



Humanitarian Law Center

Dossier:  
**125<sup>th</sup> Motorized Brigade of the  
Yugoslav Army**



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## Abbreviations used in the text

125 <sup>th</sup> MtBr	125 <sup>th</sup> Motorized Brigade of the Yugoslav Army, Priština Corps
CB	Combat Group
STF	Sabotage and Terrorist Forces
HLC	Humanitarian Law Center
<i>Milošević</i>	Case before the International Criminal Tribunal for the Former Yugoslavia IT-02-54, <i>Prosecutor v. Slobodan Milošević</i>
<i>Šainović et al.</i> <sup>1</sup>	Case before the International Criminal Tribunal for the Former Yugoslavia IT-05-87, <i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić</i>
<i>Čuška case</i>	Case before the Higher Court in Belgrade War Crimes Department K Po2 48/2010, <i>Office of the War Crimes Prosecutor v. Toplica Miladinović, Srećko Popović, Abdulah Sokić, Slaviša Kastratović, Boban Bogičević, Ranko Momić, Zoran Obradović, Miloško Nikolić, Siniša Mišić, Dejan Bulatović</i>
MUP	Republic of Serbia Ministry of the Interior
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
NATO	North Atlantic Treaty Organization
KLA	Kosovo Liberation Army
SPU	Special Police Units
PrC	Yugoslav Army Priština Corps
FRY	Federal Republic of Yugoslavia
Serbian forces	Yugoslav Army and the Republic of Serbia Ministry of the Interior
SHTF	Shiptar Terrorist Forces (a term usually used to refer to the Kosovo Liberation Army in Yugoslav Army documents)
YA	Yugoslav Army
MTD	Military-Territorial Detachment
TD	Territorial Defence Force

1 Case had been previously referred to as “*Milutinović et al.*”, but after the acquittal of Milan Milutinović it is referred to as “*Šainović et al.*”





## Dossier: 125<sup>th</sup> Motorized Brigade of the Yugoslav Army

### I. Introduction

1. During the armed conflict in Kosovo, between February 28<sup>th</sup> 1998 and June 11<sup>th</sup> 1999, 7,914 Kosovo Albanian civilians were killed or forcibly disappeared in the campaign of violence and terror undertaken by members of the Serbian forces.<sup>2</sup> 1,295 of the 7,914 Kosovo Albanian victims were women, and 918 were children.<sup>3</sup>
2. In the area of responsibility of the 125<sup>th</sup> Motorized Brigade [hereinafter referred to as the 125<sup>th</sup> MtBr], under the Command of Major General Dragan Živanović, 1,813 civilians were killed and a further 216 are still registered as missing.<sup>4</sup> Among those killed were 236 children and 327 women.
3. During the armed conflict in Kosovo, the 125<sup>th</sup> MtBr or its subordinate units undertook dozens of actions, independently or together with other MUP or YA units, in which mass killings, persecution and deportation of Kosovo Albanians, and the looting and destruction of their property were committed.
4. This Dossier contains descriptions of ten crimes in which members of the 125<sup>th</sup> MtBr or its subordinate units participated and in which 301 civilians, including seven women and 19 children, were killed.<sup>5</sup>
5. Almost all crimes in 1999 were committed in the same manner. Soldiers would enter a village and chase Kosovo Albanians from their homes. Then they would separate the men from the women, children and the elderly. The forced evictions and the separation of the men from the women would be followed by abuse, insults, looting, and the destruction of property. The women, children and the elderly would then be ordered to go to Albania. The detained men would then be executed in groups. Their bodies were then incinerated or taken to secret locations.
6. Not a single member of the 125<sup>th</sup> MtBr or its subordinate units has been prosecuted for the crimes described in this Dossier. However, at the time of the writing of this Dossier, criminal proceedings

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<sup>2</sup> HLC Database, accessed on September 13<sup>th</sup>, 2013.

<sup>3</sup> Ibid.

<sup>4</sup> HLC Database.

<sup>5</sup> Ibid.



against members of a unit subordinate to the 125<sup>th</sup> MtBr for crimes committed in the municipality of Peć/Pejë are pending. Namely, proceedings against the commander<sup>6</sup> and members of the 177<sup>th</sup> Military Territorial Detachment Peć [hereinafter referred to as the 177<sup>th</sup> MTD Peć],<sup>7</sup> which was directly subordinated to the 125<sup>th</sup> MtBr,<sup>8</sup> for the crimes against the civilian population committed in April and May 1999 in the villages of Ljubenić/Lubeniq, Čuška/Qyshk, Pavljane/Pavlan and Zahać/Zahaq [Čuška case], are pending before the Higher Court in Belgrade (War Crimes Department).

7. Rules of international criminal law prescribe the individual criminal responsibility of direct perpetrators of crimes, military commanders and political leaders who ordered the commission of crimes, and also the principle of command responsibility, according to which superior officers, who fail to take necessary measures to prevent the commission of crimes or to punish perpetrators, are also held responsible.
  8. So far, the concept of command responsibility has not been applied once in a case of war crimes prosecuted in the Republic of Serbia, despite the fact that after the ratification of Additional Protocol I to the Geneva Conventions, since 1978, local institutions have an international legal obligation to prosecute individuals pursuant to the principle of command responsibility.
  9. This Dossier presents facts and evidence pointing to the responsibility of the Commander of the 125<sup>th</sup> MtBr, Dragan Živanović, pursuant to the principle of command responsibility for all ten crimes described herein. In five cases, evidence pointing to the direct responsibility of Major General Živanović, for the execution and personal responsibility for issuing orders which represent violations of the principles of the Geneva Conventions *per se*, was presented. These orders refer to the arming of the local Serb population in Kosovo and their engagement in combat activities, orders which do not distinguish between civilians and combatants, and orders directly aiming attacks against civilian population.<sup>9</sup>
- 4
10. The goal of the Dossier is to allow the public to learn about the facts and evidence concerning the crimes committed against Kosovo Albanian civilians during those operations in which the 125<sup>th</sup> MtBr and its subordinate units were significantly involved. At the same time, the Dossier should be seen as a call for the relevant institutions to prosecute those individuals responsible for the crimes described herein and thus bring justice to the victims and their families.
  11. Facts about the crimes committed and the role of the 125<sup>th</sup> MtBr are based on statements given by survivors of the crimes, eyewitnesses, victims' family members, forensic reports, judgments and transcripts from trials conducted before the International Criminal Tribunal for the Former

6 Toplica Miladinović. The indictment also includes Veljko Korićanin, as a member of the Territorial Defence, and Vidoje Korićanin and Radoslav Brnović as members of the MUP. See the amended joint indictment of the Office of the War Crimes Prosecutor in the Čuška case from December 17<sup>th</sup>, 2012 [hereinafter referred to as the Indictment of the OWCP].

7 Srećko Popović, Abdulah Sokić, Slaviša Kastratovića Boban Bogićević, Ranko Momić, Zoran Obradović, Miloško Nikolić, Siniša Mišić, Dejan Bulatović. The indictment also includes Veljko Korićanin, as a member of the Territorial Defence, and Vidoje Korićanin and Radoslav Brnović as members of the MUP. See above, footnote 6, the Indictment of the OWCP.

8 Exhibit 6D 1023, Engagement Plan of Joint Units from April 25<sup>th</sup>, 1999, Šainović *et al.*

9 See Chapters 4.) Srbica/Skendëraj; 6.) Kraljane/Kralan; 8.) Čuška/Qyshk; 9.) Pavljane/Pavlan; 10.) Zahać/Zahaq in this Dossier. See the Criminal Code of the FRY, Article 142 – “War Crimes Against Civilian Population”, which states: Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, **orders** an attack on civilian population ... shall be punished by imprisonment...” Article 2 of the Statute of the ICTY contains almost identical provision. Hence, issuing an order is punishable, regardless of the fact whether or not it was executed.



Yugoslavia [hereinafter referred to as the ICTY], original military documents presented as evidence at ICTY trials, media reports, and other documents.

12. The first part of the Dossier presents the basic information about the organization of the YA and the area of responsibility of the 125<sup>th</sup> MtBr and the structure and the number of soldiers in this Brigade. The second part describes mass crimes against Kosovo Albanians, committed by Serbian forces in the area of responsibility of the 125<sup>th</sup> MtBr during 1998 and 1999. The participation of soldiers of the 125<sup>th</sup> MtBr or its subordinate units in these crimes has been documented using authentic YA documents and testimonies given by the YA soldiers.

## II. Basic Information About the 125<sup>th</sup> MtBr

### 1. Structure of the YA

13. In 1999, the Yugoslav Army comprised three basic structures: the Land forces, the Navy, the Air-force and the Anti-Aircraft Defence forces.<sup>10</sup>
14. The Land forces were split into three armies: the 1<sup>st</sup> Army (with headquarters in Belgrade), the 2<sup>nd</sup> Army (with headquarters in Podgorica), and the 3<sup>rd</sup> Army (with headquarters in Niš). The area of responsibility of the 3<sup>rd</sup> Army covered the area of South Serbia, including Kosovo.<sup>11</sup>
15. Subordinate to the 3<sup>rd</sup> Army were the Priština Corps and Niš Corps, as well as the Priština and Niš Military Districts and their Military Departments.<sup>12</sup>
16. The 125<sup>th</sup> MtBr was subordinated to the Priština Corps, which was itself under the command of Lieutenant General Nebojša Pavković until December 25<sup>th</sup>, 1998, who was later replaced by General Vladimir Lazarević.<sup>13</sup>

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10 Exhibit P984, FRY Law on YA, Article 2, *Šainović et al.*

11 Ljubiša Stojimirović, Exhibit 4D506, witness statement from October 2<sup>nd</sup>, 2007, para 17, October 26<sup>th</sup>, 2007, *Šainović et al.*; Exhibit P950, Interview of the Prosecution with Vladimir Lazarević, pages 14-15, *Šainović et al.*; Aleksandar Vasiljević, Exhibit P2600, witness statement from January 14<sup>th</sup>, 2007, para 12, *Šainović et al.*

12 Ljubiša Stojimirović, October 26<sup>th</sup>, 2007, *Šainović et al.*; Zlatomir Pešić, Exhibit P2502, Witness Statement dated January 30<sup>th</sup>, 2004, paras. 6-9, *Šainović et al.*; Exhibit 4D240, Structure, Schedule, and Recruitment in Army Territorial Component of the 3<sup>rd</sup> Army, January 14<sup>th</sup>, 1999, *Šainović et al.*

13 ICTY Judgment in *Šainović et al.*, Volume 1 of 4, para. 8



## 2. Structure of the 125<sup>th</sup> MtBr<sup>14</sup>

17. In January 1998, the Brigade had 1,400 soldiers, although by December that same year, this number had increased to 2,500 soldiers. Of these, 300 were officers, non-commissioned officers or civilians employed by the YA.<sup>15</sup>
18. In peace-time, the 125<sup>th</sup> MtBr comprised of: a Command Structure and two motorized battalions (one in Kosovska Mitrovica/Mitrović and one in Peć/Pejë).<sup>16</sup>
19. During 1998, the 125<sup>th</sup> MtBr had five combat groups. Immediately before the NATO intervention it had six combat groups.<sup>17</sup>
20. Combat Group 1 was created in April 1998. It was stationed in the village of Bukoš/Bukosh, between Kosovska Mitrovica/Mitrović and Vučitrn/Vushtri. This Combat Group was comprised of approximately 220 soldiers, including 12 officers, 12 non-commissioned officers, and approximately 190 other ranks.<sup>18</sup> In his second testimony in the case of *Haradinaj et al*, the Commander of the 125<sup>th</sup> MtBr, Dragan Živanović, stated that Combat Group 1 and Combat Group 2 had been created in 1985.<sup>19</sup>
21. In his testimony before the ICTY in the case of *Šainović et al*.<sup>20</sup> Dragan Živanović described the structure of Combat Group 1.



Photo 1:  
Insignia of the 125<sup>th</sup> MtBr.

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"Combat Group 1 was about 220 strong. It had a motorized company comprising about 160 men. This motorized company contained three firing platoons a support platoon, recoilless artillery pieces and an 82 millimeter mortar platoon, with four individual weapons. It also had a platoon of 120-millimeter guns, two of those, and there was also – there was a 120-millimetre howitzer battery as well as a logistical platoon, a rear platoon if you like"<sup>21</sup>

Combat Group 2 of the 125th MtBr was stationed in the military barracks in Đakovica/Gjakovë until May 1998, when it was relocated to Ponoševac/Ponoshec. This Combat Group had ten tanks. It was formed to assist the MUP in maintaining control of the Peć/Pejë - Dečani/Deçane - Đakovica/Gjakovë road."<sup>22</sup>

14 HLC addressed a request to the Ministry of Defence of the Republic of Serbia on August 6<sup>th</sup>, 2013 for information on the units, which were subordinated to the 125<sup>th</sup> MtBr in the period of 1998 and 1999. However, by the date of publication of this Dossier, no response had been received.

15 Exhibit P1018, 92 ter Statement by Dragan Živanović dated August 9<sup>th</sup>, 2007, para. 11, ICTY, *Haradinaj et al*.  
16 Dragan Živanović, January 18<sup>th</sup> 2008, *Šainović et al*. T. 20532.

17 Ibid, T. 20531.

18 Exhibit P1018, 92 ter Statement by Dragan Živanović dated August 9<sup>th</sup> 2007, paras. 15-17, 19-20, ICTY, *Haradinaj et al*.

19 Dragan Živanović, October 11<sup>th</sup> 2007, ICTY, *Haradinaj et al*.

20 ICTY judgment in *Šainović et al*. referred to in the further text is the Trial Chamber judgment, which is the first instance and non-final judgment; the appellate proceedings are pending.

21 Dragan Živanović, January 18<sup>th</sup> 2008, *Šainović et al*. T. 20532.

22 Exhibit P1018, 92 ter Statement by Dragan Živanović dated August 9<sup>th</sup> 2007, para. 16, ICTY, *Haradinaj et al*.



22. Combat Group 3 was created in April 1998 and was based at the barracks in Peć/Pejë. It was created for the purpose of maintaining control on the roads around the town of Peć/Pejë.<sup>23</sup>
  23. Combat Group 4 was created in July 1998 and was based in Kosovska Mitrovica/Mitrovicë. Its main task was to protect communication facilities in Stari Trg/Stantërg, north-west of Kosovska Mitrovica/Mitrovicë.<sup>24</sup>
  24. Combat Group 5 was created in September 1998 and was based in Volujak/Vulljakë, north of Klina/Klinë. It comprised some 140 people and three tanks.<sup>25</sup>
  25. The Armoured Battalion of the 125<sup>th</sup> MtBr was stationed in the municipality and had its command post in the village of Raušić/Raushiq, to the south of Peć/Pejë, until March 26–27, 1999, when it was relocated to the Hotel Metohija in Peć/Pejë.<sup>26</sup>
  26. The 177<sup>th</sup> Military Territorial Detachment Peć [hereinafter referred to as 177<sup>th</sup> MTD Peć], which was put under the command of the 125<sup>th</sup> MtBr not later than April 25<sup>th</sup>, 1999<sup>27</sup> and there are some solid indications that the 177<sup>th</sup> MTD had been placed under the command of the 125<sup>th</sup> MtBr by the time the Wartime Plan was drawn-up.<sup>28</sup>
  27. Miloš Mandić, the Commander of the 252<sup>nd</sup> Armoured Brigade stated in his testimony before the ICTY that the Mechanized Battalion with its seven tanks was in Kosovo from March 16<sup>th</sup>, 1999 and that it had been placed under the command of the 125<sup>th</sup> MtBr in Kosovska Mitrovica/Mitrovicë.<sup>29</sup>
  28. Ljubomir Savić, the Commander of the 58<sup>th</sup> Light Infantry Brigade, added in his testimony before the ICTY that the 2<sup>nd</sup> Light Infantry Battalion had been placed under the command of the 125<sup>th</sup> MtBr, “which was located in the Rugovska klisura area of defence”.<sup>30</sup>
  29. Saša Antić, the Commander of the 52<sup>nd</sup> Military Police Battalion Unit testified before the ICTY that on April 12<sup>th</sup> or 13<sup>th</sup>, 1999 one company was created out of the 52<sup>nd</sup> Military Police Battalion and was sent to the area of the Košare/Koshare and Morina/Morinë watchtowers and there it was placed under the command of the 125<sup>th</sup> MtBr. On April 21<sup>st</sup> 1999, Antić was sent there as commander of this company, which had been placed under the command of the 125<sup>th</sup> MtBr several days earlier.<sup>31</sup>
30. The combat report dated April 25<sup>th</sup> 1999 and sent by Živanović, leads to the conclusion that the 73<sup>rd</sup> Territorial Detachment of the MUP SPU, during an operation on the territory of Rugovska klisura had been under the command of the 125<sup>th</sup> MtBr. The Report particularly states the following:

23 Ibid. paras. 15-17, 19-20.

24 Ibid.

25 Ibid.

26 Judgment in *Šainović et al.* Volume 2 of 4, p. 8, para. 8.

27 Exhibit 6D 1023, Joint Unit Engagement Plan from April 25<sup>th</sup>, 1999, *Šainović et al.*

28 Wartime Plan or the plan for the defence of the FRY in case of a foreign attack in 1999 was known as the Grom 3 plan, which was a directive for the defence of the state against the threat of a NATO attack and the KLA, issued on 15 January 1999. Lazarević testified that the basis for the involvement of the 3<sup>rd</sup> Army and the Priština Corps in Kosovo in 1999 was this plan. Milorad Obradović testified that this directive was designed to engage the YA in defensive measures throughout Kosovo to counter the threat of foreign invasion from across the Macedonian border. See the ICTY Trial Chamber judgment in *Šainović et al.*, Volume 1 of 4, para 581. See further down Chapter 6.3 a).

29 Miloš Mandić, January 23<sup>rd</sup> 2008, *Šainović et al.* T. 20909-20911.

30 Ljubomir Savić, December 27<sup>th</sup> 2007, Exhibit 5D1392, para. 10. *Šainović et al.*

31 Saša Antić, January 5<sup>th</sup> 2008, Exhibit 5D1443, para. 15, 17, 19, *Šainović et al.*



“The Brigade comprises the MUP’s 73<sup>rd</sup> TrDe [Territorial Detachment] with its five companies” and describes the deployment of these five companies.<sup>32</sup> When asked if this unit had been subordinated to his Bridage, Živanović gave the following statement:

“This is a document composed by inertia; it was written on the basis of a document produced by the Priština Corps Command on the subordination to MUP units, joint tactical units. These forces were not really subordinated to me.”<sup>33</sup>

### 3. Command Staff of 125<sup>th</sup> MtBr<sup>34</sup>

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31. Dragan Živanović was the Chief of Staff of the 125<sup>th</sup> MtBr during the period from September 1<sup>st</sup>, 1997 until June 12<sup>th</sup>, 1998. He was appointed Commander of the 125<sup>th</sup> MtBr on June 12<sup>th</sup> 1998 and he remained in this position until the YA withdrew from Kosovo on June 10<sup>th</sup> 1999. According to the testimony of Dragan Živanović, given before the ICTY, the Chief of Staff of the Command of the 125<sup>th</sup> MtBr was Lieutenant Đorđe Nikolić,<sup>35</sup> while his Deputy was Jordan Denkić, who was also the Chief of Operations.<sup>36</sup>
  32. According to the War Diary of Combat Group 3, between March 1<sup>st</sup> and March 14<sup>th</sup>, 1999, the Commander of this Group was Goran Jovanović, a 1<sup>st</sup> Class Captain. From March 15<sup>th</sup> to April 10<sup>th</sup>, the commander of this Combat Group was Major Miodrag Romić.<sup>37</sup>
  33. The War Diary of Combat Group 5 for the period from December 26<sup>th</sup>, 1998 to April 9<sup>th</sup>, 1999, Major Robert Šmaljcelj was Deputy Commander of this Combat Group.<sup>38</sup>
  34. Major Jovica Deljanin was the commander of the 122 mm howitzer battery during the period from March 28<sup>th</sup> until April 30<sup>th</sup>, 1999.<sup>39</sup>
  35. Sergeant 1<sup>st</sup> Class, Goran Ikonić was the commander of the 125<sup>th</sup> MtBr Armoured Battalion between March 26<sup>th</sup> and June 16<sup>th</sup>, 1999.<sup>40</sup>
  36. According to the statement of Dragan Živanović, the Chief of Engineers in the 125<sup>th</sup> MtBr was Dragan Petrović<sup>41</sup> and Aleksandar Savović was the Chief of Security.<sup>42</sup>

32 Exhibit P2023, Command of the 125<sup>th</sup> MtBr, Regular Combat Report Addressed to the Priština Corps, April 25<sup>th</sup> 1999, para 2, *Šainović et al.*

33 Dragan Živanović, January 18<sup>th</sup> 2008, *Šainović et al.* T. 20621.

34 HLC addressed a request to the Ministry of Defence of the Republic of Serbia on August 6<sup>th</sup>, 2013 for information regarding the names of officers and non-commissioned officers, who were members of the 125<sup>th</sup> MtBr in 1998-1999. However, by the date of publication of this Dossier, no response had been received.

