



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

Case No. IT-02-60-T
Date: 5 April 2004
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IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vassilenko
Judge Carmen Argibay

Registrar: Mr. Hans Holthuis

Judgement of: 5 April 2004

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

**JUDGEMENT ON MOTIONS FOR ACQUITTAL PURSUANT
TO RULE 98 *BIS***

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Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. Miodrag Stojanović and Mr. Branko Lukić for Dragan Jokić

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I. INTRODUCTION

1. Pending before Trial Chamber I, Section A (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) are the motions for the entry of judgement of acquittal of the Accused Vidoje Blagojević (“Blagojević Motion”) and Dragan Jokić (“Jokić Motion”), filed on 2 March 2004.¹

2. The Office of the Prosecutor (“Prosecution”) filed an Amended Joinder Indictment on 27 May 2002 against Vidoje Blagojević, Dragan Jokić, Momir Nikolić and Dragan Obrenović. Momir Nikolić pleaded guilty on 7 May 2003 and a sentencing judgement was rendered against him on 2 December 2003. Dragan Obrenović pleaded guilty on 21 May 2003 and a sentencing judgement was rendered against him on 10 December 2003. Following these guilty pleas, the Prosecution filed a Amended Joinder Indictment against the remaining accused, Vidoje Blagojević and Dragan Jokić (“Accused”), on 26 May 2003 (“Indictment”). It is upon this Indictment which the case against the Accused was brought by the Prosecution.

3. The Indictment alleges that Vidoje Blagojević and Dragan Jokić participated, *inter alia*, in the forcible transfer of the women and children from the Srebrenica enclave to Kladanj, on 12 and 13 July 1995, as well as in the capture, detention, mass execution, burial and reburial of thousands of Bosnian Muslim men and boys aged 16 to 60 from the Srebrenica enclave, from 12 to 19 July 1995.²

4. The Indictment alleges that Vidoje Blagojević was the commander of the First Bratunac Light Infantry Brigade (“Bratunac Brigade”) during the indictment period (from 11 July to 1 November 1995) and that he participated, in this capacity, in mass killings in and around, and the forcible transfer of civilians out of, the Srebrenica enclave during the indictment period. He is also accused of participating in the reburial operation that occurred from about 1 August through about 1 November 1995.³ As a result, Vidoje Blagojević is charged with the following crimes, under both Articles 7(1) and 7(3) of the Statute of the Tribunal (“Statute”):

- in Count 1B⁴ with complicity to commit genocide, punishable under Article 4(3)(e) of the Statute,

¹ “Defendant Dragan Jokić’s Motion for Acquittal Pursuant to Rule 98 *bis*,” 2 March 2004; “Vidoje Blagojević’s Motion for Judgement of Acquittal Pursuant to Rule 98 *bis*”, 2 March 2004.

² Indictment, para. 30.

³ Indictment, para. 51.

⁴ Following the guilty plea of Momir Nikolić and the filing of a new indictment, the Indictment does not contain a Count 1A, as this count (genocide) was limited to Momir Nikolić.

- in Count 2 with extermination, a crime against humanity punishable under Article 5(b) of the Statute,
- in Counts 3 and 4 with murder, as a crime against humanity punishable under Article 5(a) of the Statute, and as a violation of the laws or customs of war punishable under Article 3 of the Statute,
- in Count 5 with persecutions, a crime against humanity punishable under Article 5(h) of the Statute, through murder, cruel and inhumane treatment, terrorising of civilians, destruction of personal property and effects and forcible transfer,
- in Count 6 with inhumane acts (forcible transfer), a crime against humanity punishable under Article 5(i) of the Statute.

5. The Indictment alleges that Dragan Jokić was the chief of engineering of the First Zvornik Infantry Brigade (“Zvornik Brigade”) during the indictment period.⁵ In addition, the Indictment alleges that he was the duty operations officer of the Zvornik Brigade from the morning of 14 July 1995 through the morning of 15 July 1995.⁶ Dragan Jokić is accused of having “assisted in the planning, monitoring, organising and carrying out of the burials involved in the murder operation” and “as Brigade duty operations officer on 14 and 15 July 1995, assisted in co-ordinating communication between VRS [Army of Republika Srpska] officers and commands involving the transportation, detention, execution and burial of Srebrenica Muslim and issued or transmitted reports and updates to superiors on the progress of the overall murder operation.”⁷ The forces of the Zvornik Brigade Engineering Company are also alleged to have participated in the reburial operation under his direction.⁸ As a result, Dragan Jokić is charged with the following crimes, under Article 7(1) of the Statute:

- in Count 2 with extermination, a crime against humanity punishable under Article 5(b) of the Statute,
- in Counts 3 and 4 with murder, as a crime against humanity punishable under Article 5(a) of the Statute, and as a violation of the laws or customs of war punishable under Article 3 of the Statute,
- in Count 5 with persecutions, a crime against humanity punishable under Article 5(h) of the Statute, through murder, cruel and inhumane treatment, terrorising of civilians, destruction of personal property and effects.

