.J. was in detention.

83. The Trial Panel assess that this witness was trying to minimise his account of events at Llapashtica, in particular by limiting his account to himself only and preferring to minimise references or events relating to any other detainee. The fact that he was minimizing is made even clearer by his denial in 2009 that even interrogations occurred whereas in 2002 he gave a clear and detailed account of the interrogation process. As regards himself, he appears on his own account to have agreed readily to any accusation put during interrogation whereas others who gave evidence talked of being beaten when denying accusations. It therefore follows that in those circumstances he may well not have been beaten. The fact that he was not beaten, does not impact upon the evidence of those witnesses who said they were. Also, V.J. was in detention for a short period, much shorter than other detainees. It therefore follows that he cannot possibly give an account of events that may have happened outside the period of his detention. Therefore the Trial Panel take the view that V.J. corroborates the facts that detentions occurred at Llapashtica, that interrogations occurred by Military Police Officers carrying batons and threats were made, though V.J. was not personally

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<sup>196</sup> Statement to Investigating Judge 11/07/2002, p6; minutes of main trial 10/09/2009, p10

<sup>197</sup> Statement to Investigating Judge 11/07/2002, p8

<sup>198</sup> Statement to Investigating Judge 11/07/2002, pp10-12

<sup>199</sup> Minutes of main trial 10/09/2009, p12

beaten. He does not know whether others were beaten and did not see beatings himself.

**84.F.M. (called on behalf of the Defence and read into the record pursuant to the agreement between the parties dated 07/05/2013)**

a. Minutes of main trial 15/05/2003

85. Reviewing all of F.M.evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. On 07/01/1999, F.M. received a KLA summons to go to Llapashtica. He complied with the summons, attending on the morning of 08/01/1999. At Llapashtica, he was taken into an office and interviewed by Commander **xxxx**. The questioning related to Serb use of F.M. café. After the interview, he was taken to a detention room with about 5-6 other prisoners, including I.S.. After 3 days, F.M. was interviewed again by Commander **xxxx**, asking the same questions. F.M. denies that any threats or maltreatment occurred to him. After a few days a third interview on the same basis occurred with commander **xxxx**. After a total of about 8 days, F.M. was released.<sup>200</sup> After the war, F.M. saw from a photograph that Commander **xxxx** was **N.M.**<sup>201</sup>
- b. F.M. emphasised that most of the time in detention, he associated only with one prisoner called B., and sometimes with A.A.. He would not discuss with other prisoners whether they had been questioned as he 'wasn't interested in their issues'. He did not hear of complaints from others about their treatment.<sup>202</sup>

86. The Trial Panel notes that F.M. was detained for a very short time compared to other detainees. He cannot therefore account for what did or did not happen when he was not detained. Equally, he appears to have kept himself detached from other detainees showing no interest or concern about them and their welfare. Whatever he told the KLA interrogators, it appears to have satisfied them in a way that other detainees did not. It may well be that F.M. was not beaten. That does not diminish the evidence of others that were. The Trial Panel accept that F.M. evidence is true insofar as it relates to him. The Trial Panel conclude that

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<sup>200</sup> Minutes of main trial 15/05/2003, pp2-4

<sup>201</sup> Minutes of main trial 15/05/2003, p5

<sup>202</sup> Minutes of main trial 15/05/2003, p4

F.M. has no useful evidence to give about events as they relate to other witnesses.