35 Exhibit P1018, 92 ter Statement by Dragan Živanović dated August 9<sup>th</sup> 2007, para. 128, ICTY, *Haradinaj et al.*

36 Ibid., para. 113.

37 Exhibit P2056, War Diary BG3/125<sup>th</sup> MtBr, *Šainović et al.*

38 Exhibit P2801, War Diary BG5/125<sup>th</sup> MtBr, *Šainović et al.*

39 Exhibit P2618, War Diary 122 mm howitzer battery / 125<sup>th</sup> MtBr, *Šainović et al.*

40 Exhibit P2802, War Diary of the Armoured Battalion / 125<sup>th</sup> MtBr, *Šainović et al.*

41 Dragan Živanović, January 17<sup>th</sup> 2008, *Šainović et al.*, T-20448.

42 Exhibit P1018, 92 ter Statement of Dragan Živanović dated August 9<sup>th</sup> 2007, para 39, ICTY, *Haradinaj et al.*



37. Major Momčilo Vojinović was the Chief of the Intelligence Department, and Dragan Trifunović was his Deputy. Vojinović was the liaison officer in charge of communication with the Kosovo Verification Mission.<sup>43</sup>
38. Captain 1<sup>st</sup> Class, Aca Čubranović, and his Deputy, Captain Dragan Branović was assigned in the Peć/Pejë garrison to cooperate with the Kosovo Verification Mission.<sup>44</sup>

#### 4. Area of Responsibility

39. The area of responsibility of the 125<sup>th</sup> MtBr was organized differently in peace-time (through to March 24<sup>th</sup>, 1999) to the way it was organised after March 24<sup>th</sup>, 1999 until June 26<sup>th</sup>, 1999.
40. In his testimony before the ICTY in the *Haradinaj et al.* case, the Commander of the 125<sup>th</sup> MtBr, Dragan Živanović described the area of responsibility of the 125<sup>th</sup> MtBr in 1998. Namely:

“During 1998, the area of responsibility of the 125<sup>th</sup> MtBr (AoR) covered the Municipalities of Leposavić, Zvečan, Kosovska Mitrovica, Zubin Potok, Srbica, Vučitrn, Klina, Istok, Peć, and Dečani. The area of responsibility of the 125<sup>th</sup> MtBr bordered the AoR of the 549<sup>th</sup> MtBr, which was under the command of the (then) Lieutenant Božidar Delić.”<sup>45</sup>

41. The area of responsibility of the 125<sup>th</sup> MtBr in 1999 covered the same Municipalities as in 1998.<sup>46</sup> Only the Municipality of Zvečan/Zvečan was excluded from the war-time area of responsibility of the 125<sup>th</sup> MtBr.

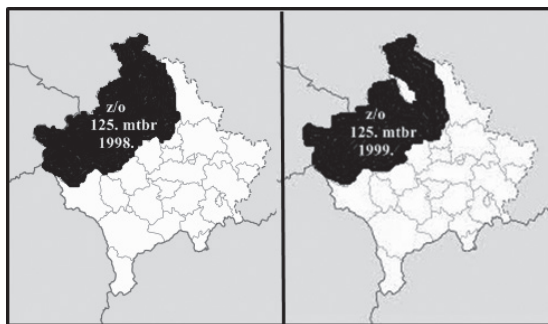


Photo 2: Area of Responsibility of the 125<sup>th</sup> MtBr.

- 43 Kosovo Verification Mission, Organization for Security and Cooperation in Europe (OSCE). The Kosovo Verification Mission (KVM) was in existence between October 1998 and March 1999 for the purpose of verifying the respect for the United Nations Security Council Resolutions 1160 and 1199 by the Federal Republic of Yugoslavia. The purpose of the KVM was to overview the ceasefire, the movement of forces, improvement of human rights, and democratic development. After the security situation in Kosovo deteriorated in March 1999, the KVM withdrew. The Mission ceased to exist on June 9<sup>th</sup>, when the Standing Council established the OSCE Provisional Combat Group for Kosovo. See <http://www.osce.org/sr/kosovo/78925>.
- 44 Dragan Živanović, January 17<sup>th</sup> 2008, *Šainović et al.* T. 20452.
- 45 Exhibit P1018, 92 ter Statement of Dragan Živanović dated August 9<sup>th</sup>, 2007, para. 5, *Haradinaj et al.*
- 46 Exhibit P1246, Order of Dragan Živanović for Cleansing of the Battlefield, *Šainović et al.*



### III. Events of 1998

#### 1) Ošljane/Oshlan

*During the period September 22nd – 24th, 1998, Serbian forces killed 9 Kosovo Albanian civilians.*

42. The village of Ošljane/Oshlan is located in the Municipality of Vučitrn/Vushtrri, about 12 kilometers south of Kosovska Mitrovica/Mitrovicë and about 10 kilometres west of the city of Vučitrn/Vushtrri. The village is located by the Čičavica Mountain.

#### 1.1 Description of Crimes, Based on Statements of Survivors

43. Early in the morning of September 22<sup>nd</sup>, 1998, Serbian forces moved out from the area of Mitrovica/Mitrovicë towards Ošljane/Oshlan with their heavy artillery.<sup>47</sup> The majority of the residents hid in the nearby forest because they were scared. The Serbian forces and the KLA confronted each other at the entrance to the village. The clash lasted for several hours, after which, the Serbian forces searched the forest where the residents of Ošljane/Oshlan were hiding.<sup>48</sup>
44. A group of Kosovo Albanian men hid in the forest because they feared for their lives. That was the last time that their families saw them alive. After the withdrawal of the Serbian forces, the bodies of seven men, with visible bullet wounds were found<sup>49</sup>.

10	Seladin (Sadik) Hyseni (born 1970)	Musa (Shaban) Sheremeti (born 1939)
	Halit (Sadik) Hyseni (born 1965)	Lutfi (Rexhep) Hyseni (born 1932)
	Sheremet (Bajrush) Sheremeti (born 1961)	Asllan (Zenel) Sheremeti (born 1928)
	Idriz (Mehmet) Mehmeti (born 1945)	

45. In the morning of September 24<sup>th</sup>, in the forest near the village of Ošljane/Oshlan, the Serbian forces found hidden members of the Mani family, including a pregnant woman and three juvenile children. When they heard **Milazim (Zaim) Mani (born 1962)** coughing, members of the Serbian forces started shooting at him immediately, killing **Kada (Kamer) Mani (born 1926)** at the scene. Milazim, Kada's son, yelled: "Don't shoot, there are children here," and the soldiers stopped shooting. After that, Milazim was ordered to come towards them. As soon as he approached them, members of the Serbian forces fired



**Photo 3:**  
A burned house in Ošljane/Oshlan, CNN  
"Kosovo: Oshlan Massaker"

<sup>47</sup> Statement of witness S. M. July 2008, HLC Database.

<sup>48</sup> Statement of witness R. G. July 2008, HLC Database.

<sup>49</sup> HLC Database: Statement of witness N. Sh. July 2008; Statement of witness N. Sh. August 2008; Statement of witness F. H. July 2008; Statement of witness L. M. July 2008; Statement of witness B. H. January 2010; Statement of witness B. Sh. January 2010.



at him, killing him outright, in front of his wife and children.<sup>50</sup>

46. In his testimony in the *Šainović et al.* case before the ICTY, witness Sabit Kadriu, from the village of Brusnik/Brusnik, in the Vučitrn/Vushtrri Municipality (approximately 14 kilometres from Ošljane/Oshlan), stated that the Serbian forces burned 78 houses during the attack on Ošljane/Oshlan.<sup>51</sup>
47. After the Serbian forces left Ošljane/Oshlan, CNN reporters arrived in the village and documented the aftermath of the attack.<sup>52</sup>

## 1.2 YA Documents Pointing to the Responsibility of the 125<sup>th</sup> MtBr for Crimes Committed in Ošljane/Oshlan

48. YA documents marked “Strictly Confidential” point to the engagement of the 125<sup>th</sup> MtBr in operations that took place between September 22<sup>nd</sup> and 24<sup>th</sup> 1998 in the area of the Čičavica Mountain and specifically in Ošljane/Oshlan at the time the crimes were committed.
49. According to the Priština Corps Order, the 4<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr was engaged in Ošljane/Oshlan between September 22<sup>nd</sup> and 24<sup>th</sup> 1998, and, along with with MUP forces, executed the operation in Čičavica. “**The Order to Support MUP Forces in Destroying STF [Sabotage and Terrorist Forces] in the General Čičavica Sector**” was issued by the Priština Corps Command on September 19<sup>th</sup>, 1998 as follows:

“to engage the **125<sup>th</sup> MtBr** to support MUP forces in destroying STF. **BG-125-4** [4th Combat Group of 125<sup>th</sup> MtBr] with the task: to support attack by the 5<sup>th</sup> Detachment of the SPU and the Kosovska Mitrovica company of the SPU. Rout the STF in the Okraštica, Pantina and Štitarica sectors; use the main forces to rout the STF and overcome the villages of **Ošljane**, Balince, Jezero and Taradža. Support the SPU in breaking up and destroying STF on Mt. Čičavica, preventing them from falling back to the Sitnica River.”<sup>53</sup>

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50. The presence of the 4<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr in Ošljane/Oshlan between September 22<sup>nd</sup> and 24<sup>th</sup> 1998 was also confirmed by a later analysis of the combat operations undertaken by the 4<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr (CG-4). The following was written by the Commander of CG-4 to the 125<sup>th</sup> MtBr Command “Analysis of Combat Operations” issued on September 23<sup>rd</sup> 1998:

“At 0800 hours, artillery preparation began for an attack on the village of **Ošljane**, the school. 82mm mortars fired deep into the area of Šutka mahala. The auxiliary forces of CG-4, consisting of three platoons of special police units...occupied the village of Taradža and TT point 746, and organized a firing position there, controlling Čičavica, Suvo Brdo-Čečen-Galica-Taradža-**Ošljane**-Balince jezgro, with MUP units providing support.”<sup>54</sup>

50 Statement of witness S. M. July 2008, HLC Database.

51 Exhibit P2377, Statement of Sabit Kadriu, December 10<sup>th</sup> 2000, *Šainović et al.* p.8.

52 CNN, video footage, “Kosovo: Oshlan Massacre”, <http://www.youtube.com/watch?v=2NDBrJv6IMk>, accessed on August 28<sup>th</sup> 2013.

53 Exhibit 6D 699, Order to Support MUP Forces in Breaking Up STF in the General Čičavica Sector, *Šainović et al.*

54 Exhibit P1162, Analysis of Performed Combat Operations, *Šainović et al.*



## 2) Dubovac/Duboc

*Between September 23<sup>rd</sup> and 24<sup>th</sup> 1998, Serbian forces killed 14 Kosovo Albanian civilians.*

51. The village of Dubovac/Duboc is located in the Municipality of Vučitrn/Vushtrri, about 20 km south of Kosovska Mitrovica/Mitrovicë and about 11 km southwest of the town of Vučitrn/Vushtrri. The village is located by the Čičavica Mountain.

### 2.1 Description of Crimes, Based on Statements of Survivors

52. After the Serbian forces launched their attack on villages in the Municipalities of Srbica/Skënderaj and Vučitrn/Vushtrri on September 22<sup>nd</sup>, 1998, residents hid in the forests on the Čičavica Mountain. They hid there for several days, sleeping in tractors and in tents. Many of them were children and the elderly.<sup>55</sup>
53. Serbian forces entered Dubovac/Duboc in the Municipality of Vučitrn/Vushtrri on September 23<sup>rd</sup> 1998. They immediately started to burn houses. The residents of the village ran to the forests on the Čičavica Mountain.<sup>56</sup>
- 12 54. The family of Enver Haliti from Ljubovac/Lubavec, in the Municipality of Srbica/Skënderaj was passing through Dubovac/Duboc on September 23<sup>rd</sup> 1998. They decided to go back home after two days spent in Ćirez/Qirez where a large number of refugees from the surrounding villages were located. The Haliti family was on a tractor driven by Enver Haliti. Near the settlement of *Shalaku* Serbian forces intercepted them on the road. The women and children were ordered to get off the tractor and to go to a field near the road. They kept Enver and his cousin Shaban by the tractor. Not long afterwards, a Pinzgauer truck arrived containing three masked Serbian soldiers. One of them addressed Enver directly in Albanian: "Where have you been Enver, we have been looking for you in the sky and you are on the ground." Then they started to beat Enver and Shaban with rifle butts. After that, one of the soldiers ordered Shaban, the women and the children to go. They kept Enver. Three days later, an acquaintance of the Haliti family found Enver's body not far from the intersection where the Serbian forces had detained him. **Enver (Halit) Haliti (born 1956)** was killed with one bullet to the head.<sup>57</sup>
55. On September 23<sup>rd</sup>, the Serbian forces started to randomly shell Čičavica Mountain. The places where thousands of civilians had taken shelter also came under fire. During the shelling of Čičavica, about 130 civilians were killed over the course of four days, between September 22<sup>nd</sup> and 26<sup>th</sup> 1998. Of those killed, 28 were children.<sup>58</sup>
56. Serbian forces entered the village of Kožica/Kozhicë in the Municipality of Srbica/Skënderaj on September 24<sup>th</sup>, 1998. Many people from the surrounding villages were in Kožica/Kozhicë after fleeing their houses. Thirteen men, mostly from the village of Galica/Galicë [Municipality of Vučitrn/Vushtrri] had fled earlier that day to the forests around the mountain. Upon arriving in the village, the Serbian forces rounded up women, children and the elderly and detained them in a field until the next morning. The fate of the men who had fled to the forest was unknown until September 25<sup>th</sup>, 1998, when residents of Galica/Galicë discovered 13 massacred male bodies in

55 HLC Database: Statement of witness H.A. June 2008; Statement of witness N.S. Statement of witness E.X. Statement of witness M.S. Statement of witness R.R.

56 HLC Database: Statement of witness H.A. June 2008. Statement of witness, June 2008.

57 Statement of witness O. H. May 2008. HLC Database.

58 HLC Database.



the forests on the Čičavica Mountain, close to the village of Dubovac/Duboc.<sup>59</sup> Eleven bodies were found at a spot close to a forest path and two more bodies were found 200 meters deeper into the forest. The victims of this crime were:<sup>60</sup>

<b>Arsim (Isa) Brahimi (born 1985)</b>	<b>Sejdi (Idriz) Kabashi (born 1975)</b>
<b>Gani (Fazli) Ademi (born 1983)</b>	<b>Nazmi (Veli) Halili (born 1972)</b>
<b>Fatmir (Shashivar) Ademi (born 1981)</b>	<b>Agim (Selim) Ademi (born 1970)</b>
<b>Bujar (Hetem) Halili (born 1981)</b>	<b>Bajram (Bejtullah) Sahiti (born 1965)</b>
<b>Burim (Ramadan) Ademi (born 1981)</b>	<b>Hetem (Rizah) Halili (born 1951)</b>
<b>Nexhat (Kadri) Halili (born 1981)</b>	<b>Shasihvar (Isa) Ademi (born 1947)</b>
<b>Bekim (Miftar) Halili (born 1976)</b>	

## 2.2 YA Documents Pointing to the Responsibility of Soldiers of the 125<sup>th</sup> MtBr for Crimes Committed in Dubovac/Duboc

57. YA documents marked “Strictly Confidential” concerning an operation undertaken between September 23<sup>rd</sup> and 24<sup>th</sup> 1998, in the area of Čičavica Mountain point to the involvement of the 125<sup>th</sup> MtBr in this operation and its presence in Dubovac/Duboc. The documents of the 125<sup>th</sup> MtBr undoubtedly indicate that the Brigade Command had at least been aware of the execution of 13 men close to Dubovac/Duboc.

58. According to the Priština Corps Order on the conduct of the operation at Čičavica, the 1<sup>st</sup> Combat Group of 125<sup>th</sup> MtBr was engaged in Dubovac/Duboc between 23<sup>rd</sup> and 24<sup>th</sup> September 1998, alongside MUP forces. The **“Order to Support MUP Forces in Breaking Up STF in the general Čičavica Sector”** issued by the Command of the Priština Corps on September 19<sup>th</sup> 1998 stated as follows:

“to engage the 125<sup>th</sup> MtBr to support MUP forces in crushing the STF. BG-125-1 [1<sup>st</sup> Combat Group of the 125<sup>th</sup> MtBr]: use the main forces along the Srbica **Dubovac village** axis and auxiliary forces on the Kosanić-Ljubovac axis. TASK: to support the attack by the 3<sup>rd</sup> Detachment of the SPU, the SOU [Special Operations Unit] and the Peć SPU company. Rout the STF in the Donje and Gornje Prekaze sector, from where you will continue the attack and take the villages Mikušnica Ljubovac and **Dubovac**.”<sup>61</sup>

59. The presence of the 4<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr in Dubovac/Duboc between September 22<sup>nd</sup> and 24<sup>th</sup> 1998 was confirmed by the later analysis of the combat operations undertaken. In the **“Analysis of Performed Combat Operations”** sent by the Command of Combat Group 4 of the 125<sup>th</sup> MtBr for September 24<sup>th</sup>, 1998, to the Command of 125<sup>th</sup> MtBr on September 25<sup>th</sup> 1998, stated the following:

59 HLC Database: Statement of witness B.S. June 2008; Statement of witness H.H. June 2008; Statement of witness H.A. June 2008; Statement of witness H.A. June 2008; Statement of witness M.H. June 2008.

60 HLC Database: Statement of witness H.A. June 2008; Statement of witness Ham.A. June 2008; Statement of witness B.S. June 2008; Statement of witness G.H. June 2008; Statement of witness M.H. June 2008; Statement of witness N.A. June 2008; Statement of witness S.A. June 2008; Statement of witness Z.H. June 2008.