⁵ Indictment, para. 12.

⁶ Indictment, para. 14.

⁷ Indictment, para. 36.

⁸ Indictment, para. 51.

6. Each count alleges that the Accused “committed” the crimes charged. The Indictment specifies that the term “committing” includes participation in a joint criminal enterprise. The Indictment refers to a joint criminal enterprise, of which the two co-accused, together with other VRS and MUP [Ministry of the Interior] officers, including the former co-accused Dragan Obrenović and Momir Nikolić, allegedly were members, the common purpose of which is defined as “to forcibly transfer women and children from Srebrenica enclave to Kladanj, on 12 and 13 July 1995”, and “to capture, detain, summarily execute by firing squad, bury and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from the Srebrenica enclave from 12 July 1995 until and about 19 July 1995.”⁹ While the joint criminal enterprise described in the Indictment refers to both the forcible transfer and the mass executions, the Trial Chamber observes that Dragan Jokić, who is presented as a member of this joint criminal enterprise, is not accused of having participated in the crime of forcible transfer.

7. The Indictment alleges that the Accused also incur responsibility under Article 7(1) of the Statute for having “planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of the charged crimes.”¹⁰

8. Additionally, Vidoje Blagojević is alleged to bear criminal responsibility under Article 7(3) of the Statute “if he knew or had reason to know that his subordinates were about to commit such acts or had done so and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”¹¹

9. The Prosecution case opened on 14 May 2003 and closed on 27 February 2004. After the end of the Prosecution case, the Defence for each Accused, within the time limit fixed by the Trial Chamber, moved for entry of a judgement of total acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”).

10. On 12 March 2004, the Prosecution filed, under seal, the “Prosecution’s Consolidated Response to Vidoje Blagojević’s and Dragan Jokić’s Motions for Acquittal Pursuant to Rule 98 *bis*” (“Response”). A redacted, public version thereof was subsequently filed on 18 March 2004. The Prosecution opposes all grounds raised in the Motions and requests that the Trial Chamber deny the relief sought and proceed on all counts in the Indictment.

⁹ Indictment, para. 30.

¹⁰ Indictment, para. 27.

¹¹ Indictment, para. 28.

II. THE APPLICABLE STANDARD OF REVIEW UNDER RULE 98 BIS

11. Rule 98 *bis* (“Motion for Judgement of Acquittal”) of the Rules of Procedure and Evidence (“Rules”) provides that:

(A) An accused may file a motion for the entry of judgement of acquittal on one or more offences charged in the indictment within seven days after the close of the Prosecutor’s case and, in any event, prior to the presentation of evidence by the defence pursuant to Rule 85(A)(ii).

(B) The Trial Chamber shall order the entry of judgement of acquittal on motion of an accused or *proprio motu* if it finds that the evidence is insufficient to sustain a conviction on that or those charges.

12. All Parties agree that the standard of review under Rule 98 *bis* is “whether a reasonable trier of fact could be satisfied beyond reasonable doubt that the evidence adduced, if believed, could sustain a finding for guilt.”¹²

13. In the *Jelisić* Appeals Judgement,¹³ the Appeals Chamber interpreted the requirement of Rule 98 *bis* to mean that a Trial Chamber must acquit in cases:

“in which, in the opinion of the Trial Chamber, the prosecution evidence, if believed,¹⁴ is insufficient for any reasonable trier of fact to find that guilt has been proved beyond reasonable doubt. In this respect, the Appeals Chamber follows its recent holding in the *Delalić* appeal judgment, where it said: “[t]he test applied is whether there is evidence (if accepted) upon which a reasonable tribunal of fact *could* be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question.”¹⁵ The capacity of the prosecution evidence (if accepted) to sustain a conviction beyond a reasonable doubt by a reasonable trier of fact is the key concept; thus the test is not whether the trier would in fact arrive at a conviction beyond reasonable doubt on the prosecution evidence (if accepted) but whether it could. At the close of the case for the prosecution, the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond a reasonable doubt.”