**87.G.Z. (called on behalf of the Defence and read into the record pursuant to the agreement between the parties dated 07/05/2013)**

- a. Minutes of main trial 15/05/2013

88. Reviewing all of G.Z. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. G.Z. was a member of the KLA from 1998 until the end of the war whose duties included detaining prisoners at Llapashtica. He denies that any maltreatment of prisoners occurred at all. He asserts that all detainees were released when the NATO bombing began in March 1999.<sup>203</sup>
- b. G.Z. accepts that his superior at the time was **N.M.**. He states that zone HQ was some 1 – 1.5 kilometres from the Military Police HQ where detainees were kept. G.Z. states that he knew **L.G.** name and saw him once or twice during the war. G.Z. confirmed that there were up to about 15-16 prisoners. He denied that any maltreatment or questioning occurred. He said that **N.M.** issued a rule that prisoners were not to be maltreated. He stated that the reason for the detentions was that the detainees had had inappropriate contacts with Serbs and that ‘we had to interrogate, advise and discipline them’ though he denied knowing who was interrogating, ever seeing them being advised, or knowing what ‘disciplining’ meant.<sup>204</sup>
- c. He confirmed that A.K., H.J. and D. were detained at Llapashtica.<sup>205</sup>

89. The Trial Panel notes that the assertion about the distance between Zone HQ and the MP Detention compound is totally inconsistent with all the other witnesses, and inconsistent with the defendants, all of whom assess that distance as between 20-200 metres. The Trial Panel reject the assertion that **L.G.** was only at Zone HQ/ Police compound ‘once or twice’ as untrue given the substantial weight of evidence to the contrary. Further, these two obviously inaccurate statements tarnish and diminish the remainder of G.Z. evidence. In addition G.Z. assertion that there was

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<sup>203</sup> Minutes of main trial 15/05/2003, pp7-8

<sup>204</sup> Minutes of main trial 15/05/2003, pp8-9

<sup>205</sup> Minutes of main trial 15/05/2003, p10

no questioning followed by asserting that detainees needed to be 'interrogated, advised and disciplined, is not credible. In addition the Trial Panel notes K.H. evidence (see paragraph 91 below) that interviewing of detainees did take place in **N.M.** office. Clearly it cannot be that G.Z. and K.H. are both right, and K.H. account is more consistent with the weight of other evidence in the case. Therefore, other than confirming that there was a KLA detention centre at Llapashtica, that **N.M.** was his Military Police Superior and that A.K., H.J. and D were all detained there, the Trial Panel rejects G.Z. evidence as unreliable.

**90. K.H. (called on behalf of the Defence and read into the record pursuant to the agreement between the parties dated 07/05/2013)**

- a. Minutes of main trial 16/05/2013
- b. Minutes of main trial 16/05/2013
- c. Minutes of main trial 10/07/2009

91. Reviewing all of K.H. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. K.H. was a KLA soldier working as a guard at the detention centre in Llapashtica. His superior was Commander **xxxx**, **N.M.**<sup>206</sup>
- b. H. was in Llapashtica for about 1 month. During that time, there were about 20 detainees. Detainees would be taken to **N.M.** office for questioning, which K.H. considers lasted about 10-15 minutes each time rather than 45-50 minutes.

92. The Trial Panel finds that K.H. evidence added little to the case save to confirm the presence of a KLA Detention Centre at Llapashtica, that **N.M.** commanded the Military Police and that questioning of detainees did occur.

**93. S.G. (called on behalf of the Defence and read into the record pursuant to the agreement between the parties dated 07/05/2013)**

- a. Statement to Investigating Judge 17/07/2002
- b. Minutes of main trial 15/07/2009

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<sup>206</sup> Minutes of main trial 16/05/2013, p5; minutes of main trial 10/07/2009, pp2-5

94. Reviewing all of S.G. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. S.G. describes himself as a distant cousin of **L.G.**.
- b. S.G. was a KLA Military Policeman serving at Llapashtica. His commander was **N.M.**. He confirms that there was a detention centre at the same compound as the Military Police HQ he was aware that there was a female detainee and several men but he did not know who they were or the reasons for their detention. Though throughout his evidence, **L.G.** seemed to show remarkable lack of interest in who was detained and their welfare, he was aware of F.M. being detained and released<sup>207</sup> and he learnt from either G.Z. or K.H. that I.S., A.T., D. and V. were detained.<sup>208</sup>
- c. S.G. denied being aware of any interviewing of detainees but also said that he was not always present at Llapashtica.
- d. S.G. confirms that **xxxx** was the zone commander. He denies that he saw **L.G.** present more than 2 or 3 occasions.