61 Exhibit 6D 699, Order to Support MUP Forces in Breaking-up STF in the General Čičavica Sector, *Šainović et al.*



"From the regroupment line in the area of the village of Brusnik, part of **CG-4** was attached to the MUP unit from Belgrade, which positioned itself along the line of the blockade in the area of the village of Kolo, border right command Vučitrn – Brusnik – **Dubovac**, border right Resnik, - Vrnica and with one 82mm mortar squad, a 90mm self-propelled gun, and one armoured combat vehicle took up a position at the intersection of the Vrnica – Kolo roads and controlled the blockade in that direction."<sup>62</sup>

60. It was stated in the aforementioned analysis that soldiers of the 4<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr killed 12 "terrorists" on September 24<sup>th</sup>, 1998:

"The unit on the left flank drove back the sabotage terrorist forces. The vanguard units, moving across the summit of Čičevica, encountered resistance from the terrorists in the area of TT point 868, where one terrorist was killed, in the area of Elevation 958, where two terrorists were killed, and in the area of Elevation 906 (intersection of cart tracks), where another **12 terrorists were liquidated**."<sup>63</sup>

61. According to HLC information on human losses during the Kosovo conflict, in the area of Dubovac/Duboc, on September 24<sup>th</sup> 1998, there were no recorded casualties of KLA soldiers. The only group of men killed on September 24<sup>th</sup>, 1998 in the area of Dubovac/Duboc was the group of civilian men who fled from the Serbian forces in the direction of Kožica/Kozhice and hid in the forest.<sup>64</sup>
62. Between September 22<sup>nd</sup> and 24<sup>th</sup> 1998, a total of 11 KLA soldiers died on the territory of the entire Municipality of Vučitrn/Vushtrri.<sup>65</sup>

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### 3) Gornje Obrinje/Obri e Epërme

*Between September 25<sup>th</sup> and 27<sup>th</sup> 1998, Serbian forces killed 28 Kosovo Albanian civilians.*

63. The village of Gornje Obrinje/Obri e Epërme is located in the Municipality of Glogovac/Gllogoc, about 17 kilometers south of the town of Srbica/ Skënderaj. It is close to the Kosmač Mountain.

#### 3.1 Description of Crimes, Based on Statements of Survivors

64. In the morning, around 06:00 on September 25<sup>th</sup> 1998, Serbian forces started shelling villages east of the town of Glogovac/Gllogoc.<sup>66</sup> Around 10:00, the Serbian forces set off towards Gornje Obrinje/Obri e Epërme from the area of Trdevac/Tërdec. The clash with the KLA took place in the hills around the village, and it lasted until the afternoon hours, when the Serbian forces withdrew towards Trdevac/Tërdec.<sup>67</sup>



**Photo 4:**  
Bodies of victims of a mass execution in  
Gornje Obrinje/Obri e Epërme.

62 Exhibit P1162, Analysis of Combat Operations Undertaken, Šainović *et al.*

63 Ibid.

64 HLC Database. Individual Register of Human Losses in Kosovo, available as an HLC internet presentation at: [www.hlc-rdc.org](http://www.hlc-rdc.org)

65 Ibid.

66 Statement of witness I.D. April 2009, HLC Database.

67 HLC Database: Statement of witness Sh. V. April 2010; Statement of witness F.K. March 2010.



65. On the following day, September 26<sup>th</sup> 1998, the Serbian forces shelled Gornje Obrinje/Obri e Epërme again.<sup>68</sup> The shelling stopped around 14:00h and Serbian forces entered the village.<sup>69</sup> Local residents had earlier hidden in the nearby forest.
66. 19 members of the Deliu family hid in a place called *Koreniti Šumarak/Zabeli i Renjave*, a kilometer away from the Deliu hamlet. There, they put up a nylon tent. M.A. told HLC researchers, that, on the day in question, he was able to hear from the spot where he was hidden, some 200-300 hundred meters from the tent where the Deliu family hid, “voices of women and children, suddenly they all started screaming at the top of their lungs...the screaming lasted for about half an hour. No voices could be heard after that.”<sup>70</sup>
67. Later that day, after the Serbian forces left the village, several local residents found the bodies of 14 massacred members of the Deliu family. The bodies of **Zeqir (Januz) Deliu (born 1954) and Alija (Veli) Deliu (born 1930)** were found in front of the tent. Alija’s throat was slit. **Pajazit (Rrustem) Deliu (born 1929)** was killed by the impact of a blunt instrument to the head. **Hava (Imer) Elshani (born 1936)** was killed not far from Pajazit. About ten meters from the tent, was the body of a boy by the name of **Jeton (Ymer) Deliu (born 1988)**, whose lower jawbone was fractured and whose right ear had been cut off. Next to Jeton was the dead body of his grandmother **Hamida (Liman) Deliu (born 1938)** and the body of **Luljeta (Sadri) Deliu (born 1971)** who was nine months pregnant. They were both killed with shots to the head. Not far from Luljeta the body of baby, **Valmir (Adem) Deliu (born 1996)** was found. Next to Valmir was the body of **Lumnija (Bajram) Deliu (born 1969)** and her daughter **Menduhiza (Imer) Deliu (born 1994)** who was shot under the left ear and in the neck. The body of **Mihana (Arif) Deliu (born 1973)** was found nearby, while the bodies of **Zahida (Adem) Deliu (born 1971)** and bodies of **Donjeta (Hajriz) Deliu (born 1991)** and **Gen-tiane (Hajriz) Deliu (born 1990)** were found a little further away.<sup>71</sup>
68. Five children of the Deliu family survived the massacre. A 6 week old baby was found in the arms of the executed Lumnija Deliu, while A.D, B.D, L.D. and A.D. ran away from the tent before the Serbian forces arrived.<sup>72</sup>
69. Between September 26<sup>th</sup> and 27<sup>th</sup> 1998, Serbian forces killed 14 more civilians in Gornje Obrinje/Obri e Epërme:<sup>73</sup>



Photo 5:  
Children victims of war crime  
in Gornje Obrinje/Obri e Epërme.

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68 Statement of witness I.D. October 2007, HLC Database.

69 Humanitarian Law Center, “Kosovo Memory Book”, Volume I, p.145.

70 Statement of M. A. October 1998, HLC Database.

71 HLC Database: Statement of witness I.D. October 2007; Statement of witness M.A. October 2009.

72 HLC Database: Statement of witness I. D. October 2007; Statement of witness I. D. October 1998; Humanitarian Law Center, “Kosovo Memory Book”, Volume I, p. 134.

73 HLC Database: Statement of witness I.D. October 1998; Statement of witness Z.D. April 2010; Statement of witness F.D. October 2007; Statement of witness M.D. October 1998; Statement of witness S.K. September 2010, Statement of witness Sh.H. October 2007; Statement of witness Sh.K. October 2007; Statement of witness I.D. October 2007; Statement of witness H.D. October 2007; Statement of witness I.D. October 2007; Statement of witness Sh. H. October 2007; Statement of witness I.D. October 1998; Statement of witness M.D. October 1998; Statement of I.D. October 2007.



Antigone (Hysen) Deliu (born 1984)  
 Mihane (Hysen) Deliu (born 1982)  
 Adem (Salih) Deliu (born 1965)  
 Hajriz (Fazli) Deliu (born 1964)  
 Xhevdet (Isa) Demiqi (born 1957)  
 Hyrë (Cene) Kalludra (born 1947)  
 Hysen (Idriz) Deliu (born 1946)

Metush (Sejdi) Shapeta (born 1945)  
 Habib (Idriz) Deliu (born 1943)  
 Sherif (Rrustem) Deliu (born 1931)  
 Ali (Hisen) Kalludra (born 1931)  
 Bilall (Brahim) Demaku (born 1930)  
 Rrustem (Murtez) Hysenaj (born 1925)  
 Fazli (Rame) Deliu (born 1908)

70. All the bodies found were in civilian clothes, had bullet and knife wounds and most of the bodies were mutilated.<sup>74</sup>
71. The crime in Gornje Obrinje/Obri e Epërme was documented by Human Rights Watch<sup>75</sup> and the OSCE,<sup>76</sup> while numerous foreign media reported on it: The New York Times, Reuters, The Times, The Guardian and The Daily Telegraph.<sup>77</sup>

### 3.2 Documents and Testimonies of YA Soldiers, Pointing to the Responsibility of Soldiers of the 125<sup>th</sup> MtBr for Crimes Committed in Gornje Obrinje/Obri e Epërme

72. Strictly confidential YA documents on operations that took place between September 25<sup>th</sup> and 27<sup>th</sup>, 1998, in the area of Kosmač/Kosmaq indicate the presence of the 125<sup>th</sup> MtBr in Gornje Obrinje/Obri e Epërme on September 26<sup>th</sup> and 27<sup>th</sup>, 1998.
73. According to a Priština Corps Command Order to support MUP Forces in Destroying STF in the Region of Komač, the first Combat Group of 125<sup>th</sup> MtBr was engaged in Gornje Obrinje/Obri e Epërme on September 25<sup>th</sup> 1998, alongside MUP forces. **“The Order to Support MUP Forces in Destroying STF [sabotage-terrorist forces] in the Region of Kosmač”** was issued by the Priština Corps on September 24<sup>th</sup> 1998 and it states the following:

**“125<sup>th</sup> MtBr** shall be engaged in supporting MUP forces to crush the STF. **BG-125-1** [1<sup>st</sup> Combat Group of 125<sup>th</sup> MtBr] shall be engaged in the villages of Likovac-**Donje and the Gornje Obrinje-Trdevac** axis, with the task of: supporting the attack by the 3<sup>rd</sup> Detachment

74 Human Rights Watch, “A Week of Terror in Drenica”, February 1999, p. 24; ICTY Judgement in the case of *Šainović et al.* Volume 1of 4, para. 902.

75 Human Rights Watch, “A Week of Terror in Drenica”, February 1999. See also Exhibit P2228, Statement of Fred Abrahams, *Šainović et al.*

76 OSCE, Kosovo Verification Mission, “As Seen As Told”, 1999, p. 191.

77 Jane Perlez, “Ethnic Albanians Recount Massacre in Kosovo, New York Times, November 15<sup>th</sup> 1999, <http://www.nytimes.com/1998/11/15/world/ethnic-albanians-recount-massacre-of-a-family-in-kosovo.html?pagewanted=all&src=pm> last accessed on July 24<sup>th</sup> 2013. Reuters “Serb Police Deny Responsibility for Killings, September 30<sup>th</sup> 1998, <http://reliefweb.int/report/serbia/serb-police-deny-responsibility-killings> last accessed on July 24<sup>th</sup> 2013; Jonathan Steel, “Among the 16 victims was a baby, beneath her mother’s corpse, and a boy, his throat cut”, The Guardian, September 30<sup>th</sup> 1998; Tom Walker, “Hidden Horror Betrays the Butcher of Kosovo”, The Times, September 30<sup>th</sup> 1998; Reuters “Kosovo-Women, Children Massacred”, September 30<sup>th</sup> 1998; “Serbian War Crimes in Kosovo - The Gornje Obrinje Massacre” <http://www.youtube.com/watch?v=vFPplwm1Alw> last accessed on July 24<sup>th</sup>, 2013.



of the Special Police Units, Special Operations Unit and the Kosovska Mitrovica Special Police Unit company in order to crush the STF and take control of the villages of Likovac- **Donje and Gornje Obrinje**-Trdevac, with the task of: providing support for the 3<sup>rd</sup> Squad of the SPU, SOU and SPU Company Kosovska Mitrovica, in order to crush SHTF and take over the area of s. Likovac, s. **D. and G. Obrinje** ... be ready to provide support on September 25<sup>th</sup> 1998 at 06:00h.<sup>78</sup>

74. The presence of the 1<sup>st</sup> Combat Group of the 125<sup>th</sup> MtBr in Gornje Obrinje/Obri e Epërme at the time in question was also confirmed by the later combat reports of the Priština Corps. A **Combat Report** of the Priština Corps Command was sent to the 3<sup>rd</sup> Army Command on September 26<sup>th</sup> 1998. For the day of September 25<sup>th</sup>, 1998, it contains the following:

"During the day, part of the [Priština] Corps BG [combat group] forces continued to support the MUP forces in crushing and destroying the STF in the sectors of **Gornje Obrinje and Donje Obrinje** villages... on the axis of the attack they overcame fierce resistance from the STF in the area of **Donje Obrinje, Gornje Obrinje** and on the north-western slopes of Mountain, and crushed them, capturing the majority and inflicting serious losses. The STF in this sector are surrounded by **BG-125-1**, BG-15-2 and part of the BG-243-2" ... "I have decided: **BG-125-1**; BG-15-2 and part of the BG-243-2 shall continue to support the MUP in completely crushing the STF surrounded in the **Gornje Obrinje** village sector."<sup>79</sup>

75. On **October 2<sup>nd</sup> 1998**, the YA General Staff requested a written statement "**regarding the massacre in the sector of Gornje Obrinje village**" from the Commander of the 3<sup>rd</sup> Army:

"According to your reports, on September 26<sup>th</sup> and 27<sup>th</sup>, 1998, elements of the PrC units provided support to the MUP forces in their combat operation aimed at routing the STF in the sectors of the villages of Gornje Obrinje and Donje Obrinje, ...Foreign media and some humanitarian organizations, even some state representatives of a number of countries reported an alleged massacre against the civilian population of Gornje Obrinje village.

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-Have you any information on the commission of a massacre against the civilian population of Gornje Obrinje village?

-If a massacre was committed, who committed it?"<sup>80</sup>

76. In his response dated October 5<sup>th</sup> 1998, the Chief of Staff of the Priština Corps, Vladimir Lazarević stated:

"1. The schedule of operation carried out on September 26<sup>th</sup> and 27<sup>th</sup>, 1999 was in keeping with the commands and orders of the PrC Command and there were no deviations.

2. The PrC units did not commit any massacres of the civilian population in the in the zones of combat operations. We do not have reliable information on the MUP forces which we supported in disarming the village of Gornje Obrinje."<sup>81</sup>

77. In the report submitted in early October 1998 to Dušan Samardžić, the Commander of the 3<sup>rd</sup> Army, the Priština Corps Commander Nebojša Pavković claims not to possess information about the "alleged massacre" in Gornje Obrinje. However, in the same document, he informs the Commander of the 3<sup>rd</sup> Army that he had been informed about the "content of unverified information that

78 Exhibit 6D700, Order to Provide Support to MUP Forces in Crushing STF in Kosmač Sector, *Šainović et al.*

79 Exhibit 6D755, Combat Report, ICTY, *Dorđević* case.

80 Exhibit. 4D403, From General Staff to Commander of 3rd Army: Request for Written Statement, October 2<sup>nd</sup> 1998, *Šainović et al.*

81 Exhibit 4D401, To PrC Command: Report on Combat Operations, October 5<sup>th</sup> 1998, *Šainović et al.*



members of security service delivered to the YA General Staff Security Administration stating that unidentified members of the MUP units that were carrying out combat operations in the village of Gornje Obrinje executed persons taken into custody.”<sup>82</sup>

78. Petar Damjanac, Chief of the Department of the Interior in Glogovac denied the involvement of the MUP in the crime in his testimony given before the ICTY. He claimed that he heard about “the case” for the first time when a group of Finnish pathologists and members of the Priština Secretariat of the Interior told him that an investigative judge must be sent to Gornje Obrinje. According to him, between July and September 1998, the police did not visit that area because it was under the control of the KLA and they could have easily have been caught in the cross-fire between the MUP and the KLA.<sup>83</sup>

79. In his testimony before the ICTY in the case of *Šainović et al.* Dragan Živanović, the Commander of the 125<sup>th</sup> MtBr, avoided speaking specifically about responsibility for the mass execution in Gornje Obrinje/Obri e Epërme. Asked by the Defence Counsel if he could remember the joint combat operations between the YA and the Republic of Serbia MUP forces in the general sector of the Gornje and Donje Obrinje villages from September 26<sup>th</sup>, 1998, Živanović replied:

“I recall that we were lending support to MUP forces in that action and we suffered our first losses right there, in terms of combat equipment and manpower. The Commander of my combat group, Major Dragan Trifunović, was wounded in that action.”<sup>84</sup>

80. Asked if he had any information about an alleged massacre of many civilians in the village of Gornje Obrinje, Živanović stated: “No. The Corps Commander at the time, General Pavković, requested that I submit a report, which I did.”<sup>85</sup>

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### 3.3 Statements from the ICTY Trial Chamber Judgement in the case of *Šainović et al.*

81. “The Trial Chamber is satisfied that during YA and MUP operations in and around Gornje Obrinje/ Abria e Eperme at the end of September 1998, a number of civilians were killed, including women and children. The fact that the YA General Staff requested information about an alleged “massacre” there demonstrates that there was, at least initially, some concern that YA forces might have been involved. However, following internal investigations it was reported that no “massacre” had been committed by members of the YA, and that the Priština Corps security department reported that members of the MUP were responsible. **Without being able to determine whether it was the YA or MUP that was involved, the Chamber thus finds that the killings were committed by forces of the FRY and Serbia.**”<sup>86</sup>

82 Exhibit P1440, PrC Report Regarding Incidents Resulting in Death, October 5<sup>th</sup> 1998, *Šainović et al.*

83 Petar Damjanac, March 6<sup>th</sup> 2008, *Šainović et al.*, T. 23813-23814.

84 Dragan Živanović, January 17<sup>th</sup> 2008, *Šainović et al.* T-20492.

85 Ibid, T-20494.

86 ICTY Trial Chamber Judgement in the case of *Šainović et al.* Vol. 1 of 4, para. 912.



## IV. Events of 1999

### 4) Srbica/Skendëraj

*On March 20th, 1999, Serbian forces killed 29 Kosovo Albanian civilians.*

82. The town of Srbica/Skendëraj is located in the centre of the municipality, of the same name, south of the Mitrovica/Mitrovicë-Peć/Pejë main road. Srbica/Skendëraj had some 4,000 citizens in 1999, 91% of whom were Kosovo Albanian and 5% were Serbs.<sup>87</sup>

#### 4.1 Description of Crimes, Based on the Statements of Survivors

83. Representatives of the Kosovo Verification Mission left Srbica/Skendëraj on March 19<sup>th</sup>, 1999.<sup>88</sup> The following day, March 20<sup>th</sup>, 1999, “a great number of Serbian soldiers arrived in the police station by bus, together with tanks and armoured vehicles.”<sup>89</sup> They positioned themselves in different places across the town: on the hill around the town; in the ammunition factory located in Settlement III; on the outskirts of Srbice/Skendëraj on the road to Prekaz and at the police station located in Settlement II on the way out of the town.<sup>90</sup>
84. After some time, members of the Serbian forces, dressed in white uniforms, wearing masks, with black gloves and black boots, started entering Kosovo Albanian houses in Settlement II.<sup>91</sup>
85. In front of their families, eight men from the Thaqi, Kalleci and Shala families were removed from their homes by members of the Serbian forces.<sup>92</sup>
86. The following persons were taken from the houses: **Sadri (Zenel) Gashi (born 1954), Nebih (Hazir) Vojvoda (born 1951) and Lavdim (Sali) Vojvoda (born 1979), Januz (Haliz) Kalleci (born 1938), Xhavit (Januz) Kelleci (born 1971), Musli (Dibran) Shala (born 1970), Sabit (Beke) Veliqi (born 1960) and Ramiz (Rexhep) Geci (born 1968).**<sup>93</sup>
87. Members of the Serbian forces took the men, with their hands raised above their heads, towards the place known as *Kod borova/Te pishat* (By the Pine Trees), on the outskirts of the town, near the

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87 OSCE, Kosovo Verification Mission, “As Seen as Told”, 1999, page 343.