14. Counsel for Dragan Jokić asserts that the application of such test should lead the Trial Chamber to reject evidence “which is suspect, contradictory, contrived or in any manner compromised”¹⁶ and that, when two reasonable inferences may be drawn from credible evidence, namely one of guilt and one of innocence, the latter must be adopted.¹⁷ It should adopt the

¹² Blagojević Motion, para. 8; see also Jokić Motion, para. 3, which states the standard of review as follows: “whether there is evidence on which a reasonable... trier of fact could be satisfied beyond reasonable doubt of the guilt of the accused.” Response, para. 10.

¹³ *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001 (“*Jelisić* Appeal Judgement”), para. 37.

¹⁴ Footnote in the original judgement: “As to the permissibility of drawing inferences at the close of the case for the prosecution, see *Monteleone v. the Queen* [1987] 2 S.C.R. 154 in which McIntyre J., for the court, said: ‘It is not for the trial judge to draw inferences of fact from the evidence before him’. And see the reference to ‘inferences’ in *Her Majesty v. Al Megrabi and Another, infra*. See the *Kvočka* decision, para. 12, p. 5, in which the Trial Chamber said: ‘The Chamber prefers an objective standard, under which it is entitled at this stage to apply any reasonable inferences and presumption or legal theories when reviewing the Prosecution evidence.’ The issue posed is not passed upon here.”

¹⁵ Footnote in the original judgement: “*Delalić* appeal judgement, para. 434, p. 148 (emphasis in original). Or, as it was correctly put by Trial Chamber II in the *Kunarac* decision, para. 10, p. 6, the “Prosecution needs only to show that there is evidence upon which a reasonable tribunal of fact could convict, not that the Trial Chamber itself *should* convict” (emphasis in original).

¹⁶ Jokić Motion, para. 4.

¹⁷ Jokić Motion, para. 5.

interpretation that is most favourable to the Accused. It furthermore asserts that “the failure to produce evidence necessary to establish any element within the Indictment creates an inference in favour of the accused and against the [Prosecution].”¹⁸ Dragan Jokić concludes that “the evidence must be sufficiently compelling to fall into the category of ‘evidence on which a reasonable Trial Chamber could convict’.”¹⁹

15. The Trial Chamber notes that several of the arguments raised by the Defence for both Accused would require the Trial Chamber to assess the reliability and credibility of witnesses. The question of whether reliability and credibility of witnesses should be considered in motions for acquittal is closely linked with the determination of the applicable standard for acquittal under Rule 98 *bis*. In deciding that the standard is whether a reasonable tribunal of fact could, on the basis of the evidence presented by the Prosecution, convict the Accused, the Trial Chamber, consistent with the jurisprudence of the Tribunal on this issue, will not evaluate the weight to be given to evidence, even when presented by a party as “suspect”, “contradictory” or in any other way unreliable. Evidence will be disregarded only when the Trial Chamber considers it so manifestly unreliable or incredible that no reasonable tribunal of fact could credit it. In other words, in examining the claims that follow, the Trial Chamber will not assess the credibility and reliability of witnesses unless the Prosecution case can be said to have “completely broken down,”²⁰ in that no trier of fact could accept the evidence relied upon by the Prosecution to maintain its case on a particular issue.²¹

16. The Trial Chamber also observes that it may, in line with prior decisions, enter a judgement of acquittal with regard to a factual incident, a particular form of liability or an event cited in the Indictment in support of a count, if the Prosecution’s evidence on that particular incident does not rise to the level of the standard laid down in Rule 98 *bis*.²²

¹⁸ Jokić Motion, para. 6.

¹⁹ Jokić Motion, para. 7.

²⁰ *Prosecutor v. Dario Kordić and Mario Čerkez*, Decision on Defence Motions for Judgement of Acquittal, Case No. IT-95-14/2-T, 6 April 2000, (“*Kordić*, 98 *bis* Decision”), para. 28 and *Prosecutor v. Miroslav Kvočka et. al.*, Case No. IT-98-30/1-T, Decision on Defence Motions for Acquittal, 15 December 2000, (*Kvočka*, 98 *bis* Decision”), para. 17.

²¹ *Kvočka*, 98 *bis* Decision, para. 17. See also *Kordić*, 98 *bis* Decision and *Prosecutor v. Dragoljub Kunarac et al.*, Decision on Defence Motions for Judgment of Acquittal, Case No. IT-96-23-T and IT-96-23/1-T, 3 July 2000 (“*Kunarac*, 98 *bis* Decision”).