95. The Trial Panel assess that this witness gives evidence of marginal relevance. He claims to have known little to nothing about who was detained or why. Such information that he accepts having as to identity of the detained he says came from others. He denied ever entering the detention centre and checking upon the welfare of the detainees. He generally claims to have very little recollection. The Panel attach little weight to his account.

**96.N.I. (called on behalf of the Defence and read into the record pursuant to the agreement between the parties as noted in the minutes of main trial 08/05/2013, p 29, minutes of main trial 10/05/2013, p14 and annex C)**

- a. Statement to Investigating Judge 27/08/2002
- b. Minutes of main trial 23/05/2003
- c. Minutes of main trial 15/07/2009

97. Reviewing all of N.I. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

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<sup>207</sup> Statement to Investigating Judge 17/07/2002, pp2-4

<sup>208</sup> Statement to Investigating Judge 17/07/2002, p6

- a. N.I. was the **xxxxxxxxxxxx** in the Llap zone AND LATER Llap zone **xxxxxxx**. As **xxxxxxx**, he was stationed in Katunishte and not Llapashtica. He confirms that **xxxx** was the Zone Commander and that **L.G.** was '**xxxxxxxx**'. He accepted that civilian suspected collaborators would be detained and questioned but considered that such detentions would only last a day or two not months. he knew that the detention centre was in Llapashtica. He denied knowing who detained I.S..<sup>209</sup>
- b. At trial in 2009, N.I. stated that he went to Llapashtica only twice.<sup>210</sup> Though he says he satisfied himself about the way detainees were kept, this seems to have been achieved simply by asking an unidentified person and not seeing or speaking to the detainees or even visiting the cell.<sup>211</sup>

98. It is clear that I. is either unable or unwilling to give any significant detail about events at Llapashtica. On his own account, he was only present there twice, and his attempts to ensure that detainees were properly cared for were at best derisory. The Trial Panel gives no weight to his evidence as regards events at Llapashtica.

**99.K.K. (called on behalf of the Defence and read into the record pursuant to the agreement between the parties as noted in the minutes of main trial 08/05/2013, p 29, minutes of main trial 10/05/2013, p14 and annex C)**

- a. Statement to Investigating Judge 03/09/2002
- b. Minutes of main trial 16/06/2003
- c. Minutes of main trial 09/09/2009

100. Reviewing all of K.K. evidence and extracting those parts that are relevant to the only remaining charge before the court, his evidence can be summarised as follows:

- a. K.K. was **xxxxxxx** of the Llap Zone. **R.M.** '**xxxx**' was Commander. As the war developed, the Zone had 2 HQs, one in Llapashtica and one in Kotunishte Llapashtica was the official HQ and Kotunishte was secret. K.K. spent most of his time with his Deputy N.I. at Kotunishte. This was from end November/ beginning December 1998. **xxxx** and **L.G.** were based in Llapashtica. L.G. was officially

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<sup>209</sup> Statement to Investigating Judge 27/08/2002, pp2-14

<sup>210</sup> Minutes of main trial 15/07/2009, p9

<sup>211</sup> Minutes of main trial 15/07/2009, pp10-11

xxxxxxx, but K.K. supports L.G. assertion that his war duties never permitted him to fulfill that task.<sup>212</sup>

- b. It was the duty of the Military Police commanded by N.M. to deal with collaborators. K.K. was aware that people suspected of collaboration were detained. Command would decide who to detain based on reports prepared by L.G.<sup>213</sup>
- c. K.K. made it clear that he had little interest in and devoted little time to the question of detainees. 'Starting 24 December 1998, I was facing continuous attacks by Serbs so I didn't have time for all of this.'<sup>214</sup> Although he knew that detainees were kept at Llapashtica, he never visited the detention centre.<sup>215</sup> He denied knowing the names of who was detained.<sup>216</sup>

101. In the same way as N.I., it is clear that K.K. had little direct contact with Llapashtica. Although he would attend there for Command meeting when required, his primary location was based elsewhere. His involvement in events at Llapashtica, and in particular with detainees, was minimal. Therefore, his weight of evidence regarding those issues is necessarily limited.