88 Statement of witness M.A. April 2007, HLC Database; Statement of T.B. April 2007, HLC Database.

89 Statement of witness F.G. April 2008, HLC Database.

90 Ibid.

91 HLC Database: Statement of witness D.S. April 2007; Statement of witness H.K. Statement of witness Sh.V. April 2007.

92 Statement of witness Sh.V. April 2007, HLC Database.

93 HLC Database: Statement of witness Sh.V. April 2007; Statement of witness Sh. V. April 2007; Statement of witness H.K. April 2007; Statement of witness R.G. April 2008; Amended statement of witness F.G. December 2012.



hospital.<sup>94</sup> That was the last time these men were seen alive. A burst of gunfire was heard from the place at around 09:00.<sup>95</sup>

88. The bodies of all eight men were handed over by Serbian forces to the Muslim community in Kosovska Mitrovica/Mitrovicë.
89. Members of Serbian forces killed 21 more civilians in Srbica/Skënderaj on March 20<sup>th</sup>, 1999. Their names are as follows:<sup>96</sup>

<b>Qemal (Xhafer) Neziri (born 1984)</b>	<b>Muhamet (Sheqir) Fazliju (born 1969)</b>
<b>Xhevdet (Zenel) Zenuni (born 1980)</b>	<b>Musa (Avdullah) Hajzer (born 1968)</b>
<b>Burim ( Isuf) Gashi (born1979)</b>	<b>Veli (Hasan) Mustafa (born 1965)</b>
<b>Emrullah (Sokol) Azemi (born 1978)</b>	<b>Xhavit (Rexhë) Sylejmani (born 1960)</b>
<b>Faton (Gani) Azemi (born 1977)</b>	<b>Muhamet (Ferat) Zenuni (born 1960)</b>
<b>Refki (Zeqir) Zeqiri (born 1975)</b>	<b>Idriz (Selman) Kameri (born 1954)</b>
<b>Shaip (Gani) Azemi (born 1973)</b>	<b>Hajzer (Hashim) Feka (born 1953)</b>
<b>Milazim (Sadik) Rexha (born 1972)</b>	<b>Isuf (Feriz) Gashi (born 1945)</b>
<b>Musli (Zeqir) Fazliju (born 1972)</b>	<b>Halil (Qerim) Gucati (born 1943)</b>
<b>Agim (Imer) Berisha (born 1971)</b>	<b>Hajdin (Maliq) Aruqi (born 1920)</b>
<b>Sejdi (Zeqir) Zeqiri (born 1969)</b>	

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94 Amended witness statement F.G. December 2012, HLC Database.

95 HLC Database: Statement of witness D.S. April 2007. Members of the Committee for the Protection of Human Rights and Freedoms in Kosovo and members of the Muslim Religious Community on March 24<sup>th</sup>, 1999, took the bodies from the hospital morgue in Kosovska Mitrovica/Mitrovicë and buried them on the following day at the village cemetery in Šupkovac/Shupkofc, in the municipality of Mitrovica/Mitrovicë. See HLC Database: the amended statement of witness F.G. December 2012; Statement of witness D.S. April 2007; Statement of witness R.G. April 2008; Statement of witness H.K. April 2007; Statement of witness Sh.V. April 2007.

96 HLC Database: Statement of witness T.B. April 2007; Statement of witness Sh.K; Statement of witness, December 2000; Statement of witness B.B. May 2007; Statement of witness Z.S., June 2007; Statement of witness Xh.M. July 2007; Statement of witness F.G. Statement of witness M.R. May 2007; Statement of witness E.Z. Statement of witness Xh.G. November 2007; Witness B.A. January 2008. Exhibit P2798, List of missing persons of the UN Mission in Kosovo Office of Missing Persons, *Šainović et al.* HLC Database; Statement of witness F.F. April 2012, HLC Database. **Of the 14 killed men 9 are registered as missing in the ICRC list of missing persons** as follows: Sejdi (Zeqir) Zeqiri (born 1969) (BLG-801783-01), Refki (Zeqir) Zeqiri (born 1975) (BLG-802859-01), Agim (Imer) Berisha (born 1971) (BLG-801902-01), Isuf (Feriz) Gashi (born 1945) (BLG-800799-02), Burim ( Isuf) Gashi (born 1979) ( BLG-800799-01), Qemal (Xhafer) Neziri (born 1984) (BLG-801893-01), Idriz (Selman) Kameri (born 1954) (BLG-804611-01); Muhamet (Sheqir) Fazliju (born 1969) (BLG-803903-01) and Musli (Zeqir) Fazliju (born 1972) (BLG-803902-01), Emrullah (Sokol) Azemi (born 1978) (BLG-803014-01), Gani (Azem) Azemi (born 1951) (BLG-802803-03), Shaip (Gani) Azemi (born 1973) (BLG-802803-01), Faton (Gani) Azemi (born 1977)(BLG-802803-02) and Halil (Qerim) Gucati (born 1943) (BLG-802595-01), Muhamet (Ferat) Zenuni (born 1960) (BLG-800959-01) and Xhevdet (Zenel) Zenuni (born 1980) (BLG-801128-01).



#### 4.2 Documents and Testimonies of YA Soldiers, Pointing to the Responsibility of Soldiers from the 125<sup>th</sup> MtBr for Crimes Committed in Srbica/Skënderaj

90. Strictly confidential documents of the YA point to the engagement of the 125<sup>th</sup> MtBr in the operations that took place on March 20<sup>th</sup> 1999 in the town of Srbica/Skënderaj.
91. According to documents from the Priština Corps, the 1<sup>st</sup> Combat Group of the 125<sup>th</sup> MtBr was engaged between September 20<sup>th</sup> and 21<sup>st</sup> 1998 alongside MUP forces. “The **idea for conducting an operation to defeat the SHTF**[Shiptar Terrorist Forces] **in the sector of Northern Drenica and Podujevo**” was issued by the Priština Corps Command on March 18<sup>th</sup>, 1999 and states the following:

“**BG-125-1** [Combat Group 1 125<sup>th</sup> MtBr] with MUP, and with mb/252<sup>nd</sup> ArBr [Mechanized Battalion of the 252<sup>nd</sup> Armoured Brigade][forces are being engaged] on the axis – **Srbica** – Poljance – G.Prekaz ... **time of execution: March 20<sup>th</sup> and 21<sup>st</sup>, 1999.**”<sup>97</sup>

92. Combat Group 1 of the 125<sup>th</sup> MtBr also received an instruction on engagement in the operation in Srbica/Skënderaj at the order of the Joint Command for Kosovo and Metohija. The “**Order on Engagement of Forces on Combating Terrorists in Kosovo and Metohija**” was issued by the Joint Command on March 19<sup>th</sup> 1999. The 125<sup>th</sup> MtBr was ordered to:

“in coordinated action with the 37<sup>th</sup> MtBr and MUP forces, to unblock the axis Klina-**Srbica and the town of Srbica.**”<sup>98</sup>

93. It was determined that the firearm factory in Srbica would be the Command Post of the 125<sup>th</sup> MtBr.<sup>99</sup>
94. Testifying before the ICTY in the *Šainović et al.* case, the Commander of the 125<sup>th</sup> MtBr Dragan Živanović confirmed that the 125<sup>th</sup> MtBr participated in the operation in Srbica/Skënderaj on March 20<sup>th</sup> 1999. He said that his brigade had participated in the attack on Srbica/Skënderaj. However, when the Prosecution referred to the Order of March 19<sup>th</sup> 1999, where the “unblocking of the town” of Srbica/Skënderaj was presented as a task of the 125<sup>th</sup> MtBr, Živanović stated:

“Yes. I received the order from the Corps Command. This task seems illogical to me. It states 125<sup>th</sup> Motorized Brigade. This means the entire Brigade. So, I already doubt that I have really seen this order. I expected to see 125<sup>th</sup> MtBr with, BG-1 [Combat Group 1], BG-2 [Combat Group 2] written in parenthesis. I do not know, was the order tampered with?”<sup>100</sup>

#### Authorization of Attacks against “Disloyal” Kosovo Albanian Civilians

95. The orders of the Joint Command from March 19<sup>th</sup> 1999 contained the following order: “**Encourage need for a fair treatment of the loyal civilian population ...**”<sup>101</sup>

97 Exhibit 6D01416. Plan of Action for Crush and Destroy SHTF in Drenica and Podujevo Regions, *Šainović et al.*, page 1.

98 Exhibit P3049, Order on Engagmet of Forces on Combating Terrorism in Kosovo and Metohija, *Šainović et al.*, page 3.

99 Ibid.

100 Dragan Živanović, January 18<sup>th</sup> 2008, *Šainović et al.* T-20565-20568.

101 Exhibit P3049, Order on Engagement of Forces on Combating Terrorism in Kosovo and Metohija, *Šainović et al.* p. 3.



96. This command represents a violation of the Geneva Conventions and their Additional Protocols, which prescribe absolute/general protection of civilian population and prohibit the adverse distinction between civilians on any grounds.<sup>102</sup>
97. This type of instruction appeared in a number of orders relating to the operations of the 125<sup>th</sup> MtBr.<sup>103</sup>

## 5) Ljubenić/Lubeniq

*On April 1st, 1999, Serbian forces killed 59 Kosovo Albanian civilians*

98. Ljubenić/Lubeniq is located in the Municipality of Peć/Pejë, some 7 kilometers south of the city of Peć/Pejë at the exit from the main road in the direction of Dečani/Dečan.<sup>104</sup>

### 5.1 Description of Crimes Based on Statements of Survivors and the Indictment of the Office of the War Crimes Prosecutor.

99. Members of the *Šakali* (Jackals), a unit of the 177<sup>th</sup> MTD Peć, along with members of the Territorial Defence units entered Ljubenić/Lubeniq on April 1<sup>st</sup> 1999, at around 07:00 a.m. in groups of four.<sup>105</sup> They started expelling civilians from their houses, and rounding them up close to the mosque in the center of the village. Soon afterwards, several hundred local residents had been gathered in front of the village mosque.<sup>106</sup>
100. At the mosque, soldiers immediately separated the men. Women, children and the elderly were ordered to go to Albania. They detained the remaining 63 men. One soldier asked the men who had burned the Kosovo Albanian houses in the immediate vicinity. Adem Haradinaj, who was standing closest to him, told him that the police had set the houses on fire. Then, the soldier ordered **Adem (Sadik) Haradinaj (born 1932)** to step out and fired at him with an automatic rifle, killing him on the spot. Ukë Bushati then addressed the soldier telling him: "You killed the man without even letting him finish his sentence". The soldier who fired at Adem Haradinaj told him: "Who are you to tell me who I am going to kill" and then he fired several rounds at **Ukë (Hajdar) Bushati (born 1951)**.<sup>107</sup>

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102 Common Article 3 of the Geneva Conventions: "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, **shall in all circumstances be treated humanely, without any adverse distinction** founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria." Article 48 of Additional Protocol I to the Geneva Conventions: "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict **shall at all times distinguish between the civilian population and combatants...**" Also, see Article 85(3) of **Additional Protocol I to the Geneva Conventions**: "In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, **when committed wilfully**, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health: (a) making the civilian population or individual civilians the object of attack..." See the ICTY Trial Chamber Judgment in the *Blaskić* case, para. 180, the ICTY Trial Chamber Judgment in *Galić* case, paras. 29, 32, 50. See UN General Assembly Resolutions 2444, 2675, 2673.

103 See Crime in Kraljane/Kralan, Chapter 6 of the Dossier.

104 OSCE, Kosovo Verification Mission "As Seen As Told", 1999, p. 290.

105 Statement of Zoran Rašković, Higher Court in Belgrade, *Čuška* case, April 23<sup>rd</sup>, 2013.

106 HLC Database: Statement of witness S. J. October 2007; Statement of witness S.U. January 2001; Statement of witness D.U. January 2001; Statement of witness M.A. October 2007.

107 HLC Database: Statement of witness. M. A, October 2007.



101. Members of the Serbian forces then ordered the men to lie down on the ground while cursing at them: “Get down you Albanian mother-fuckers!” When all the men had laid down, the soldiers opened fire on them with automatic weapons. The shooting lasted for several minutes. One of the soldiers said: “No one should be left alive, check!” Soldiers then went among the pile of dead civilians checking if all of them were dead. Those who were still breathing were killed on the spot. The soldiers then left the village.<sup>108</sup> Seven men survived the execution because they were covered by dead bodies.
102. The following persons were killed on April 1<sup>st</sup> 1999 by the mosque in Ljubenić/Lubeniq:<sup>109</sup>

<b>Gezim (Deme) Avdullahaj (born 1984)</b>	<b>Fadil (Shaban) Alimehaj (born 1953)</b>
<b>Arif (Iber) Tahiraj (born 1975)</b>	<b>Rexhë (Hasan) Rexhaj (born 1952)</b>
<b>Tafil (Haradin) Huskaj (born 1981)</b>	<b>Ramë (Binak) Ukshinaj (born 1952)</b>
<b>Fehmi (Shaban) Huskaj (born 1981)</b>	<b>Ukë (Hajdar) Bushati (born 1952)</b>
<b>Gani (Din) Soshi (born 1976)</b>	<b>Rrustem (Male) Alimehaj (born 1950)</b>
<b>Khavit (Jashar) Hamzaj (born 1975)</b>	<b>Hajdar (Uke) Ukshinaj (born 1948)</b>
<b>Ramiz (Sadik) Berisha (born 1970)</b>	<b>Haxhi (Mustafë) Alimehaj (born 1947)</b>
<b>Fazli (Tahir) Ukshinaj (born 1970)</b>	<b>Avdyl (Ali) Bobi (born 1942)</b>

108 HLC Database: Statement of witness M.A. October 2007; Statement of witness D.U. January 2001; Statement of witness S.J. October 2007; Statement of witness S.B. January 2001.

109 HLC Database. **The bodies of 30 Kosovo Albanian civilians executed in Ljubenić/Lubeniq were found in mass grave sites in the Belgrade settlement of Batajnica:** Osman (Haradin) Huskaj (born 1965); Riza (Avdyl) Morina (born 1968); Neke (Selman) Huskaj (born 1940); Musa (Sadik) Jahmurtaj (born 1930); Selim (Sadik) Hamzaj (born 1935); Ilir (Sokol) Lokaj (born 1956); Haxhi (Mustafë) Alimehaj (born 1947); Fehmi (Shaban) Huskaj (born 1981); Ramë (Sadik) Huskaj (born 1935); Smajl (Isuf) Bushati (born 1937); Bajram (Rexhe) Bobi (born 1936); Adem (Sadik) Haradinaj (born 1932); Kadri (Sadik) Jahmurtaj (born 1912); Bekë (Rexhe) Bobi (born 1934); Naim (Hime) Huskaj (born 1957); Ramiz (Brahim) Hamzaj (born 1958); Ukë (Hajdar) Bushati (born 1952); Rrustem (Male) Alimehaj (born 1950); Ramë (Binak) Ukshinaj (born 1952); Bajram (Salih) Bushati (born 1962); Ruzhdi (Qerim) Ukshinaj (born 1965); Khavit (Jashar) Hamzaj (born 1975); Gezim (Deme) Avdullahaj (born 1984); Adem (Isuf) Bushati (born 1932); Haradin (Jake) Huskaj (born 1958); Tafil (Haradin) Huskaj (born 1981); Shaban (Isuf) Alimehaj (born 1933); Shaban (Lahe) Alimehaj (born 1958); Selaim (Dervish) Sylaj (born 1960) and Rexhë (Hasan) Rexhaj (born 1952). See Exhibit P2798, List of Missing Persons of Kosovo UN Mission's Office of Missing Persons and Forensics, *Šainović et al.* After the war, **the remains of 11 Kosovo Albanian civilians killed in Ljubenić/Lubeniq were found at the Peć cemetery** as follows: Hajdar (Uke) Ukshinaj (born 1948); Fadil (Shaban) Alimehaj (born 1953); Hazir (Male) Alimehaj (born 1957); Rrustem (Sadri) Ukaj (born 1937); Metush (Deli) Huskaj (born 1927); Haxhi (Beqir) Huskaj (born 1961); Fazli (Tahir) Ukshinaj (born 1970); Zeqë (Hysen) Bobi (born 1969); Avdyl (Ali) Bobi (born 1942); Ramiz (Sadik) Berisha (born 1970); Nazmi (Beqir) Rrustemaj (born 1962). **Nine men are still registered as missing** at the ICRC list as follows: Gani (Din) Soshi (born 1976) (BLG-801099-01); Ramë (Ali) Avdullahaj (born 1964) (BLG-802627-01); Arif (Iber) Tahiraj (born 1975) (BLG-801538); Sali (Beqir) Rrustemaj (born 1957) (BLG-801618-01); Muharrem (Rexhë) Bobi (born 1938) (BLG-803126-01); Smajl (Musa) Jahmurtaj (born 1965) (BLG-803171-02); Jashar (Misin) Hamzaj (born 1935) (BLG-803162-01) and Selaim (Dervish) Sylaj (born 1960) (BLG-803169-01). See International Committee of the Red Cross, “Book of Missing Persons related to the events in Kosovo from January 1998” until 2000. See above, footnote 6, the Indictment of the OWCP.



<b>Zeqë (Hysen) Bobi (born 1969)</b>	<b>Neke (Selman) Huskaj (born 1940)</b>
<b>Cun (Avdyl) Morina (born 1969)</b>	<b>Sefer (Sali) Shoshi (born 1938)</b>
<b>Riza (Avdyl) Morina (born 1968)</b>	<b>Muharrem (Rexhë) Bobi (born 1938)</b>
<b>Osman (Haradin) Huskaj (born 1965)</b>	<b>Smajl (Isuf) Bushati (born 1937)</b>
<b>Smajl (Musa) Jahmurtaj (born 1965)</b>	<b>Rrustem (Sadri) Ukaj (born 1937)</b>
<b>Ruzhdi (Qerim) Ukshinaj (born 1965)</b>	<b>Bajram (Rexhe) Bobi (born 1936)</b>
<b>Ramë (Ali) Avdullahaj (born 1964)</b>	<b>Jashar (Misin) Hamzaj (born 1935)</b>
<b>Nazmi (Beqir) Rrustemaj (born 1962)</b>	<b>Selim (Sadik) Hamzaj (born 1935)</b>
<b>Bajram (Salih) Bushati (born 1962)</b>	<b>Ramë (Sadik) Huskaj (born 1935)</b>
<b>Haxhi (Beqir) Huskaj (born 1961)</b>	<b>Bekë (Rexhe) Bobi (born 1934)</b>
<b>Selaim (Dervish) Sylaj (born 1960)</b>	<b>Shaban (Isuf) Alimehaj (born 1933)</b>
<b>Muzli (Hazir) Haradinaj (born 1959)</b>	<b>Adem (Sadik) Haradinaj (born 1932)</b>
<b>Shaban (Lahe) Alimehaj (born 1958)</b>	<b>Adem (Isuf) Bushati (born 1932)</b>
<b>Haradin (Jake) Huskaj (born 1958)</b>	<b>Bajram (Sadik) Alimehaj (born 1931)</b>
<b>Ramiz (Brahim) Hamzaj (born 1958)</b>	<b>Musa (Sadik) Jahmurtaj (born 1930)</b>
<b>Naim (Hime) Huskaj (born 1957)</b>	<b>Metush (Deli) Huskaj (born 1927)</b>
<b>Sali (Beqir) Rrustemaj (born 1957)</b>	<b>Selim (Zenun) Aličkaj (born 1920)</b>
<b>Hazir (Male) Alimehaj (born 1957)</b>	<b>Kadri (Sadik) Jahmurtaj (born 1912)</b>
<b>Ilir (Sokol) Lokaj (born 1956)</b>	<b>Smajl (Azem) Huskaj (born 1915)</b>

103. On that day, in their houses in Ljubenić/Lubeniq the following persons were also killed: **Adem (Isuf) Bushati (born 1932)**,<sup>110</sup> **Bajram (Sadik) Alimehaj (born 1931)** and **Fadil (Shabana) Alimehaj (born 1953)**.<sup>111</sup>

104. On that day, Serbian forces burned down at least 11 family houses in Ljubenić/Lubeniq.<sup>112</sup>

105. Zoran Rašković, a former member of the *Šakali* (Jackals) unit, testified about the execution of civilians in Ljubenić/Lubeniq, in the case of *Čuška*.<sup>113</sup>

106. Human Rights Watch also documented the mass execution in Ljubenić/Lubeniq.<sup>114</sup>

110 Statement of witness I.B. October 2007, HLC Database.

111 Statement of witness M.A. October 2007, HLC Database.

112 See above, footnote 6, the Indictment of the OWCP.

113 Zoran Rašković, January 26<sup>th</sup>, 2012, *Čuška* case, p. 39.

114 Human Rights Watch, "Under Orders: War Crimes in Kosovo", 2001, p. 333-335.



## 5.2 Documents and Testimonies of YA Soldiers, Pointing to the Responsibility of Dragan Živanović for the Crime Committed in Ljubenić/Lubeniq