²² *Kvočka*, 98 *bis* Decision, para. 9. See also *Kordić*, 98 *bis* Decision and *Kunarac*, 98 *bis* Decision.

III. THE SUBSTANCE OF THE MOTIONS FOR ACQUITTAL

17. Both Accused seek the entry of a judgement of total acquittal on the ground that the Prosecution has not proved their participation in the crimes charged in the Indictment. The Motions hence mainly touch upon Article 7 of the Statute and the Trial Chamber therefore briefly sets out the legal requirements under Article 7 before considering each Motion.

A. The law on Article 7 of the Statute

18. Article 7(1) of the Statute provides that:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

19. "Planning" means that one or more persons design the commission of a crime at both the preparatory and execution phases.²³

20. "Instigating" means prompting another to commit an offence.²⁴

21. "Ordering" entails a person in a position of authority using that position to command another to commit an offence.²⁵

22. Planning, instigating and ordering require that the accused has criminal intent, either direct or indirect.²⁶

23. "Committing" supposes that the accused carries out, physically or otherwise directly, the *actus reus* of the crime.²⁷ This can be achieved individually or jointly with others. Co-perpetration and the theory of joint criminal enterprise are modes of joint commission that have been recognised in the Tribunal's jurisprudence.²⁸ The *Stakić* Trial Judgement has defined commission as follows:

²³ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("Akayesu Trial Judgment"), para. 480, reiterated in *Prosecutor v. Radislav Krstić*, IT-98-33-T, Judgement, 2 August 2001 ("Krstić Trial Judgment"), para. 601, in *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, 3 March 2000 ("Blaškić Trial Judgment"), para. 279 and in *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001, ("Kordić Trial Judgment"), para. 386.

²⁴ *Blaškić* Trial Judgement, para. 280, *Krstić* Trial Judgement, para. 601, *Kordić* Trial Judgement, para. 387, *Akayesu* Trial Judgement, para. 482.

²⁵ *Krstić* Trial Judgement, para. 601.

²⁶ Regarding planning: *Blaškić* Trial Judgement, para. 278; *Kordić* Trial Judgement, para. 386. Regarding instigating, see *Kvočka* Trial Judgement, para. 252. Regarding ordering, see *Blaškić* Trial Judgement, para. 282.

²⁷ *Prosecutor v. Duško Tadić*, Case No. IT-95-1-A, Judgement, 15 July 1999, ("Tadić Appeal Judgement"), para. 189.

²⁸ Regarding co-perpetration as a form of commission, see *Prosecutor v. Milomir Stakić*, Case No. IT-97-24, Judgement, 31 July 2003 ("Stakić Trial Judgment"), para. 439. Regarding joint criminal enterprise as a form of commission, see *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 5 November 2003 ("Krnojelac Appeal Judgement"), para. 29.

“the accused participated, physically or otherwise directly or indirectly,²⁹ in the material elements of the crime charged through positive acts or, based on a duty to act, omissions, whether individually or jointly with others. The accused himself need not have participated in all aspects of the alleged criminal conduct.”³⁰ Joint criminal enterprise is defined by three objective elements: first, there must be a plurality of persons; second, a common plan, design or purpose must exist, which amounts to or involves the commission of a crime provided in the Statute; and third, the accused must have participated in the common design.³¹ This participation need not involve the commission of a specific crime but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.³² The Appeals Chamber has distinguished three categories of joint criminal enterprise on the basis of the *mens rea* required. In the first category, all perpetrators share the same criminal intention; the accused must voluntarily participate in at least one aspect of the common design and, even if not personally effecting the crime(s), must nevertheless intend the result. The second category refers to the so-called “concentration camp” cases and is not applicable to this case. Under the third category, a member of a joint criminal enterprise is held responsible for the criminal acts committed by other such members when these criminal acts, while falling outside the scope of the common design, were natural and foreseeable consequences of effecting the common design.³³

24. “Aiding and abetting” means rendering a substantial contribution to the commission of a crime.³⁴ The aider and abettor must have knowledge that his acts assist the commission of the crime.³⁵

25. Article 7(3) of the Statute provides that:

The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

26. The jurisprudence has specified that an accused is held responsible under Article 7(3) if:

- there is a superior-subordinate relationship between the perpetrator(s) and the accused;

²⁹ Indirect perpetration in German law refers to the “perpetrator behind the perpetrator”. This term is often used in the context of white collar crimes and other forms of organised crime.