## **INDIVIDUAL CRIMINAL LIABILITY**

102. **Criminal Liability of L.G.** – the facts as found proved in this case establish that:

- a. At all material times a state of internal armed conflict existed to which the Geneva Conventions and Additional Protocols applied.
- b. The KLA were an organised military body engaged in hostilities.
- c. A Zone Headquarters existed in Llapashtica, and a Military Police Headquarters and detention centre existed within a short distance of the Zone HQ. The detention cell was a stable/ barn in which the conditions were basic and limited. The number of detainees kept there varied and went up to approximately 20 persons.
- d. That the above identified witnesses were detained. At all material times that had the status of protected persons under the Geneva Conventions and Additional Protocols.

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<sup>212</sup> Statement to Investigating Judge 03/09/2002, pp2-4

<sup>213</sup> Statement to Investigating Judge 03/09/2002, pp5-7

<sup>214</sup> Statement to Investigating Judge 03/09/2002, p10

<sup>215</sup> Statement to Investigating Judge 03/09/2002, p12

<sup>216</sup> Statement to Investigating Judge 03/09/2002, p14

- e. In breach of the rights and privileges of protected persons, the detainees were beaten and tortured in order to extract confessions from them about collaborating with Serbs.
- f. **L.G.** was the **xxxxxxxxxx** for the Llap zone and de facto directing the Military Police and was the superior of **N.M.**
- g. **L.G.** as **xxxxxxxxxx** was centrally involved in the operation of the detention centre in Llapashtica. He bears both command and direct personal liability for directing the illegal detentions, beatings and torture of detainees and personally engaging in questioning victims whilst they were beaten.

103. **Criminal Liability of N.M.** - the facts as found proved in this case establish that:

- a. Paragraphs 102(a) to (e) are repeated herein.
- b. At all material times, **N.M.** was the **xxxxxxxxxxxxxx**, supervising the Detention Centre guards and reporting to his direct superior **L.G.** .
- c. **N.M.** was responsible for keeping the detainees in detention and for presenting the detainees for interrogation, being fully aware that such interrogations would involve beatings and torture in order to extract confessions of collaboration. In addition, **N.M.** I had an active personal role to inflict the beatings.

104. **Criminal Liability of R.M.** - the facts as found proved in this case establish that:

- a. Paragraphs 102(a) to (e) are repeated herein.
- b. At all material times, **R.M.** was zone commander of the Llap Zone.
- c. At all material times, **R.M.** as zone commander, superior of **L.G.** whom **R.M.** had selected and appointed. **R.M.** was responsible for and directed the regime of illegal detention, beatings and torture and was fully aware that such conduct was occurring under his authority. The Panel concludes that **R.M.** had a close relationship with **L.G.** who knew that his actions were undertaken with the express approval and endorsement of **R.M.** Accordingly, **R.M.** bears command responsibility for the conduct at Llapashtica Detention Centre.

## SENTENCING

105. General

- a. In 1998 the Albanian Citizens of Kosovo rose up against the over-whelming oppression that was imposed upon them by the Milosevic regime.
- b. The KLA, acting on behalf of the Albanian citizens of Kosovo, conducted a war aimed at securing freedom and independence for their own future, a war for which many are justly proud. Nothing this Trial Panel says or does in relation to this case can be seen to be a criticism or challenge to that pride.
- c. There are some, often in high places, who wrongfully suggest that individual members of the KLA did no wrong and that any guilty verdict of a KLA member is a challenge to the integrity of the entire KLA. The same people sometimes suggest that because it was the Serbian Regime that provoked the conflict, it is only the Serbs that should face trials. Both suggestions are plainly wrong and can be answered in the following way:
  - i. First - when individuals are convicted for their own actions, it is they that bear responsibility and not the whole institution that they served;
  - ii. Second: even if the conduct of Milosevic's regime provoked the conflict, that does not give a freedom to the oppressed to behave in an uncontrolled, unlawful criminal manner.