107. The *Šakali* (Jackals) unit was part of the 177<sup>th</sup> MTD Peć that was subordinate to the 125<sup>th</sup> MtBr.<sup>115</sup> According to the rules of international law, Dragan Živanović, as the Commander of the 125<sup>th</sup> MtBr, was obliged to undertake all necessary measures to prevent crime happening in Ljubenić/Lubeniq. That is, once he found out about any crime committed, he was obliged to report the perpetrators of the crime to the prosecution authorities.
108. In his testimony in the *Čuška* case, the defendant Abdulah Sokić said that the *Šakali* (Jackals) unit was called the “intervention platoon of the 177<sup>th</sup> MTD Peć,” which was their official name and not the name *Šakali* (Jackals).<sup>116</sup>
109. While testifying in the *Čuška* case, Zoran Rašković, a member of the *Šakali* unit, pointed to the relationship between the *Šakali* unit and the 177<sup>th</sup> MTD Peć:
- “... if people received their salaries from the 177<sup>th</sup> and the military and in the triangle it was written 177<sup>th</sup>, then we must have been registered somewhere as part of the 177<sup>th</sup>, but I do not know how it was all regulated officially in the paperwork, I know what the situation was in the field.”<sup>117</sup>
110. According to a YA document, the 177<sup>th</sup> MTD Peć was formally placed under the command of the 125<sup>th</sup> MtBr on April 25<sup>th</sup>, 1999, which was 24 days after the crime in Ljubenić/Lubeniq was committed.<sup>118</sup>
111. However, documents from the 125<sup>th</sup> MtBr, the testimonies of several witnesses before the Trial Chamber of the Belgrade War Crimes Department in the case against members of the 177<sup>th</sup> MTD for crimes committed in *Čuška*, Zahać, Pavljane and Ljubenić [the *Čuška* case] and the testimony of Dragan Živanović before the ICTY in the *Haradinaj et al.* case lead one to the conclusion that the 177<sup>th</sup> MTD was under the command of the 125<sup>th</sup> MtBr at the time when the crime in Ljubenić/Lubeniq was committed.
112. In his testimony before the ICTY, the former Commander of the 125<sup>th</sup> MtBr Dragan Živanović stated that the 177<sup>th</sup> MTD came under his command in “early April”.<sup>119</sup>
113. Some other military documents and testimonies of YA officers and soldiers provide a basis for the conclusion that the 177<sup>th</sup> MTD Peć was placed under the command of the 125<sup>th</sup> MtBr before April 25<sup>th</sup> 1999, as part of the Wartime Plan,<sup>120</sup> that is, before the mass execution of Kosovo Albanian civilians in Ljubenić/Lubeniq.<sup>121</sup>
114. Duško Antić, who was the Commander of the Peć Military Department in 1999, during his testimony in the *Čuška* case stated the following:

115 Transcript from the hearing held on May 23<sup>rd</sup>, 2011, *Čuška* case, p. 13-14.

116 Abdulah Sokić, December 24<sup>th</sup>, 2010, *Čuška* case, p. 22.

117 Zoran Rašković, January 26<sup>th</sup> 2012, *Čuška* case, p. 33. See also Ibid, p. 35.

118 Exhibit 6D 1023, Plan for Engagement of Joint Squads from April 25<sup>th</sup> 1999, *Šainović et al.*

119 Dragan Živanović, January 17<sup>th</sup>, 2008., *Šainović et al.* p. 20497.

120 See above, footnote 29.

121 Duško Antić, February 23<sup>rd</sup> 2011, *Čuška* case, str. 65.



Witness Duško Antić: "... according to the mobilisation and wartime plans the Military Department did not have an area of responsibility as of **March 24<sup>th</sup>**, since a Military Department is not a combat unit, but rather combat brigades had the area of responsibility..."

Presiding Judge: "Good, let's now talk about what happened in practice?"

Witness Duško Antić: "... The Military Department Peć was placed under the command of the 125<sup>th</sup> Brigade..."

...

Presiding Judge: "And Toplica [Miladinović, Commander 177<sup>th</sup> VTO Peć] was placed under the command of whom?"

Witness Duško Antić: "Under the Command of the 125<sup>th</sup> Brigade as it was prescribed in the wartime plan."

Presiding Judge: "And who was the Commander of the 125<sup>th</sup>?"

Witness Duško Antić: "General Živanović was the Commander."

...

Presiding Judge: "And who exactly had the command of the military in Peć, of the 177<sup>th</sup> MTD, was it you or Toplica Miladinović?"

Witness Duško Antić: "Toplica Miladinović was the Commander of the Military Territorial Detachment and it was part of the 125<sup>th</sup> Brigade."<sup>122</sup>

- 26** 115. While testifying as a defendant in the *Ćuška* case, Toplica Miladinović, the Commander of the 177<sup>th</sup> MTD Peć stated that he received orders from the 125<sup>th</sup> MtBr.

Presiding Judge: "And what about the thing you said to the Police, 'I received assignments at that time from the Chief of Staff or the HQ Commander MTD Peć or from the Chief of Staff of the 125<sup>th</sup> MtBr,' you did not mention to us today that you received orders from the Chief of Staff of the 125<sup>th</sup> MtBr, the Lieutenant Colonel, his name was Nikolić I think?"

The defendant Toplica Miladinović: "I do not know that name, I do not know if that is correct, but that was the fact we were literally subordinate, meaning the Military Department and the units that were there, they fought the war."

Presiding Judge: "No, just tell us if you received orders from Lieutenant Colonel Nikolić, the Chief of Staff of the 125<sup>th</sup> Motorized Brigade?"

The defendant Toplica Miladinović: "Yes."<sup>123</sup>

116. Answering a question put by the legal representative of the injured parties in the *Ćuška* case concerning the relationship between the 177<sup>th</sup> MTD Peć and the 125<sup>th</sup> MtBr, the defendant Toplica Miladinović said:

"Yesterday I tried to... I think it was yesterday that I said that we were subordinate in parallel to the 125<sup>th</sup> Brigade according to this military, that is territorial criterion, meaning that, you know, the Brigade was the oldest. This means that I was subordinate to them only in some combat elements."<sup>124</sup>

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<sup>122</sup> Ibid.

<sup>123</sup> Toplica Miladinović, December 20<sup>th</sup> 2010, *Ćuška* case, p. 79.

<sup>124</sup> Toplica Miladinović, December 21<sup>st</sup> 2010, *Ćuška* case, p. 9.



117. Witness Zoran Rašković, former member of the *Šakali* (Jackals) unit who testified in the *Ćuška* case said that the YA and the MUP were, at that time, informed about the crime in Ljubenić/Lubeniq.

Presiding Judge: "Can you give examples of some executions of civilians?"

Witness Zoran Rašković: "Well, madam, to me the most horrifying memory was of the pile of people in Ljubenić, you know, people in slippers, old shoes, without weapons."

Presiding Judge: "When was Ljubenić?"

Witness Zoran Rašković: "In early April, it was the first massacre I had seen in my life, and it was just the way I described it just now."

Presiding Judge: "Well, are you trying to tell me that people knew about these events?"

Witness Zoran Rašković: "Well of course, the military knew, the police knew, I do not know if the general population knew about it but people in Peć talked about it, it was well known that wherever Mrtvi [late Minić Nebojša, *Šakali* Commander] trod, he would ravage the place; so, wherever he went that place was gone; in most cases Mrtvi would kill with ease, it was very easy for him to kill."

Presiding Judge: "You mean in the sense that the Army Command was aware of it?"

Witness Zoran Rašković: "I was not in the Army Command, but the Command not knowing that would have been..."

Presiding Judge: "I mean it was known to the extent that...?"

Witness Zoran Rašković: "Well of course, I mean it would have been absurd and illogical that the Command did not know about it, those were not logs, those were piles of people."<sup>125</sup>

## 6) Kraljane/Kralan

27

*On April 4<sup>th</sup> 1999, Serbian forces killed 78 Kosovo Albanian civilians.*

118. The village of Kraljane/Kralan is located in the Municipality of Đakovica/Gjakovë, about 20 km north of the city of Đakovica/Gjakovë and about 25 km east of Dečani/Deçane.

### 6.1 Description of the Crime based on Statements of Survivors

119. In late March 1999, several thousand Kosovo Albanian civilians from the Municipalities of Klina/Klinë, Mališevo/Malishevë and Đakovica/Gjakovë, took shelter in Kraljane/Kralan since it was controlled by the KLA.<sup>126</sup> The refugees settled in the elementary school in the western part of the village, on the route to the village of Jablanica/Jabllanicë.<sup>127</sup>
120. On April 2<sup>nd</sup> 1999, at the entrance to Kraljane/Kralan from the direction of Rakovine/Rakovinë, there was fighting between the Serbian forces and the KLA. At around 08:00, Serbian forces entered the village, first with infantry and then with tanks and artillery. Then, the KLA forces withdrew into the forest.<sup>128</sup>

<sup>125</sup> Zoran Rašković, January 26<sup>th</sup> 2012, *Ćuška* case, p. 39.

<sup>126</sup> HLC Database: Statement of witness M.F. August 2007; Statement of witness F.G. March 2000; Statement of witness R.K. August 2007; Statement of witness Sh. E. August 2007.

<sup>127</sup> Statement of witness Sh.E. August 2007. HLC Database.

<sup>128</sup> HLC Database: Statement of witness N.G. February 2000; Statement of witness M.K. January 2008.



121. When the refugees saw a large number of Serbian forces in the center of the village with tanks, they created a convoy. They put a white sheet at the front as a sign of surrender and started moving in the direction of Jablanica/Jabllanicë. When the column arrived at an old mill at the exit from the village, members of the Serbian forces stopped them.
122. They started separating the men and sending them to the meadow next to the road and ordered the women and children to continue their way towards Đakovica/Gjakovë.<sup>129</sup> They cursed at them and insulted them, saying: "Go to Clinton!" "Complain to Rugova!" "There is no room for you here."<sup>130</sup>
123. About 500 men were kept in the meadow on the left side of the road by the mill.<sup>131</sup> Members of the Serbian forces then ordered the detained men to go down to the creek by the mill, to take off their upper body garments and line up along the creek with their hands raised behind their heads. While the men stood with their hands raised behind their heads, members of the Serbian forces cursed at them and hit them with rifle butts.<sup>132</sup> They also intimidated them by pretending to try to run them over with a tank.<sup>133</sup> During this time, members of the Serbian forces fired at two men, Hasan Dushk and Avdija [last name unknown] from the village of Labučevo/Llapçevë and wounded them.<sup>134</sup>
124. The men spent the entire night by the creek without food and water, surrounded by Serbian forces.<sup>135</sup>
125. On the following day, April 3<sup>rd</sup> 1999, two members of the Serbian forces informed the detainees that they would set them free if they managed to collect several thousands German Marks. The detained men selected the 45-year old Enver Hoti to be their representative. Hoti collected the money and handed it over to the Serbian forces. Later that day, a military truck arrived at the field. Members of the Serbian forces put a group of elderly and the two wounded men on the truck and took them to Đakovica/Gjakovë, where they were ordered to continue on foot to Albania. The rest of the men were told that other trucks would arrive later and take them to the border with Albania.<sup>136</sup>
- 28 126. On the following day, April 4<sup>th</sup>, 1999, a Serbian officer came in a military SUV to the meadow where the Kosovo Albanian men were detained. He introduced himself as "Major Grujić." He told them that he could not secure the trucks that would transport them to the border with Albania, but that they would instead have to walk there.<sup>137</sup> As the men created a column, 10-15 members of the Serbian forces started to separate the younger men to one side. They took the older men to the main road towards Đakovica/Gjakovë. They told them that the younger men who stayed in the meadow would be released after they filled in the trenches dug out by the KLA in the nearby forest.<sup>138</sup>
127. The older men who were moving in the direction of Đakovica/Gjakovë, escorted by Serbian forces

129 HLC Database: Statement of witness Xh. G. August 2007; Statement of witness I.G. October 2007.

130 Statement of witness F.G. March 2000. HLC Database.

131 HLC Database: Statement of witness A.R. August 2007; Statement of witness R.K. August 2007; Statement of witness Xh. G. August 2007.

132 HLC Database: Statement of witness M.K. January 2008; Statement of witness S.M. August 2007; Statement of witness A.R. August 2007; Statement of witness K.K. December 2007.

133 HLC Database: Statement of witness K.K. December 2007; Statement of witness Xh. G. August 2007; Statement of witness R.K. August 2007.

134 Statement of witness S.M. August 2007. HLC Database.

135 Statement of witness F.G. March 2000, HLC Database.

136 HLC Database: Statement of witness O.D. November 2000; Statement of witness M.K. January 2008; Statement of witness R.K. August 2007.

137 HLC Database: Statement of witness K.K. December 2007; Statement of witness H.G. September 2007.

138 Statement of witness O.D. November 2000. HLC Database.



and one tank, heard shooting from the direction of the meadow where they had left the younger men. The shooting lasted for several minutes.<sup>139</sup>

128. Out of the 78 Kosovo Albanian men, who were detained by Serbian forces on April 4<sup>th</sup> 1999 in the meadow located at the exit from Kraljane/Kralan, the bodies of 17 of them were found at a mass gravesite in Serbia, nearby the Perućac lake<sup>140</sup>, while eight bodies were found at the cemetery in the village of Brekovac/Brekoc in the Đakovica/Gjakovë Municipality.<sup>141</sup>
129. The remaining 53 men last seen alive in Kraljane/Kralan on April 4<sup>th</sup>, 1999, are still registered as missing on the ICRC list.<sup>142</sup>

**Shkelzen (Rifat) Hajdaraj (born 1984)**  
(BLG-801798-01)

**Tahir (Beqir) Krasniqi (born 1969)**  
(BLG-801269-01)

**Kushtrim (Hilmi) Raci (born 1984)**  
(BLG-802885-01)

**Sadri (Azem) Ahmeti (born 1966)**  
(BLG-803228-01)

**Genc (Fadil) Elezaj (born 1983)**  
(BLG-802612-03)

**Qamil (Shaban) Elezaj (born 1965)**  
(BLG-802612-02)

**Sabedin (Kadri) Kryeziu (born 1982)**  
(BLG-801881-01)

**Jakup (Bajram) Dushi (born 1964)**  
(BLG-802776-01)

**Mentor (Maliq) Kryeziu (born 1981)**  
(BLG-801451-01)

**Rexhep (Ibrahim) Mazreku (born 1963)**  
(BLG-801800-01)

**Sahit (Ahmet) Gashi (born 1981)**  
(BLG-801309-01)

**Brahim (Kadri) Fejza (born 1962)**  
(BLG-800890-02)

**Kamer (Adem) Seferaj (born 1981)**  
(LG-802888-01)

**Fadil (Shaban) Elezaj (born 1962)**  
(BLG-802612-01)

**Naim (Dinë) Halilaj (born 1981)**  
(BLG-802895-02)

**Haxhi (Muharrem) Gllasoviku (born 1961)**  
(BLG-802778-01)

**Ylli (Rame) Manaj (born 1980)**  
(BLG-801939-01)

**Bajram (Riza) Bytyqi (born 1961)**  
(BLG-802586-01)

29

139 Statement of witness K. K. December 2007. HLC Database.

140 The bodies of the following civilians were found at the Perućac lake: **Enver (Hysen) Hoti (born 1954)**, **Sadri (Sefer) Deskaj (born 1949)**, **Xhevdet (Smajl) Dushi (born 1968)**, **Shefqet (Smajl) Dushi (born 1973)**, **Basri (Gani) Morina (born 1979)**, **Hamit (Pajazit) Gashi (born 1966)**, **Pashtrik (Vesel) Krasniqi (born 1978)**, **Shpend (Jahir) Kotorri (born 1974)**, **Bekim (Milazim) Racaj (born 1968)**, **Vesel (Mehmet) Seferaj (born 1965)**, **Smajl (Sefer) Manaj (born 1973)**, **Burim (Osman) Rexhepaj (born 1980)**, **Halit (Haki) Gashi (born 1966)**, **Selim (Hazir) Berisha (born 1959)**, **Haxhi (Muharrem) Gllasoviku (born 1961)**, **Besim (Hashim) Hasani (born 1981)** and **Blerim (Jahir) Kotorri (born 1977)**. HLC Database.

141 **Ilir (Avdyll) Kelmendi (born 1968)**; **Avni (Gani) Morina (born 1980)**; **Hidajet (Vesel) Kryeziu (born 1976)**; **Sejdi (Jakup) Thaçi (born 1978)**; **Ramiz (Sadik) Merlaku (born 1980)**; **Valon (Hazir) Borincaj (born 1984)**, **Valdet (Isuf) Buqani (born 1979)** and **Binak (Xhemë) Gllasoviku (born 1981)**. HLC Database.

142 Exhibit P2798, List of Missing Persons of Kosovo UN Mission's Office of Missing Persons and Forensics, *Šainović et al.*



**Vehbi (Pajazit) Halilaj (born 1979)**  
(BLG-801380-01)

**Valdet (Isuf) Buqani (born 1979)**  
(BLG-802773-01)

**Abedin (Ajet) Dushi (born 1979)**  
(BLG-802775-01)

**Feriz (Osman) Rexhepi (born 1977)**  
(BLG-802887-03)

**Hysni (Rexhep) Krasniqi (born 1977)**  
(BLG-802204-01)

**Masar (Ymer) Dushi (born 1976)**  
(BLG-801929-01)

**Bali (Pajazit) Gashi (born 1976)**  
(BLG-800798-01)

**Mentor (Xhemail) Myrtaj (born 1976)**  
(BLG-802363-02)

**Nevzat (Hysen) Raci (born 1976)**  
(BLG-802883-01)

**Bashkim (Osman) Rexhepi (born 1974)**  
(BLG-802887-01)

**Bekim (Muharrem) Gashi (born 1974)**  
(BLG-802782-01)

**Bekim (Hashim) Hasani (born 1973)**  
(BLG-802380-01)

**Driton (Xhemail) Myrtaj (born 1973)**  
(BLG-802363-01)

**Sefer (Azem) Krasniqi (born 1972)**  
(BLG-801144-01)

**Hazir (Adem) Gashi (born 1972)**  
(BLG-802779-01)

**Sadik (Daut) Hereqi (born 1971)**  
(BLG-802785-01)

**Fadil (Murat) Mustafaj (born 1970)**  
(BLG-801809-01)

**Nazmi (Osman) Dushi (born 1969)**  
(BLG- 801928-01)

**Azem (Avdullah) Deskaj (born 1960)**  
(BLG-802386-01)

**Hajriz (Islam) Borincaj (born 1960)**  
(BLG-802167-01)

**Qaush (Musli) Morina (born 1960)**  
(BLG-802898-01)

**Sheremet (Brahim) Ismajli (born 1958)**  
(BLG-801909-01)

**Emin (Ramadan) Krasniqi (born 1958)**  
(BLG-801191-01)

**Hashim (Jahë) Hasanaj (born 1957)**  
(BLG-801239-01)

**Isa (Halil) Gashi (born 1956)**  
(BLG- 801157-01)

**Ismet (Hazir) Gashi (born 1956)**  
(BLG-802780-01)

**Osman (Kadri) Fejza (born 1956)**  
(BLG-800890-01)

**Rifat (Bali) Hajdaraj (born 1953)**  
(BLG-802012-01)

**Adem (Hazir) Gashi (born 1952)**  
(BLG-802378-01)

**Faik (Zenel) Morina (born 1951)**  
(BLG-801220-01)

**Sinan (Shaban) Raci (born 1948)**  
(BLG-802886-01)

**Dinë (Ukë) Halilaj (born 1948)**  
(BLG-802895-01)

**Bajram (Isë) Thaçi (born 1947)**  
(BLG-801407-01)

**Curr (Shaban) Raci (born 1945)**  
(BLG-802884-01)

**Hajzer (Rexhep) Veseli (born 1944)**  
(BLG-802788-01)



## 6.2 Documents and Testimonies of YA Soldiers, Pointing to the Responsibility of the 125<sup>th</sup> MtBr for Crimes Committed in Kraljane/Kralan

130. YA documents clearly point to the presence of the 125<sup>th</sup> MtBr in Kraljane/Kralan at the time when the crime was committed on April 4<sup>th</sup>, 1999. Moreover, the data from these documents indicate that members of the 125<sup>th</sup> MtBr were at the crime scene and that the executed civilians were under their control immediately before the killing.