³⁰ *Stakić* Trial Judgement, para. 439.

³¹ *Prosecutor v Mitar Vasiljević*, Case No. IT-98-32-A, Judgement, 25 February 2004, para. 100.

³² *Tadić* Appeal Judgement, para. 227.

³³ *Tadić* Appeal Judgement, para. 196.

³⁴ *Krstić* Trial Judgement, para. 601, confirmed in *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95 14/1-A, Judgement, 24 March 2000, (“*Aleksovski* Appeal Judgement”), para. 162.

³⁵ *Prosecutor v. Duško Tadić*, Case No. IT-95-1-T, Judgement, 7 May 1997, (“*Tadić* Trial Judgement”), para. 674; *Prosecutor v. Zejnil Delalić et al*, Case No. IT-96-21-T, Judgement, 16 November 1998, (“*Čelebići* Trial Judgement”),

- the accused knew or had reasons to know that a crime was about to be or had been committed;
- the accused failed to take the necessary and reasonable measures to prevent the commission of the crime or punish the perpetrator(s) thereof.³⁶

B. Vidoje Blagojević's Motion

1. Vidoje Blagojević's alleged involvement in the commission of crimes

(a) Involvement in, and knowledge of criminal activities

27. The Defence submits that there is no evidence that Vidoje Blagojević participated in criminal activities: he was not present at any location where crimes were committed, nor is there any evidence to suggest that he provided assistance to criminal activity.³⁷ On the contrary, the Defence claims that the evidence shows that Vidoje Blagojević was never contacted to provide assistance in relation to criminal activity³⁸ and only carried out lawful military orders that were consistent with the VRS rules and regulations.³⁹

28. Further, the Defence submits that no evidence has been presented in relation to conversations between Blagojević and other members of the alleged joint criminal enterprise.⁴⁰ Also, no reliable evidence has been adduced regarding the participation of the Accused in meetings where criminal activity was discussed.⁴¹ In particular, the Defence contests that criminal activity was discussed during the meeting of 16 October 1995 attended by Blagojević. It first argues that the evidence is not clear enough to accept that the reference to "asanacija", made during this meeting, did refer to the reburial operation.⁴² Second, even assuming that "asanacija" was used in reference to the reburial operation, it contests that this was indeed discussed at the meeting.⁴³

29. The Prosecution responds that documentary evidence implicates Blagojević directly, such as the intercept of a conversation between General Radislav Krstić, the Drina Corps commander, and

para. 326; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgement, 25 June 1999, ("*Aleksovski* Trial Judgement"), para. 61.

³⁶ *Prosecutor v. Zejnil Delalić et al.*, Case IT-96-21-A, 20 February 2001 ("*Čelebići* Appeal Judgement"), para. 186-198 and 266.

³⁷ Blagojević Motion, Factual Basis, Part I, para. B(1).

³⁸ Blagojević Motion, Factual Basis, Part I, para. B(2).

³⁹ Blagojević Motion, Factual Basis, Part I, para. B(3). The lawful activities listed by the Defence are the following: providing buses and regulating traffic; discovering, blocking, disarming and capturing Bosnian Muslim groups; searching the terrain; sending troops to Bratunac-Milici-Bracan; providing troops to the Zvornik Brigade on 15-16 July 1995; co-ordinating various units searching the terrain; and sending troops to Žepa.

⁴⁰ Blagojević Motion, Factual Basis, Part I, para. C (1) and (2).

⁴¹ Blagojević Motion, Factual Basis, Part I, para. A(1) and (2).

⁴² Blagojević Motion, Factual Basis, Part I, para. A(2).

⁴³ Blagojević Motion, Factual Basis, Part I, para. C (2).