106. On the contrary, it is the continued denial that any individual committed any wrongs that diminishes the integrity of the KLA.

107. In this case, there is clear, credible and persuasive evidence that these 3 defendants committed unlawful acts towards Albanian Kosovars that they had taken into detention. No matter how many positive and good acts that these defendants may have undertaken, in committing the criminal acts that this court finds proved, these defendants fell far short of the high standards that the people of Kosovo rightly expected of members of the KLA.

108. The Trial Panel emphasises, by these convictions, it is these 3 defendants that are found to have acted unlawfully and not the whole KLA. If anyone suggests to the contrary, they are simply acting from a fixed political stand point and choosing to ignore the over-whelming evidence to the contrary.

109. In determining the punishment, the Trial Panel must evaluate all mitigating and aggravating factors.

110. As a result of the ruling of the Supreme Court Ap.-Kz. No. 89/2010 dated 26 January 2011, this trial panel cannot exceed any sentence in relation to each of these defendants that was imposed by the District Court of Pristina P. Nr. 526/05 dated 2 October 2009, that is a maximum of 6 years imprisonment for **L.G.**, 3 years imprisonment for **N.M.** and 4 years imprisonment for **R.M.**.

**111. L.G.**

- a. Aggravating factors:
  - i. Central role in a regime of illegal detentions, interrogation and torture.
  - ii. Command responsibility and personal responsibility for extensive beatings.
  - iii. The number of victims who endured fear, great personal suffering and indignity, together with the anxious fears of their family members.
- b. Mitigating factors
  - i. No previous convictions.
- c. The Trial Panel assesses that the correct sentence (subject to the available limitation as set out in paragraph 110 above) for count 8 is five (5) years imprisonment.
- d. L.G. shall serve an aggregate punishment under Counts 5, 8 and 14 of six (6) years of imprisonment.

**112. N.M.**

- a. Aggravating factors
  - i. Direct personal responsibility for the regime of illegal detention, beatings and torture that had been authorised and approved by others.
  - ii. Direct personal involvement in the extensive beatings.
  - iii. The number of victims who endured fear, great personal suffering and indignity, together with the anxious fears of their family members.
- b. Mitigating factors
  - i. No previous convictions

- c. The Trial Panel assesses that the correct sentence (subject to the available limitation as set out in paragraph 110 above) for count 8 is three (3) years imprisonment.
- d. **N.M.** shall serve an aggregate punishment under Counts 5 and 8 of three (3) years of imprisonment.

**113. R.M.**

- a. Aggravating Factors
  - i. Command Responsibility and a key role in the creation of a system of illegal detentions, beatings and torture, together with continued approval and endorsement of the same throughout the period of the indictment.
  - ii. The number of victims who endured fear, great personal suffering and indignity, together with the anxious fears of their family members.
- b. Mitigating Factors
  - i. No previous convictions
- c. The Trial Panel assesses that the correct sentence (subject to the available limitation as set out in paragraph 110 above) for count 8 is four (4) years imprisonment.
- d. **R.M.** shall serve an aggregate punishment under Counts 5 and 8 of four (4) years of imprisonment.

114. Pursuant to CCSFRY Article 50 and LCP Article 351(1)(6), the defendants are entitled to credit for time spent in custody thus far.

Judge Jonathan Welford-Carroll  
Presiding Judge

Emiliya Viktorova

Recording Clerk

Prepared in English, an authorized language.

*Legal remedy:*

Authorized persons may file an appeal in written form against this verdict to the Appeal Court through the Basic Court of Pristina within fifteen (15) days from the date the copy of the judgment has been delivered pursuant to LCP Article 359(1).