### Presence in Kraljane/Kralan at the time of the crime (April 3<sup>rd</sup> and 4<sup>th</sup>, 1999)

131. According to the orders of the Priština Corps and the Joint Command, the 5<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr was engaged, together with MUP forces, in operations against the KLA in Kraljane/Kralan.
132. The Priština Corps issued an order on “Engaging forces of the Priština Corps to secure and control the territory and block the area of Jablanica” on April 1<sup>st</sup>, 1999 in which the 5<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr received the following task:

“take the general area of the **Kraljane** village ... and be on stand-by for active combat operation along the **Kraljane** village-Crna Gora- Dašinovac village axis.”<sup>143</sup>

133. On the following day, April 2<sup>nd</sup>, 1999, the Joint Command for Kosovo and Metohija issued the “**Order to smash and destroy the SHTF** in the Jablanica sector”, where the task of the 5<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr was to:

“provide support for MUP troops in smashing and destroying the SHTF along the axis: **Kraljane** village- Jablanica village...”<sup>144</sup> **31**

134. A Combat Report of the 125<sup>th</sup> MtBr and the War Diary of the 5<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr confirm the presence of the 125<sup>th</sup> MtBr in Kraljane/Kralan at the time of the crime. In the “**Regular Combat Report**” of the 125<sup>th</sup> MtBr from April 3<sup>rd</sup> and 4<sup>th</sup> 1999, it is stated that the 5<sup>th</sup> Combat Group is being “engaged according to the decision of the Commander of the Priština Corps [YA Priština Corps], in the area of: **Kraljane** village, Šaban Mahala village, Calat Mahala village.”<sup>145</sup>
135. In the Wartime Diary of the 5<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr, it is stated that during the following three days, until April 5<sup>th</sup>, 1999, the 5<sup>th</sup> Combat Group together with the Special Police Unit (SPU) is executing active operations in the region of Jablanica [the village next to Kraljane/Kralan].<sup>146</sup>
136. The presence of the 125<sup>th</sup> MtBr and its cooperation with the MUP in the operation in Kraljane/Kralan was also confirmed by the Commander of the 125<sup>th</sup> MtBr, Dragan Živanović. In his testimony before the ICTY in the *Šainović et al.* case, Dragan Živanović stated that his troops provided support to the

143 Exhibit P2029, Priština Corps Command order re: engagement of PrC (Priština Corps) troops on securing, controlling and blocking the territory of the Jablanica region, *Šainović et al.* p. 1.

144 Exhibit P2003, Order to smash and destroy SHTF in the Jablanica sector from April 2<sup>nd</sup> 1999, *Šainović et al.* p. 3.

145 Exhibit 5D 464, 125<sup>th</sup> MtBr Command, Regular Combat Report from April 3<sup>rd</sup> 1999, *Šainović et al.* p. 1.  
Exhibit 5D 465, 125<sup>th</sup> MtBr Command, Regular Combat Report from April 4<sup>th</sup> 1999, *Šainović et al.* p. 1.

146 Exhibit P 2801, War Diary Combat Group 5 of the 125<sup>th</sup> MtBr, *Šainović et al.*



MUP troops in the Jablanica Operation, in early April 1999.<sup>147</sup>

Tanks seen by witnesses at the crime scene belonged to the 125<sup>th</sup> MtBr

137. On April 3<sup>rd</sup> 1999, the Priština Corps Command issued an order to the Command of the 252<sup>nd</sup> ArBr (Armoured Brigade): “By 0700 hours on 4 April 1999, the Commander of the 252<sup>nd</sup> ArBr will place one tank platoon (three tanks) and 1 mechanized platoon (3 infantry combat vehicles with crews and loading area) under the command of the **Commander of CG[combat group] 5/ 125. MtBr in the sector of Kraljane village.**”<sup>148</sup>

Civilians were under the control of the 125<sup>th</sup> MtBr

138. **In the War Diary of the 5<sup>th</sup> Combat Group of the 125<sup>th</sup> MtBr**, for April 2<sup>nd</sup>, 1999 it is recorded that the 5<sup>th</sup> Combat Group, along with the 24<sup>th</sup> Special Police Unit (SPU), took control of the village of **Kraljane/Kralan** and during that operation “**250 people were taken prisoner and into custody**, and around 3,000 refugees were sent in the direction of Kramavik (Rakovina).”<sup>149</sup>

Authorization of Attack against “Disloyal” Kosovo Albanian Civilians and Arming of Serb Civilians

139. The order of the Joint Command for Kosovo and Metohija dated April 2<sup>nd</sup> 1999 contained the following order: “**Demonstrate to the loyal civilian population the need for a fair attitude...**”<sup>150</sup>

140. This order represents a violation of the Geneva Conventions and their Additional Protocols, which prescribe general protection of civilian population and prohibit the adverse distinction between civilians on any grounds.<sup>151</sup>

32 141. This type of an instruction appeared in a number of orders related to the operations of the 125<sup>th</sup> MtBr.<sup>152</sup>

142. The order of the Joint Command for Kosovo and Metohija from April 2<sup>nd</sup> 1999 contains another disputable instruction: “**Engage armed non-Shiptar population** in securing military features and communications...”<sup>153</sup>

143. This order engaging civilians in the armed conflict, thus depriving them of the status of protected persons represents a violation of the Geneva Conventions and their Additional Protocols, which prescribe the general protection of the civilian population.<sup>154</sup>

144. During his testimony in the *Šainović et al.* case, the Prosecutor asked Dragan Živanović if the 125<sup>th</sup> MtBr participated in the arming and engagement of the local Serb population in the YA and MUP operations. Živanović denied this claiming that this part of the Order referred to the civilian defence and civilian protection authorities. However, the Prosecutor reminded him that the protection of

147 Dragan Živanović, January 17<sup>th</sup> 2008, *Šainović et al.* T-20471-2047.

148 Exhibit 5D 360, Order of the Priština Corps Command, *Šainović et al.*

149 Exhibit P2801, War Diary BG5/125. MtBr, *Šainović et al.* p.5.

150 Exhibit P2003, Order to Smash and Destroy SHTF in the Jablanica sector, dated April 2<sup>nd</sup> 1999, *Šainović et al.* page 4

151 See above, footnote 102.

152 See Crime in Srbica/Skëderaj, Chapter 1 of the Dossier.

153 Exhibit P2003, Order to Smash and Destroy SHTF in the Jablanica sector, dated April 2<sup>nd</sup> 1999, *Šainović et al.* page 4.

154 See above, footnote 9.



civilians included the Kosovo Albanian population as well, hence this Order could not have referred to the civilian defence and civilian protection authorities.<sup>155</sup>

145. This type of instruction appeared in a number of orders related to the operations of the 125<sup>th</sup> MtBr.<sup>156</sup>

## 7) Starodvorane/Staradran

*On May 8th, 1999, Serbian forces killed 15 Kosovo Albanian civilians.*

146. The village of Starodvorane/Staradran is located in the Municipality of Istok/Istog, north-east of the town of Peć/Pejë.

### 7.1 Description of Crime Based on the Statements of Survivors

147. Several thousand Kosovo Albanian civilians, who escaped from the surrounding villages in the Municipalities of Peć/Pejë and Istok/Istog, namely Kašice/Kashicë, Trbuhovac/Trubuhoc, Zablaće/Zabllaq, Trstenik/Trestenik, Ljutoglava/Lutogllavë and Ruhot/Ruhot were located in the Ali Grabovci meadow in the village of Starodvorane/Staradran on May 7<sup>th</sup> 1999.<sup>157</sup>

148. Members of the Serbian forces arrived at the meadow around 10:00. Some of them wore blue camouflage uniforms, while others wore dark green uniforms. Most of them wore hats and their faces were painted black and green. They ordered them to line up and head towards the centre of the village.<sup>158</sup>

149. When the convoy arrived at the main intersection in the village, they were ordered to move into the village school where they spent the night.<sup>159</sup> 33

150. Around 9:00 the following morning, members of the Serbian forces ordered the people in the school to head in the direction of Dobruša/Dobrushë village in the Municipality of Istok/Istog and then further towards Albania.<sup>160</sup> As the civilians were climbing into their tractors and creating a convoy, members of the Serbian forces near the school gates took **Mustafa (Murat) Dreshaj (born 1954)** and his son **Berat (Mustafa) Dreshaj (born 1980)** out of the convoy, in front of their family.<sup>161</sup> This was the last time that Mustafa and Berat were seen alive.

151. When the convoy reached the Berisha Mahala it ran into members of the Serbian forces who started separating the younger men from their families.<sup>162</sup> Witness D.E. told HLC researchers: "When we arrived at the Berisha Mahala, by the house of Deme Zeqiri, I was stopped and approached by two soldiers, who, pointing with their fingers, ordered my sons **Muhajdin (Daut) Elshani (born 1977)**, **Shemsedin (Daut) Elshani (born 1979)** and **Nexhmedin (Daut) Elshani (born 1981)** to get off

155 Dragan Živanović, January 18<sup>th</sup> 2008, Šainović *et al.* T-20559-20564.

156 See, for instance Exhibit 6D 699, Order to support MUP forces in breaking STF in the general Čičavica sector, Šainović *et al.* str. 3.

157 Statement of witness S.E. July 1999, HLC Database.

158 HLC Database: Statement of witness S.E. July 1999; statement of witness E.Z. November 2001.

159 HLC Database: Statement of witness E.Z. November 2001, Statement of witness S.E. July 1999.

160 HLC Database: Statement of witness E.Z. November 2001, Statement of witness D.E. July 1999.

161 Statement of witness X.D., May 2007, HLC Database.

162 Statemet of witness D.E., July 1999, HLC Database.



the tractor. They issued the same order to my brother **Avdyl (Imer) Elshani (born 1962)**, and my nephew Naim, whose arm they twisted in order to get him off the tractor.”<sup>163</sup>

152. There, the following men were separated from the group:<sup>164</sup>

**Jeton (Tahir) Ahmetaj (born 1974)**

**Nimon (Ramë) Elshani (born 1955)**

**Remzi (Smajl) Shala (born 1969)**

**Hasan (Ramë) Elshani (born 1951)**

**Gani (Haxhi) Isufi (born 1964)**

**Isuf (Nezir) Lubeniqija (born 1948)**

**Ismet (Mustafë) Ahmetaj (born 1964)**

**Dinë (Bajram) Grabovcija (born 1945)**

**Muharrem (Ramë) Elshani (born 1958)**

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153. Members of the Serbian forces took the men who had been separated out, some 50 of them, to the estate of Zeqir Berisha. Survivor N.E. told the HLC researchers what happened upon their arrival at the estate: “In the middle of the yard, there was a small house where a small... mill was located ... they took me inside the small house where the mill was located. There in one corner was a scale where I saw a large number of personal documents. They searched my pockets, where they found my personal documents and 600 German Marks. They threw the documents on the scale, while one of them put the money into his pocket. They started beating me. This lasted for about two minutes and then they took me to the yard again ... Then they took me to the yard of Zymer Berisha. When they took me into the yard I saw about 50 dead bodies. Most of them were shot dead with a bullet to the head. I could notice blood on their heads. They told me to put my hands on the fence wall, which I did. Then I felt the rifle barrel on the rear part of my right cheek, where the jawbone begins. He fired immediately, with only one round. I know that I immediately fell down.”<sup>165</sup> Members of Serbian forces shot N.E. in the jaw. When he regained his consciousness, he managed to run to the nearby forest.<sup>166</sup>

154. After the end of the Kosovo conflict, on September 1<sup>st</sup> 1999, families of the victims found a mass grave in the hamlet of *Mavraj*, close to the execution site, where the bodies of the 15 of the men separated in Starodvoran/Staradran were found.<sup>167</sup>

155. The crime in Starodvoran/Staradran was also documented by the OSCE,<sup>168</sup> Human Rights Watch<sup>169</sup> and the UNHCR.<sup>170</sup>

<sup>163</sup> Ibid.

<sup>164</sup> Isuf Lubeniqi is still considered missing according to the ICRC List. His name was registered under the number BLG-803281-01. See: International Committee of the Red Cross, “Book of Persons Unaccounted For in Relation to the Events in Kosovo From January 1998”, 2000; HLC Database: Statement of witness Z.E.; Statement of witness G.L. January 2008; Statement of witness N.E. November 2001; Statement of witness D.Sh. May 2007.

<sup>165</sup> Statement of witness N.E. November 2001. HLC Database.

<sup>166</sup> HLC Database: Amended witness state N.E. December 2012; Statement of witness N.E. November 2001.

<sup>167</sup> Statement of witness E.Z. November 2001. HLC Database.

<sup>168</sup> OSCE, Kosovo Verification Mission “As Seen As Told” 1999, Part 3, Annexes, p. 248, 287.

<sup>169</sup> Human Rights Watch, “Under Orders: War Crimes in Kosovo” 2001, p. 152.

<sup>170</sup> UNHCR “Kosovo Crisis Update” <http://www.unhcr.org/3ae6b80c8.html>.



## 7.2 Documents and Testimonies of YA Soldiers, Pointing to the Responsibility of the 125<sup>th</sup> MtBr Soldiers for Crimes Committed in Starodvorane/Staradran

156. YA documents marked “Strictly Confidential” unquestionably indicate the presence of the 125<sup>th</sup> MtBr in Starodvorane/Staradran at the time of the crime committed on May 8<sup>th</sup>, 1999.
157. According to a 7<sup>th</sup> Infantry Brigade order, the armoured battalion of the 125<sup>th</sup> MtBr and MTD Peć, which at the time were subordinated to the 125<sup>th</sup> MtBr, were engaged, together with MUP forces in the operation against the KLA in Starodvorane/Staradran. **The Order to Smash and Destroy SHTF in the villages of Trbuhovac, Dvorjane, Ruhot, Pobrde and the Trstenik sector, given by the Command of the 7<sup>th</sup> Infantry Brigade, was issued on May 5<sup>th</sup>, 1999 as follows:**

“The activities of the SHTF have intensified in the general sector of Trstenik village, Trbuhovac village, Ruhot village and Zablacë village in the past few days. They were digging in and constructing bunkers in the sector of Trstenik village, probably preparing for raids on the Trstenik/Trestenik – Zablacë/Zabllaq axis. The task of the Military Department Peć/Pejë, SPU and **ArBa/125. MtBr** [the Armoured Battalion of the 125. MtBr] is to set up a blockade, shatter and destroy the strongholds of KLA in the area of **s. Starodvorane/Staradran** - Trbuhovac/Trubuhoc - Ruhot/Ruhot - Nabrde/Nabërgjan and Trstenik/Trestenik, thus preventing the break-out of KLA forces through the communication Peć/Pejë – Klina/Klinë” ... “BVG - provide support for the operations conducted by the ArBa/125 [Armoured Battalion of the 125<sup>th</sup> MtBr] and the SPU by opening fire over the area of: Trstenik-Ruhot-**Starodvorane**.”<sup>171</sup>

158. The Supreme Command was also informed of the arrests of a large number of Kosovo Albanian men in Starodvorane/Staradran and surrounding villages. In the “**Combat Report**” of the Supreme Command written on May 11<sup>th</sup>, 1999 the following is stated:

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“In an operation to crush the Shiptar Terrorist Forces in the sector of Dvorane, Ruhot, and Nabrde some of the units of the 7<sup>th</sup> Infantry Brigade and the Military Department Peć captured around **600 Shiptar national minority men, fit for military service** and around **10,000 civilians** from the sector were directed towards Klina and Peć.”<sup>172</sup>

159. In his testimony regarding the presence of the 125<sup>th</sup> MtBr in Starodvorane/Staradran at the time when the crime was committed, the Commander of the 125<sup>th</sup> MtBr, Dragan Živanović, spoke vaguely and confusingly. Answering a question from his defence attorney if he acted upon the order of the Command of the 7<sup>th</sup> Infantry Brigade, Živanović answered:

“I must admit that I did not receive this because it is the order issued by my colleague, the Commander of the 7<sup>th</sup> Brigade. I did not receive it and here only a part of the 125<sup>th</sup> MtBr forces is mentioned. I do not know, maybe a platoon of the Peć Police was involved.”<sup>173</sup>

## 7.3 Relevant Statements from the ICTY Trial Chamber Judgement in Šainović et al.

160. Regarding the Combat Report of the Supreme Command, the ICTY Trial Chamber assessed that:

171 Exhibit 5D 794, The Order to Smash and Destroy SHTF in the area of s. Trbuhovac, s. Dvorjane, Ruhot, Pobrde and Trstenik, *Šainović et al.* p. 1-2.

172 Exhibit 3D 846, Combat Report Op.br 48 from 18:00h on May 8<sup>th</sup> to 18:00h of May 10<sup>th</sup> 1999, *Šainović et al.* p. 5

173 Dragan Živanović, January 17 2008, *Šainović et al.* T-20502-20503.



"Rather than referring to these men as "terrorists" as was done elsewhere in the report in relation to other incidents, it merely stated that they were 600 "Shiptar men" fit for service. It did not state that these 600 men were armed, as was done elsewhere in the report in relation to "Shiptar terrorists".<sup>174</sup> **The Trial Chamber considers this indicative of the approach of the YA and MUP of targeting male Kosovo Albanians, irrespective of whether they were KLA members or not.**"<sup>175</sup>

## 8) Ćuška/Qyshk

*On May 14<sup>th</sup> 1999, Serbian forces killed 39 Kosovo Albanian civilians.*

161. Ćuška/Qyshk is located in the Municipality of Peć/Pejë, 4 km east of the city of the same name, on the Peć/Pejë – Priština/Prishtinë main road. The village had approximately 200 houses and a population of 2,000. Three Serb families lived in the village.<sup>176</sup>

### 8.1 Description of Crimes, Based on Statements of Survivors, members of the YA and the Indictment of the Office of the War Crimes Prosecutor

162. At around 7 o'clock in the morning, on May 14<sup>th</sup>, 1999, YA soldiers, dressed in blue and camouflage uniforms and with their faces covered in black paint, entered the village of Ćuška/Qyshk.<sup>177</sup> Citizens were expelled from their houses and ordered to gather in the centre of the village. About 300 villagers gathered in the centre of the village, in the *Hasan Beqaj hamlet*.

163. YA soldiers ordered the villagers to hand over all of their money, gold and gold coins. As R.K. testified, "Soldiers randomly took the money and valuables that we handed over to them. They tore and burned personal identification documents. The entire time they asked for money and gold coins."<sup>178</sup> After robbing all the valuables, the YA soldiers ordered the women, children and the elderly into houses of the Gashi family, while the men, about 50 of them, were held at a wider section of the road near the cemetery.

164. At around 9:00 o'clock, soldiers split the separated men into three groups. There were 12 men in the first group:<sup>179</sup>

**Ismet (Zeke) Dinaj (born 1967)**

**Skender (Dine) Kelmendi (born 1952)**

**Gani (Beke) Avdylaj (born 1958)**

**Osmon (Haxhi) Lushi (born 1952)**

**Deme (Isuf) Kelmendi (born 1958)**

**Iber (Dine) Kelmendi (born 1947)**

**Jashar (Azem) Gashi (born 1952)**

**Halil (Dervish) Gashi (born 1946)**

174 Exhibit 3D846, Supreme Combat Report, May 11<sup>th</sup> 1999. Šainović *et al.* p.5 See also Exhibit 4D315, Combat Report of 3<sup>rd</sup> Army, May 10<sup>th</sup> 1999. Šainović *et al.* p.1.