Colonel Ljubiša Beara of the Main Staff, or the minutes of the meeting of 16 October 1995.⁴⁴ The Prosecution also claims that there is substantial circumstantial evidence indicating that Blagojević had knowledge of the crimes such as the large scale and organisation of the executions.⁴⁵ Evidence would also indicate that Vidoje Blagojević, as commander of the Bratunac Brigade, was in the Bratunac Brigade zone of responsibility during this time.⁴⁶ The Prosecution concludes that Blagojević was necessarily involved in criminal activity.⁴⁷

30. The Prosecution further submits that the evidence shows that members of the Bratunac Brigade were involved in the guarding, loading on trucks and escorting of thousands of Bosnian Muslims from Potočari on 12 and 13 July 1995,⁴⁸ as well as in key aspects of the murder operation, including the separation, detention, murder, burial and reburial of Bosnian Muslim men.⁴⁹

31. The Prosecution adds that Vidoje Blagojević was fully aware of the intention of the Republika Srpska and the VRS to expel the Bosnian Muslim population from the territory of eastern Bosnia, as this intention was consistently expressed well before July 1995.⁵⁰ Among others, the Prosecution points to several documents including the attack plan authored by Blagojević on 5 July 1995,⁵¹ the Accused's position as a senior commander since the beginning of the war in 1992,⁵² his involvement in the establishment of a checkpoint restricting humanitarian aid,⁵³ and his involvement in artillery operations where civilians were targeted.⁵⁴

32. The Trial Chamber finds that evidence has been presented by the Prosecution, which, if accepted, could lead a reasonable trier of fact to conclude beyond reasonable doubt that troops and resources of the Bratunac Brigade were involved in the commission of certain crimes.⁵⁵ The Trial Chamber also finds that sufficient evidence has been adduced for a reasonable trier of fact to conclude that Vidoje Blagojević was aware of crimes committed in the Bratunac area, including by troops belonging to the Bratunac Brigade. There is therefore evidence, which, if accepted, could lead a reasonable trier of fact to conclude that Vidoje Blagojević was informed of the criminal activities carried out by and the whereabouts of his subordinates.

⁴⁴ Response, para. 34.

⁴⁵ Response, para. 48(6).

⁴⁶ Response, para. 24.

⁴⁷ Response, paras 30-31.

⁴⁸ Response, paras 25-26.

⁴⁹ Response, para. 48(7).

⁵⁰ Response, paras 17- 18.

⁵¹ Response, para. 18.

⁵² Response, para. 18.

⁵³ Response, para. 19.

(b) Control over troops involved in criminal activities

33. The Defence concedes that Vidoje Blagojević was the commander of the Bratunac Brigade and was in a position of authority within the Brigade.⁵⁶ However, it claims that there is no evidence which would indicate that Vidoje Blagojević ordered,⁵⁷ or knew or had reason to know, that his subordinates committed or were about to commit the crimes alleged in the Indictment.⁵⁸ The Defence adds that, even assuming that Vidoje Blagojević knew of the crimes committed by his subordinates, there is insufficient evidence to establish that he could have taken reasonable measures to punish the perpetrators.⁵⁹

34. The Defence claims that evidence has shown that, under the military rules applicable at that time, “a functional relationship exist[ed] between the higher and lower echelon officers within the same organ”. This functional relationship allowed a higher echelon officer of a particular organ to issue orders to a lower echelon officer of the same organ without passing through the brigade commander, who merely had to be kept informed.⁶⁰ Regarding the Bratunac Brigade intelligence and security organ in particular, the Defence submits that Blagojević did not have control over the Bratunac Brigade Military Police, which was placed under Momir Nikolić, the Chief of Intelligence and Security. Further, the notion of “counter-intelligence” was expanded by the Instructions issued by the VRS Main Staff commander General Ratko Mladić in October 1994, which, according to the Defence, most probably emboldened members of the security organs to operate independently of their commanders.⁶¹ Under this separate chain of command, orders were received by the Bratunac Brigade Military Police directly from higher echelon officers. The Defence adds that the evidence adduced confirms that Nikolić in fact did not follow the functional relationship as per the VRS rules, and admitted to having received orders directly from the superior intelligence and security organ, without informing Blagojević.⁶² The Defence submits that the testimony of Momir Nikolić is unreliable and untruthful and contrasts his testimony with that of five other witnesses in support of this claim.⁶³

⁵⁴ Response, para. 20-21.

⁵⁵ See Ex. P441 and Ex. P469 (daily combat reports of 12 and 13 July 1995).

⁵⁶ Blagojević Motion, para. 23.

⁵⁷ Blagojević Motion, Factual Basis, Part I, para. D(1) and (2). See also, in relation to the crimes committed at the Branjevo Military Farm and Pilica, Factual Basis, Part I, para. B(4).

⁵⁸ Blagojević Motion, Factual Basis, Part II, para. A.

⁵⁹ Blagojević Motion, Factual Basis, Part II, para. B; see also para. 24, regarding the Accused’s ability, or lack thereof, to take measures vis-à-vis Nikolić.

⁶⁰ Blagojević Motion, Factual Basis, Part II, para. A (1)(b).

⁶¹ Blagojević Motion, Factual Basis, Part II, para. A (1)(d).

⁶² Blagojević Motion, Factual Basis, Part II, para. A (1).

⁶³ Blagojević Motion, Factual Basis, Part II, para. A (1)(g) and (h). The Defence contrasts his testimony with that of Butler, P138, Deronjić, Franken and Jević.

35. Finally, the Defence submits that there is no evidence on the basis of which Blagojević could be held responsible for activities carried out by the Main Staff or the Drina Corps while using the Bratunac Brigade Headquarters as the forward command post, or for activities of the civilian authorities, including the MUP.⁶⁴

36. Conversely, the Prosecution submits that, in light of the chain of command, Vidoje Blagojević must have been informed of and was involved in the criminal activities conducted by security officers and personnel, and other soldiers.⁶⁵ The Prosecution also points to evidence indicating that Nikolić informed Blagojević of the fate of the Bosnian Muslim prisoners at Bratunac, when they met on 12 July 1995.⁶⁶

37. The Trial Chamber finds that a reasonable trier of fact could conclude that the Prosecution has provided sufficient evidence of the Accused's *de jure* authority as the Bratunac Brigade Commander, and of his effective control over the brigade troops. The Trial Chamber recalls that it will assess the weight and reliability to be attributed to the evidence, including in particular Momir Nikolić's testimony, at a later stage.

2. Vidoje Blagojević's responsibility for the crimes of extermination and murder

38. The Defence does not contest the fact that "following the attack on Srebrenica, certain members of the VRS and MUP forces captured, detained, summarily executed and buried thousands of Bosnian Muslim men."⁶⁷ The Trial Chamber finds that the Prosecution has adduced sufficient evidence for a reasonable trier of fact to conclude beyond reasonable doubt that murder, as a crime against humanity and as a violation of the laws or customs of war, and extermination as a crime against humanity, were committed during the indictment period. The Trial Chamber however analyses *ex officio* those aspects of the crimes referring to the "opportunistic killings" before considering the alleged responsibility of the Accused for these crimes.

(a) Opportunistic killings (paragraphs 43, 45, 47-48 of the Indictment)

39. The Trial Chamber understands that the crimes of murder and extermination also refer to the factual allegations of "opportunistic killings" contained in the Indictment.

40. The Indictment contains three sections dealing with "opportunistic killings":

⁶⁴ Blagojević Motion, para. 23.

⁶⁵ Response, para. 48(4).

- a) Paragraph 43 concerns killings in Potočari on 12-13 July 1995,
- b) Paragraph 45 concerns killings in Bratunac “between 12 and about 15 July 1995”, and
- c) Paragraphs 47-48 concern “opportunistic killings in the Bratunac Brigade and Zvornik Brigade zones” in the period “during and after the campaign of organised executions...through about 1 November 1995”.

41. The Trial Chamber notes that the Indictment alleges all three sets of opportunistic killings for both Accused. The Trial Chamber is of the opinion that the Prosecution has led evidence which, if believed, could lead a reasonable trier of fact to conclude that the following opportunistic killings occurred as described in the Indictment: paragraph 43 a), b), c), and d); paragraph 45 a), c), d) and f), paragraph 47.1, 47.3, 47.4, and 47.6, and paragraph 48.

42. The factual allegation described in paragraph 45 b) is however not supported by the evidence adduced at trial by the Prosecution. From the testimony of Kemal Mehmedović, it transpires that two men were removed from the truck on which the witness was held in the morning of 14 July 1995. While the discrepancy with paragraph 45 b) regarding the date of the event on its own is not serious enough to conclude that the factual allegation is incorrect, the Trial Chamber notes that the witness testified that “[t]hey were taken away, but nothing was heard afterwards, no bursts of fire or shots or anything. What happened to them, I have no idea.”⁶⁸ The Trial Chamber has not found any other evidence to support the factual allegation and therefore concludes that a reasonable trier of fact could not determine that this factual allegation occurred on the basis of the evidence presented.

43. As regards the factual allegation in paragraph 45 e), the Trial Chamber has not been furnished with any evidence by the Prosecution that four young Bosnian Muslim men were taken from the area of the Vuk Karadžić old elementary school and summarily executed. The Trial Chamber therefore concludes that a reasonable trier of fact, on the basis of the evidence adduced, could not conclude that this factual allegation occurred.