175 ICTY Trial Chamber Judgement in Šainović *et al.* Volume 3 of 4, para. 570.

176 Human Rights Watch, "Under Orders: War Crimes in Kosovo" 2001, p.385.

177 Statement of witness I.G. September 2007, HLC Database.

178 Statement of witness R.K. September 2007, HLC Database.

179 HLC Database: Statement of witness I.G. September 2007, Statement of witness F.L. September 2007



**Uke (Lush) Lushi (born 1942)**

**Emin (Beke) Gashi (born 1939)**

**Rame (Dervish) Gashi (born 1942)**

**Isa Gashi (survived)**

165. They took this group into the house of Azem Gashi and into one of the rooms. Isa Gashi, who was in this group, told HLC researches what happened then:

“They put me and my group in the house of Azem Gashi, lined us up against the wall in one of the rooms and searched us again in order to find money which they asked us for in exchange for our freedom. However, they did not find anything as they had already taken it all. One of them said that he must ask the Commander what to do with us and when he asked over the radio, the answer he received was “kill them all at once”. One of the soldiers, who was standing in the doorway with an M-48 machine gun fired a burst of gunfire, injuring me in the left leg. I fell down after that. The dead bodies of Ibër Kelmendi and my brother Halim Gashi fell on top of me. Before he shot at us he yelled: “In the name of Serbia!” Then, the other soldiers opened fire all over the room. After that, they set the house on fire and prepared to leave the room. I pulled myself from under the dead bodies and realized that nobody from my group was alive.”<sup>180</sup>

166. Several minutes later, burning foam rubber was thrown through the window into the room where the dead civilians were. The bodies burned quickly.<sup>181</sup>

167. There were 9 men in the second group:

**Erdogan (Skender) Kelmendi (born 1980)**

**Brahim (Sylë) Kelmendi (born 1959)**

**Mentor (Shaban) Kelmendi (born 1973)**

**Sefedin (Haxhi) Lushi (born 1958)**

**37**

**Ahmet (Rrustem) Gashi (born 1964)**

**Ramiz (Lush) Lushi (born 1958)**

**Besim (Dinë) Kelmendi (born 1963)**

**Brahim (Shaban) Gashi (born 1940)**

**Rexhë Kelmendi (survived)**

168. YA soldiers took these men to the house of Dema Gashi. The men entered the hallway of the house, two by two. At that time, one YA soldier threw a lighter on the floor and ordered Rexhi Kelmendi to lift it up from the floor and set the curtains on fire. When Rexhë bent down to pick up the lighter, the YA soldier let off a burst of gunfire at the civilians. Rexhë Kelmendi saved himself by managing to run away into another room and then jumping through the window. When he went back to the house several hours later, it had been burned out and “when [he] entered the hallway [he] saw the burned bodies.”<sup>182</sup>

169. The following men were separated in the third group:

**Arian (Qaush) Lushi (born 1978)**

**Emrush Krasniqi (born 1950)**

**Zeqir (Halil) Alilaj (born 1969)**

**Xhafer (Lush) Lushi (born 1943)**

180 Statement of witness I.G. September 2007, HLC Database.

181 Ibid.

182 Statement of witness, R. K, September 2007, HLC Database.



**Xhafer (Rame) Gashi (born 1958)**

**Avdullah (Lush) Lushi (born 1941)**

**Skender (Lush) Lushi (born 1955)**

**Musa (Shaban) Gashi (born 1936)**

**Isuf (Shaban) Shala (born 1951)**

**Hazir Berisha (survived)**

170. YA soldiers took the third group to the house of Sahit Gashi. They took them inside a room and ordered them to sit down on the floor and then a YA soldier fired at them from a machine gun. After several minutes, YA soldiers put foam rubber on the bodies of executed men and then set them alight. Hazir Berisha, who survived the execution, told HLC researchers: "The gunfire was constant. The man who was shooting was tall and he had a painted face. When he shot me I could see him setting a blanket on fire. Then, he took some foam rubber and placed it over us. Then, he lit the foam rubber."<sup>183</sup>

171. After the YA soldiers entered the hamlet of Çeku, they ordered the families of Hasan and Haxhi Çeku to gather in the yard of Kadri Çeku. When all family members had gathered there, the YA soldiers robbed them, taking money, gold and other valuables from them. Then, a YA soldier asked "Which one of you is the father of Agim Çeku?" Hasan Çeku answered. Soldiers immediately ordered him to gather members of his family in one part of the yard. After that, two YA soldiers took **Hasan (Brahim) Çeku (born 1930)** to his barn, where they killed him by slitting his throat. Then they set the barn on fire. One soldier took **Kadri (Ahmet) Çeku (born 1930)** into his house where he killed him and then set the house on fire.<sup>184</sup>

172. On the same day, the Serbian forces killed eight more men in different parts of *Ćuška*/Qyshk<sup>185</sup>:

**38**

**Skender (Dervish) Gashi (born 1962)**

**Muhamet (Isa) Shala (born 1949)**

**Haki (Nurë) Gashija (born 1961)**

**Qaush (Rrustem) Lushi (born 1948)**

**Rasim (Hysen) Rama (born 1957)**

**Brahim (Dervish) Gashi (born 1942)**

**Selim (Maxhun) Gashija (born 1955)**

**Ibish (Kadri) Gashi (born 1941)**

**Sylë (Azem) Gashi (born 1950)**

173. Zoran Rašković, a soldier of the 177<sup>th</sup> MTD Peć and a witness to the mass executions in *Ćuška*/Qyshk, described the crime during his testimony in the *Ćuška* case:

"It was May 14<sup>th</sup> – *Ćuška*, 8 o'clock in the morning ... Mrtvi [the late. Minić Nebojša] told me to take him to the Command, to Toplica [Miladinović, Commander of 177<sup>th</sup> MTD Peć]. ... I took him there and Mrtvi stayed there for about 40 minutes, 30-40 minutes, in the vehicle. He did not say anything to me. We went back and then he said very briefly "let's move, get ready to move"... and we started moving along the highway towards Priština. After some 3 to 4 kilometers on the right side, there is an exit, an exit going to the village of *Ćuška* ...we arrived

183 Statement of witness H.B. March 1999, HLC Database.

184 HLC Database: Statement of witness H.Ç. September 2007. Statement of witness L.Ç. September 2007. See above footnote 6, the Indictment of the OWCP.

185 HLC Database: Statement of witness A.G. September 2007. Statement of witness T.G. September 2007. Statement of witness M.R. June 1999. Statement of witness H.Ç. September 2007. HLC Database. See above, footnote 6, the Indictment of the OWCP.



at a place with a rest area, it was some sort of a square, I would say.... We stopped there as we ran into about 10 soldiers of the Territorial Defence reserve unit three, two or three of them were in blue uniforms, the camouflage blue police uniforms, I do not know if they were active or reserve police, I do not know....We stopped there, Mrtvi went to them, talked to them, the vehicles were parked and then we got back on the move.

Then, according to some regular [plan], since this was not the first operation of such kind, though I never knew and it was never known how far we would go, now I am talking about executions. I did not know. We split into four groups ... and the groups went in four different direction while Mrtvi went in the direction we came from, from where we entered the village. I stayed by the vehicle as always, more or less. with five soldiers in the center.

And as Mrtvi and Vampir were leaving, two Shiptars, older men, mid-life, at that time I thought they were older, they were maybe 45 years old, they asked if we needed them to find something ... when Vampir, without any warning, I do not know if Mrtvi told him that or he just did it, but he cut them and left them by the side of the road. So they left and all four groups went each in a different direction.

Nobody fired at us, I did not see any terrorists, it was a sunny morning and they spread out around the village. And then, Your Honour, the battle started. The shooting manifested by bursts of gunfire coming from different sides, east, west, north, south, and then the hay since it is easiest to see hay burning. I am talking about this from my position in the center of the village. Then, women, children, the elderly, refugees, could be seen pulling bags, suitcases, children screaming, the elderly gathering.....bags were being kicked and they started gathering together in the center.

Tractors came, people who knew how to drive were driving tractors and other people were getting on the tractors, TAM trucks, all going to Albania. Not everybody could get on the vehicles, so they were waiting on them. At that time, there were also soldiers there and then suddenly a NATO plane flew over us.....which often hit civilians as well, as had been the case some ten days earlier, so in all this disarray the plane caused more panic among them and us additionally....I remember Bata Lekić, ripping off necklaces, asking for money, and all this forcing of people to the tractors and the gathering of people lasted for an hour or two. All these men needed to be put on tractors and then slowly the tractors started to leave and group leaders then came back with soldiers though some of them got separated. It was obvious that Buba [Zoran Obradović] was there, and he left with Čale [Srećko Popović].

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People were just wandering around the village, 15-20 houses were already on fire, the expulsion was in progress and the soldiers were returning from time to time, bringing some Shiptar civilian with them or removing some from the tractors if it was assessed that they were fit for military service. Mrtvi had a saying that everyone from the age of 13 to 77, and since 13 is an unlucky number, then it was from the age of 12. Some soldiers took it as a joke and some took it literally and then on the way back I saw Čale, Srećko Popović, executing three Albanians, for Serbia, for Serbia...

So they were coming back and what I could see from this part where I was standing was that women, children, had already left. I was in that central square and I could see up there that 25 men were standing in a line alongside the road. Now I cannot tell you their exact age, one of them was very young, younger than me, but there were some who were older, at the age of 15, 30, 20. I did not count. It has been many years and the group was solid, whatever that means....

I approach them, 15 Shiptars were standing in line and Ranko "Bosanac" [Ranko Momić] was communicating with them. There were 10-15 of us there: "Let's say "Jackals", Ranko "Bosanac"



tells them – don't be afraid, buses will arrive to transport you to the main police station in Peć." While talking to one of them he is told "we did not lay a finger on anyone, what is this", and then Ranko replied "I know, fuck it, it is a war, what can we do", and he even gives him a cigarette to light up and says "in order to prevent those at the Peć Police Station from causing you any problems and from harrassing you" they had to put on a small rug or spread out tent to put there all they had in their pockets. They started throwing down personal ID cards, wallets, everything, everything, meaning watches, bracelets, rings, literally everything....

There was a child in the line as well, younger than me and "Mrtvi" told him to collect it all and pick up a backpack. I passed it to him so he could put it all in it. That child, I do not know how to describe to you his fear. He was shaking and he pissed and shitted himself because of fear but he still collected it. His image is very strongly imprinted in my memory, the incredible fear. Ranko then told them "come on, let's go to this house so we do not stand in the sun, you see there is shade there", which was on the left side. The house was on the right side. The house only had a ground floor and did not have the Shiptar wall fence but rather an ordinary fence, a yard and some trees, something green, maybe walnut trees and Ranko started moving in a relaxed manner with his "AK-47" lowered down in front of everyone and says "let's go, it is easier in the shade". He is joined by "Šumadija" [Nikolić Miloško] and in the end he is joined by Mada Vuković. The three of them led the entire group of fifteen men, they entered the yard, but did not stay in the yard but went to the porch and then slowly into the house.

The house was a Shiptar house, not a rich house, two rooms, maybe a hallway. They went inside and all that could be heard was burst fire, long bursts and after that some noise, a bang. The first one who ran out of the house was "Šumadija", I remember that clearly. As he came out he said his typical curse "fucking mosque and mosque orchestra". A round ricocheted and grazed his leg and pierced his overalls, but "Šumadija", as usual, did not complain about the leg but about having his overalls pierced. Then, Ranko "Bosanac" came out, relaxed just like he was when he came in and lit a cigarette and then in the end the third one to come out was Mado Vuković who had stayed in after them to set the house on fire, since smoke could already be seen. The young man who collected the valuables, was not put back in line. When he had collected everything, "Vampir" was there and put the barrel of his AK-47 to his head and then "Mrtvi" said "let him go" and "Vampir" said in surprise "why should I let him go". "Let him go so there is someone to tell Shiptars about this". "Mrtvi" would spare lives like that, it was like a custom to him. For example, he would let a Shiptar run down the field and would decide to shoot three rounds from a distance of some 200 meters. If he shot him than that's how it would be, but if he didn't he would only say "you see it was not his destiny, let him live..."<sup>186</sup>

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## 8.2 Documents and Testimonies of YA Soldiers Pointing to the Responsibility of Dragan Živanović for Crimes Committed in Čuška/Qyshk

174. The *Šakali* (Jackals) unit was part of the 177<sup>th</sup> MTD Peć which was under the command of the 125<sup>th</sup> MtBr.<sup>187</sup> According to the rules of international law, Dragan Živanović, as the Commander of the 125<sup>th</sup> MtBr was obliged to undertake all necessary measures to prevent the crime in Čuška/Qyshk, or if made aware of the events after the fact, to report the events to the prosecuting authorities.
175. According to the "Plan for Engagement of Joint Squads" of the Priština Corps Command issued on April 25<sup>th</sup> 1999, the 177<sup>th</sup> MTD was placed under the command of the 125<sup>th</sup> MtBr for the following activities and tasks:

186 Zoran Rašković, January 26th 2012, Čuška case, p.13-15, 18-20.

187 Transcript from main hearing from May 23<sup>rd</sup> 2011, Čuška case, p.13-14.



"1. United and sustained command, co-ordination, uninterrupted functioning of the communication system.

...

3. Detection and destruction of the remaining SHTF and full control of the territory within the zone of responsibility.

...

8. Clearing up of the front through the organs of the MUP and local authorities.

...

10. Taking of measures to prevent disorder, lack of discipline, looting, arson, abuse and other forms of criminal behaviour within the unit and the zone of responsibility..."<sup>188</sup>

176. The Command of the 125<sup>th</sup> MtBr issued an order sent (among others to the 177<sup>th</sup> MTD) on April 24<sup>th</sup>, 1999, asking for "full combat control of the sectors" The order was signed by Dragan Živanović. Part of the order required an "Assessment of the number of SHTF in the area of responsibility of the Brigade":

"Another 100 individuals who took part in combat operations against our forces are in the area of the villages of Blagoje, Naklno, Zabrd, Osoje, Čuška, and Zahač, wearing civilian clothes and living in their native villages."<sup>189</sup>

177. This order represents an obvious violation of international humanitarian law because civilians in the aforementioned villages are represented as legitimate targets, that is, no distinction was made between combatants and civilians, a clear violation of the Geneva Conventions and their Additional Protocols.<sup>190</sup>

## 9) Pavljane/Pavlan

41

*On May 14th, 1999, Serbian forces killed eight Kosovo Albanian civilians.*

178. Pavljane/Pavlan is located in the Municipality of Peć/Pejë, about 5 kilometers east of the city of Peć/Pejë on the Peć/Pejë – Priština/Priştinë road.

### 9.1 Description of the Crime, Based on Statements of Survivors, members of the YA, and the Indictment of the Office of the War Crimes Prosecutor

179. Soldiers of the 177<sup>th</sup> MTD Peć and the MUP entered Pavljane/Pavlan in the morning of May 14<sup>th</sup> 1999. The local population, whose houses were located by the main paved road left for the house of Agim Selmani, located in the centre of the village. Several hundred people gathered in the yard.

180. At around 09:30h, eight YA soldiers, in green uniforms, with masks on their faces and hats on, entered the yard of the Selmani family. Before that, the younger men had fled to the banks of the Drim River, and the women, children and the elderly stayed in the yard. Soldiers approached a group of men: **Shaban (Tahir) Kelmendi (born 1946), Haxhi (Rexhe) Dreshaj (born 1958), Nimon (Azem) Gashi (born 1946), Zenun (Brahim) Shala (born 1941) and Muce (Isuf) Lulaj (born 1935)**, and ordered them to hand over all of their money. After that, they took all of the money, jewelry and other valuables from the women. Then, they ordered the five men to go to the house

188 Exhibit 6D 1023, Plan for Engagement of Joint Squads, from April 25<sup>th</sup> 1999, Šainović et al.

189 Exhibit 6D 1123, Order of the 125<sup>th</sup> MtBr Command from April 24<sup>th</sup>, 1999, Šainović et al.

190 See above, footnotes, 9, 102, 151, 154.



of Zymer Gashi, located across the road, with their hands above their head. After several minutes a burst of gunfire was heard and then Serbian soldiers burned the house with the bodies of the dead men inside.<sup>191</sup>

181. The Serbian forces then ran into the minors, Ganimete and Ajete Nikqi not far from the house of the Nikqi family. The soldiers took them back to their own yard. A burst of gunfire was then heard from the house. At the time, the parents of Ganimete **Vesel (Sali) Nikqi (born 1946) and Gejrana (Binak) Nikqi (born 1942)** and mother of Ajeta Nikqi, **Hatixhe (Ajdin) Nikqi (born 1944)** were in the house.<sup>192</sup>
182. The soldiers took 200 German Marks from Ganimete and Ajete. One soldier found a gun permit on Ganimete that belonged to her father Vesel Nikqi. After slapping them on their face several times, he ordered Ganimete and Ajete to take them to the house from which they had collected the permit. As they were leaving the yard, Ganimete and Ajete could see that the house where their parents were was burning.<sup>193</sup>
183. Soldiers took Ganimete and Ajete to the house of Xufo Gashi. They searched the house threatened to rape Ganimete and hit Ajete about the head and neck. At one point they tried to set the curtains on fire and then left the two in the house and locked the door with the threat that they would come to get them.
184. Zoran Rašković, a member of the *Šakali (Jackals)* unit of the 177<sup>th</sup> MTD Peć and an eye-witness to the mass killings in Pavljane/Pavlan, while testifying in the *Čuška* case described the crime in the following manner:

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“Mrtvi” [late Minić Nebojša] ordered us to move on, to chase the pest towards Zahač and when we were passing through some village, later on I found out that it was called Pavljan, whether it was a hamlet, since all the houses were connected, scattered around, there was not group of houses, there is nothing between *Čuška* to Zahač and we continued in two groups from there, which is different to the way we came to that point ....

And then we were on the way to Zahač, through the Pavljan hamlet, split into two groups of approximately 15 to 20 men. One group was led by “Čale” [Srečko Popović] and “Šumadija” [Nikolić Miloško], and the other one was led by Ranko “Bosanac” [Ranko Momić] and “Mrtvi”; we were on our way. I was in an SUV and we were not driving faster than the soldiers who were walking.

One important moment, well now I do not know if we had entered Pavljane or we were still in Čuška, the border was right around there somewhere, there was a small wood and a Shiptar with a traditional Albanian hat on his head and “Čale” approached him and told him: **“you have not yet left, go to Albania”** and the man replied **“this is my house, I am not going anywhere”** and then he told him again “you will for Serbia”, and bam, there he killed him in that little forest on a log.

And so in Pavljane, Your Honor, and in Pavljane I personally witnessed one of the most sickening scenes of the entire war. From the SUV, I saw Rus winding something on the window, I approach Rus and through the window I see Ranko “Bosanac” having an intercourse with some Albanian woman. I said that she was pregnant, but maybe she wasn’t pregnant, but she had a belly disproportionate to other parts of her body. She is bent over the couch and he is

191 Statement of witness B.K. September 2001, HLC Database.

192 HLC Database: Statement of witness V.N. September 2001; Statement of witness G.N. June 2007. See the Indictment of the OWCP.

193 Ibid.



relaxed and calm while he is doing his thing. He looks at the two of us and he says: “would you like some”, he had these erotic jokes that he made about us, the handsome ones in the unit, as he called us. And she is squealing over the couch, not complaining much and he finished, wiped it off her, put down the AK-47, he had a rifle grenade extension and then slowly opened fire, I remember that, those bullets through the back....and so 40 minutes through Pavljane and we arrived in Zahač<sup>194</sup>

## 9.2 YA Army Documents Pointing to the Responsibility of Dragan Živanović for Crimes Committed in Pavljane/Pavlan

185. The “*Šakali*” (Jackals) unit was part of the 177<sup>th</sup> MTD Peć, which was under the command of the 125<sup>th</sup> MtBr.<sup>195</sup> According to the rules of international law, Dragan Živanović, as the Commander of the 125<sup>th</sup> MtBr was obliged to undertake all necessary measures to prevent the crime in Pavljane/Pavlan, or if made aware of the events after the fact, to report the events to the prosecuting authorities.

186. According to the “Plan For Engagement of Joint Squads” of the Priština Corps Command issued on April 25<sup>th</sup> 1999, the 177<sup>th</sup> MTD was under the command of the 125<sup>th</sup> MtBr for the following activities and tasks:

“1. United and sustained command, coordination, uninterrupted functioning of the communication system..

...

3. Detection and destruction of the remaining SHTF [Shiptar Terrorist Forces] and full control of the territory within the zone of responsibility.

...

8. Clearing up of the front through the organs of the MUP and local authorities.

...

10. Taking measures to prevent disorder, lack of discipline, looting, theft, arson, abuse, and other forms of criminal behaviour within the unit and the zone of responsibility...”<sup>196</sup>

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187. The Command of the 125<sup>th</sup> MtBr on April 24<sup>th</sup> 1999, issued an order sent (among others) to the 177<sup>th</sup> MTD, calling for “full combat control of the territory”. The order was signed by Dragan Živanović. One part of the order “Assessment of the number of SHTF **in the area of responsibility of the Brigade**” notes:

“Another 100 individuals who took part in combat operations against our forces are in the area of the villages of Blagoje, Naklno, Zabrđe, Osoje, *Ćuška* and Zahač wearing civilian clothes and living in their native villages.”<sup>197</sup>

188. This order represents an obvious violation of international humanitarian law because civilians in the aforementioned villages are represented as legitimate targets. That is, no distinction was made between combatants and civilians, something that represents an evident violation of the Geneva Conventions and their Additional Protocols.<sup>198</sup>

194 Zoran Rašković, January 26<sup>th</sup> 2012, *Ćuška* case, p.21-22.

195 Transcript from main hearing held on May 23rd 2011, *Ćuška* case, p.13-14.

196 Exhibit 6D 1023, Plan For Engagement of Joint Squads from April 25<sup>th</sup> 1999, *Šainović et al.*

197 Exhibit 6D 1123, Order of the Command of 125<sup>th</sup> MtBr from April 24<sup>th</sup> 1999, *Šainović et al.*

198 See above, footnotes 9,102,151,154,190.



## 10) Zahać/Zahaq

*On May 14th, 1999, Serbian forces killed 22 Kosovo Albanian civilians.*

189. The village of Zahać/Zahaq is located in Peć/Pejë Municipality, about 7 kilometres east of the city of Peć/Pejë, on the Peć/Pejë – Priština/Prishtinë road.

### 10.1 Description of the Crime Based on Statements of Survivors, members of the YA and the Indictment of the Office of the War Crimes Prosecutor

190. After the crime committed in the village of Pavljane/Pavlan [see above], soldiers of the 177<sup>th</sup> MTD and TD (Territorial Defence) forces arrived in Zahać/Zahaq, located on the Peć/Pejë - Priština/Prishtinë road. Villagers were ordered to leave their houses and gather in the centre of the village, by Ahmet Mehmeti's store.<sup>199</sup>
191. The soldiers ordered the citizens who had gathered, to start moving towards Peć/Pejë. When the convoy with trucks and tractors arrived at the Pavljane/Pavlan - Zahać/Zahaq intersection, by the "Kuqi" vehicle repair shop, soldiers started to remove the men fit for military service from the trucks and tractors. The women, children and the elderly were ordered to carry on towards Peć/Pejë. Eighteen men were taken from the convoy. The locals who were allowed to continue towards Peć/Pejë, saw that the soldiers lined the separated men against the wall of the Kuqi repair shop and aimed their weapons at them.<sup>200</sup>
192. After that, soldiers ordered the separated men into the inspection pit in the repair shop. There, they executed them with automatic rifle fire.<sup>201</sup> None of the men survived. The following men were killed:

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<b>Gëzim (Beqir) Cukaj (born 1979)</b>	<b>Shpend (Fejzë) Hyseni (born 1968)</b>
<b>Bekim (Ahmet) Delija (born 1979)</b>	<b>Hamëz (Rexhep) Murati (born 1968)</b>
<b>Hysen (Rashit) Gjoka (born 1978)</b>	<b>Sabita (Hajrullah) Hyseni (born 1968)</b>
<b>Shaban (Halil) Smajlaj (born 1976)</b>	<b>Demë (Ahmet) Atashi (born 1966)</b>
<b>Fehmi (Rashit) Gjoka (born 1976)</b>	<b>Muhamet (Hali) Dobra (born 1963)</b>
<b>Rajrush (Avdyll) Hyseni (born 1975)</b>	<b>Naima (Hajrullah) Hyseni (born 1961)</b>
<b>Zymer (Halil) Smajlaj (born 1973)</b>	<b>Ismet (Hajrullah) Hyseni (born 1958)</b>
<b>Agim (Hajrullah) Hyseni (born 1970)</b>	<b>Fazli (Halil) Dobra (born 1957)</b>
<b>Halit (Halil) Dobra (born 1968)</b>	<b>Shaban (Ramush) Rama (born 1952)</b>

199 See above, Indictment of the OWCP, footnote 6; Statement of witness H.N. June 2007, HLC Database.

200 See above, Indictment of the OWCP, footnote 6; Statement of witness H.H. July 2006, HLC Database; Statement of witness S.H. June 2007, HLC Database; Statement of witness F.A. June 2007, HLC Database; Statement of witness Z.D. June 2007, HLC Database; Statement of witness R.G. June 2007, HLC Database; Statement of witness J.R. June 2007, HLC Database; Statement of witness B.S. May 2007, HLC Database.

201 See above, Indictment of the OWCP, footnote 6; Statement of witness H.H. June 2006, HLC Database; Statement of witness F.A. June 2007, HLC Database; Statement of witness R.G. June 2007, HLC Database.



193. The women, children and the elderly who were ejected from Zahać/Zahaq returned to the village later the same day because Serbian forces at the checkpoint Vitimirica/Vitomiricë [Peć/Pejë Municipality] refused to allow them to proceed towards Peć/Pejë. In the inspection pit of the “Kuqi” vehicle repair shop, they found the bodies of the men. Several minutes later, YA soldiers arrived in a green SUV. They stopped the villagers from taking the bodies and ordered them to go to their homes. The families knew nothing about the fate of the bodies until 2002, when they found out that the bodies had been discovered at the cemetery in the nearby village of Ruhot in the Municipality of Peć/Pejë.<sup>202</sup>

194. On the same day, the YA soldiers in Zahać/Zahaq, also killed the following persons in their houses:<sup>203</sup>

**Faton (Sadri) Rama (born 1975)**

**Shaban (Kesem) Neziri (born 1958)**

**Valdet (Nezir) Rama (born 1963)**

**Sadri (Imer) Rama (born 1949)**

195. Zoran Rašković, a member of the *Šakali* (Jackals) unit of the 177<sup>th</sup> MTD Peć was in Zahać/Zahaq on May 14<sup>th</sup>, 1999. He did not see the execution at the “Kuqi” repair shop. In the *Čuška* case he testified about other criminal operations of the *Šakali* unit soldiers:

“So, I remember some scenes from Zahać, I know we came from the lower side and I know that the other group came from the upper side....I still remember a scene from Zahać, because, I, even 12 years later, we were in some kind of a trance, I do not know if anyone was normal at that time, but we entered Zahać in that kind of state. There was a man from Kragujevac, I think that two, three, four men from Kragujevac joined us during those days, one young man from Kragujevac was riding a donkey and shooting from his AK-47, it was like a scene from a cartoon and I asked Srećko Popović what the man was doing. Čale [Srećko Popović] told me, let him do it, he is calming himself down like that... so if he was calming himself down that way you can only imagine the state in which we arrived in Zahać. Unlike *Čuška*, where there was some organization, in Zahać everyone was going where they wanted. In groups of three or four, soldiers raided houses and set them on fire. I really did not see any mass executions, but they were splitting up. Ranko “Bosanac” [Momić], “Vampir”, Siniša, Lekić, “Mrtvi” [the late Minić Nebojša] would enter a yard. Definitely it would be Ranko who would spread out a rug or a tent sheet and ask people to take everything out of their pockets. They would enter a yard of a house where 20-30 people were gathered and the people would hand over their gold...

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...

Two executions I remember. One man from the Territorial Defence force who joined us there, I remember that he carried the antenna on his back, I thought he was completely OK... where was I, yes... with a donkey where he is chasing two Shiptars. I did see that. In the same manner Srećko Popović together with “Šumadija” [Nikolić Miloško] killed some Shiptar by a barn and he did it again in the name of Serbia and he set an entire haystack on fire. Maybe there is more but those would be some of the scenes from Zahać.”<sup>204</sup>

202 HLC Database: Statement of witness S.H. June 2007; Statement of witness Z.D. June 2007; Statement of witness J.R. June 2007; Statement of witness B.S. May 2007.

203 HLC Database: Statement of witness B.R. July 2006; Statement of witness H.N. June 2007, Statement of witness C.R. June 2007; Statement of witness B.R. HLC Database.

204 Zoran Rašković, January 26<sup>th</sup> 2012, *Čuška* case, p.22-26.



## 10.2 YA Documents Pointing to the Responsibility of Dragan Živanović for Crimes Committed in Zahać/Zahaq

196. The *Šakali* (Jackals) unit was part of the 177<sup>th</sup> MTD Peć which was under the command of the 125<sup>th</sup> MtBr.<sup>205</sup> According to the rules of international law, Dragan Živanović, as the Commander of the 125<sup>th</sup> MtBr was obliged to undertake all necessary measures to prevent the crime in Zahać/Zahaq, or if made aware of the events after the fact, to report the events to the prosecuting authorities.
197. According to the “Plan for Engagement of Joint Squads” produced by the Priština Corps Command and issued on April 25<sup>th</sup>, 1999, the 177<sup>th</sup> MTD was subordinate to the 125<sup>th</sup> MtBr in the following activities and tasks:
1. United and sustained command, co-ordination, uninterrupted functioning of the communication system.
  - ...
  3. Detection and destruction of the remaining SHTF and full control of the territory within the zone of responsibility.
  - ...
  8. Clearing up of the front through the organs of the MUP and local authorities.
  - ...
  10. Taking of measures to prevent disorder, lack of discipline, looting, arson, abuse and other forms of criminal behaviour within the unit and the zone of responsibility...”<sup>206</sup>
198. The Command of the 125<sup>th</sup> MtBr issued an order sent (among others to the 177<sup>th</sup> MTD) on April 24<sup>th</sup>, 1999, asking for “the full combat control of the sectors”. The order was signed by Dragan Živanović. Part of the order offers an “Assessment of the number of ShTF [Shiptar – Terrorist Forces] **in the area of responsibility of the Brigade**”:
- “Another 100 individuals who took part in combat operations against our forces are in the area of the villages of Blagoje, Naklno, Zabrdje, Osoje, Čuška, and **Zahać** wearing civilian clothes and living in their native villages.”<sup>207</sup>
199. This order represents an obvious violation of international humanitarian law because civilians in the aforementioned villages are represented as legitimate targets, that is, no distinction was made between combatants and civilians.<sup>208</sup>

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205 Transcript from the main hearing held on May 23<sup>rd</sup> 2011, *Čuška* case, p.13-14.

206 Exhibit 6D 1023, Plan for Engagement of Joint Squads from April 25<sup>th</sup> 1999, *Šainović et al.*

207 Exhibit 6D 1123, Order of the 125<sup>th</sup> MtBr Command from April 24<sup>th</sup> 1999, *Šainović et al.*

208 See above, footnotes 9, 102, 151, 154, 190, 198.



## V. Commander of the 125<sup>th</sup> MtBr Dragan Živanović<sup>209</sup>

200. Major General Dragan Živanović was the Commander of the 125<sup>th</sup> MtBr throughout the entire period in which the crimes described in this Dossier occurred. He was appointed to this position on June 12th, 1998.<sup>210</sup>

201. A Decree of the then FRY President, Vojislav Koštunica, from April 2002, appointed Dragan Živanović as Chief of Staff of the YA Belgrade Corps, in accordance with the newly established internal organization of the YA.<sup>211</sup> Dragan Živanović retired on March 31st, 2006 with the rank of Major General.<sup>212</sup>

202. After the war in Kosovo, the 125<sup>th</sup> MtBr was awarded the decoration of National Hero.<sup>213</sup>

203. Much evidence, including testimonies of YA soldiers indicates that the crimes against Kosovo Albanians in the area of responsibility of the 125<sup>th</sup> MtBr were committed with the knowledge and authorization of the 125<sup>th</sup> MtBr Command.

204. In his testimony before the ICTY in *Šainović et al.* Živanović stated that during the armed conflict, members of the 125<sup>th</sup> MtBr committed “two or three murders.”

“There were two or three cases of murders committed by individual members. There were several instances of robbery and about 30 cases of theft. As far as I can remember.”<sup>214</sup>

205. Answering to a question of the Defence Counsel about what sort of measures the brigade commander in charge had taken in relation to those who committed crimes, Živanović stated:

“First of all if someone’s performance was poor and inadequate, such as was the case of a battalion commander, those men were removed; second, all those who committed crimes were prosecuted under the normal procedures.”<sup>215</sup>

206. The responsibility of the Commander of the 125<sup>th</sup> MtBr, Dragan Živanović, which is indicated by this Dossier is not based solely on the principle of command responsibility, but also on the principle of individual responsibility. Namely, on several occasions, Dragan Živanović executed, and in some cases he personally issued, orders that represent violations of the principles of the Geneva Conventions *per se*. These were orders that referred to the arming of the local Serbian population in Kosovo and their involvement in combat operations, orders that do not make a clear distinction



Photo 6:  
Dragan Živanović during his testimony in the  
*Šainović et al.* case.

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209 Dragan Živanović held the rank of Colonel. He was promoted in 2000 to the rank of Major General and he retired with this rank on March 31<sup>st</sup> 2006. See Exhibit P1018, 92<sup>ter</sup> Statement of Dragan Živanović, August 9<sup>th</sup> 2007, paras. 1-2, ICTY, *Haradinaj et al.*

210 Exhibit P1018, 92<sup>ter</sup> Statement of Dragan Živanović from August 9<sup>th</sup> 2007 para. 3, ICTY, *Haradinaj et al.*

211 Glas Javnosti, “Lazarević the Head of KOV,” last visited on September 16<sup>th</sup>, 2013 <http://arhiva.glas-javnosti.rs/arhiva/2002/04/06/srpski/P02040507.shtml>

212 Exhibit P1018, 92<sup>ter</sup> Statement of Dragan Živanović from August 9<sup>th</sup> 2007, para. 2, ICTY, *Haradinaj et al.*

213 M. Danilović, “Support of the People and the Army”, Army, August 7<sup>th</sup> 1999 p. 99-10, ICTY Archive.

214 Dragan Živanović, January 17<sup>th</sup> 2008, *Šainović et al.* T. 20491.

215 Ibid. T. 20490.



between civilians and combatants, and orders which direct attacks against the civilian population.<sup>216</sup>

207. The rules of international criminal law prescribe individual criminal responsibility for direct perpetrators of crimes, military commanders and political leaders who ordered the commission of crimes, but are also clear about the principle of command responsibility, according to which those superiors who fail to undertake necessary measures to prevent the commission of crimes or to punish the perpetrators, are also held responsible.
208. After ratification of Additional Protocol I to the Geneva Conventions on December 28<sup>th</sup>, 1978, an international legal obligation was imposed on local institutions to prosecute individuals responsible for crimes, pursuant to the principle of command responsibility.
209. Despite the existence of this international legal obligation, the concept of command responsibility has not been applied in a single case of war crimes prosecuted before the courts in the Republic of Serbia to date. The explanation of the judicial bodies is that the application of this concept would represent a violation of the principle of legality prescribed by the Constitution, since command responsibility, as a specific form of criminal responsibility, was not explicitly prescribed by the Criminal Code that was in force in 1990s.<sup>217</sup>
210. Two strong objections founded on international and national law may be addressed against this position taken by the judicial authorities. First of all, Additional Protocol I to the Geneva Conventions explicitly instructs the High Contracting Parties to the Protocol to apply the concept of command responsibility.<sup>218</sup> Additional Protocol I became an integral part of the national legal system in Serbia when it was ratified in 1978.<sup>219</sup> This is the interpretation of provisions of the Additional Protocol used by the courts in Croatia and in Kosovo.<sup>220</sup> Second, the principle of legality is considered breached if an act *“did not constitute a criminal offence under law or any other regulation based on the law.”* Even though criminal responsibility was not prescribed by the Criminal Code at the time of the armed conflict in Kosovo, *a regulation based on the law*, which explicitly noted the command

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216 See above, footnotes 9, 102, 151, 154, 190, 198, 208.

217 Article 34 of the Constitution of the Republic of Serbia: “No person may be held guilty for any act which did not constitute a criminal offence under law or any other regulation based on the law at the time when it was committed, nor shall a penalty be imposed which was not prescribed for this act.” Also see Siniša Vazić, “Command Responsibility – Towards Clear Answers and Precise Positions”, *Justice in Transition*, issue 7, p.1-2, [http://www.tuzilastvorz.org.rs/html\\_trz/\(CASOPIS\)/SRP/SRP07/1477.pdf](http://www.tuzilastvorz.org.rs/html_trz/(CASOPIS)/SRP/SRP07/1477.pdf) last visited on October 2<sup>nd</sup>, 2012. Command responsibility was explicitly introduced into the Criminal Code from 2005 as a specific criminal offence.

218 Additional Protocol I to the Geneva Conventions from August 12<sup>th</sup> 1949, relating to the Protection of Victims of International Armed Conflicts. “Official Gazette of FRY”, International Treaties no. 16/1978, Article. 86: “The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.” Article 87: “The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof”

219 Constitution of the Republic of Serbia, Article 16.

220 Judgment of the Zagreb County Court, II K-rz-1/06, May 30<sup>th</sup> 2008, p. 98; Supreme Court of the Republic of Croatia, nr: I Kž 1008/08-13, November 18<sup>th</sup> 2009 p.98; District Court in Priština/Pristine, C. Nr. 4251/2001, p. 23-24; District Court in Gnjilane/Gjilan, Trajković Case, Judgment, March 6<sup>th</sup> 2001.



responsibility of army commanders was in force. This document is the Socialist Federal Republic of Yugoslavia Military Manuals that had been in force since 1988.<sup>221</sup>

211. The highest ranking commanders of the YA at the time in 1999, namely Dragoljub Ojdanić, Nebojša Pavković and Vladimir Lazarević the then Deputy Prime Minister of the FRY in charge of Kosovo, Nikola Šainović, and Police Generals Sreten Lukić and Vlastimir Đorđević, have been convicted by ICTY first instance judgments specifically for mass executions and other acts of violence committed by YA brigades and MUP units against Kosovo Albanians during 1999 in the area of responsibility of the 125<sup>th</sup> MtBr.<sup>222</sup>

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221 The Socialist Federal Republic of Yugoslavia Military Manual, Official Military Gazette no. 10, 1988, Article 21: "An army commander is personally responsible for violations of international humanitarian law if he knew or he should have known that his subordinates or other units or individuals are preparing the commission of such violations and he fails to undertake measures to prevent such violations, at a time when it is still possible to prevent their commission. An army commander who knows that violations of the international humanitarian law have been committed and who fails to initiate disciplinary or criminal proceedings against the perpetrators or, if he is not authorized to initiate proceedings, who fails to report the perpetrator to a responsible military commander, is also individually criminally responsible.

222 For instance, see Peć, ICTY Judgment in *Šainović et al.* Volume 2 of 4, p. 6-22; Dečani ICTY Judgement in *Šainović et al.* Volume 2 of 4, p.22-31; Srbica ICTY Judgement in *Šainović et al.* Volume 2 of 4, p.200-249; ICTY Judgement in *Šainović et al.* Volume 2 of 4, p.262 – 283.





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