44. Paragraph 47.2 of the Indictment alleges that, sometime between 13 July through 27 July 1995, two Bosnian Muslim men were captured by VRS and/or MUP soldiers and that these two men were later placed in a pit near Konjević Polje where they were executed. The Trial Chamber has not found any evidence to support this factual allegation and concludes that a reasonable trier of fact could not find that it occurred as described.

⁶⁶ Response, para. 48(8).

⁶⁷ Blagojević Motion, para. 2.

⁶⁸ Mehmedović, T. 1275.

45. Paragraph 47.5 of the Indictment alleges that six named Bosnian Muslim men were captured by MUP forces sometime between 12 July and 1 November 1995 and turned over to and interrogated by Bratunac Brigade personnel, who subsequently executed them. Witness P-134 testified how Momir Nikolić on 13 July 1995 removed two men from a road checkpoint near Konjević Polje. Momir Nikolić himself admitted that he only removed one Bosnian Muslim man, named Rešid Sinanović, from the checkpoint.⁶⁹ Momir Nikolić also testified that he had heard from people he spoke with that Rešid Sinanović had later been transferred to the Vuk Karadžić School and then “to Zvornik” where he was killed.⁷⁰ Apart from the testimonies of witness P-134 and Momir Nikolić, the Prosecution has not provided any testimonial evidence regarding this factual allegation. The Trial Chamber therefore finds that a reasonable trier of fact could conclude on the evidence that the factual allegation in paragraph 47.5 occurred as regards Rešid Sinanović but not as regards the five other named individuals. Consequently, the factual allegation in paragraph 47.5 is retained only in so far as it refers to Rešid Sinanović.

46. The Prosecution has not furnished the Trial Chamber with any evidence supporting the factual allegations in paragraphs 47.7 and 47.8. The Trial Chamber therefore concludes that a reasonable trier of fact could not conclude on the evidence presented that these allegations occurred as described.

(b) Vidoje Blagojević’s alleged responsibility under Article 7 of the Statute

47. The Trial Chamber deems that there is insufficient evidence for a reasonable trier of fact to find Vidoje Blagojević responsible for planning, instigating or ordering the crimes of extermination and murder charged in Counts 2-4.

48. The Trial Chamber finds, however, that there is evidence that could lead a reasonable trier of fact to conclude that the mass murder of Bosnian Muslim men was part of an organised and well executed operation. However, evidence that would prove the Accused’s membership of the joint criminal enterprise to execute thousands of Bosnian Muslim men is scarce. The Prosecution has adduced very little evidence of direct contact between the Accused and other alleged members of the joint criminal enterprise.⁷¹ Much of the evidence centers on the involvement of troops from the Bratunac Brigade in the attack on Srebrenica and in activity following the fall of Srebrenica, such as guarding detained Bosnian Muslim men. The Prosecution argues that this evidence, together with Blagojević’s position in the VRS and his participation in military actions leading up to the fall of Srebrenica, is sufficient to prove that he shared the intent to murder the Bosnian Muslim men. The

⁶⁹ Nikolić, T. 1715, see also his Statement of Facts and Acceptance of Responsibility, Ex. P82.

⁷⁰ Nikolić, T. 1805.

Trial Chamber does not agree with this proposition. Evidence that Bratunac Brigade members participated in the attack on Srebrenica and in criminal activities following the fall of Srebrenica, some of which could be considered as furthering the joint criminal enterprise, is, in and of itself, not sufficient for a reasonable trier of fact to conclude that Blagojević shared the intent of such a joint criminal enterprise. Likewise, evidence that Blagojević was present in the Bratunac Brigade zone of responsibility during the relevant time is not deemed sufficient for a reasonable trier of fact to find that Blagojević intended the results of the joint criminal enterprise. This conclusion is furthermore supported by evidence that the superior commands of the Bratunac Brigade, the Main Staff of the VRS and the Drina Corps, had forward command posts co-located with the Bratunac Brigade command, and also by evidence that there appears to have been occasions when superior echelons bypassed the chain of command and issued orders to Bratunac Brigade resources without the brigade commander's authorisation.⁷² Thus, the Trial Chamber does not consider that proof of participation in criminal activity of Bratunac Brigade troops is sufficient for a reasonable trier of fact to conclude that Blagojević was a member of the joint criminal enterprise to execute Bosnian Muslim men. While there is evidence which could lead a reasonable trier of fact to conclude that the Accused had knowledge of the murder operation,⁷³ this evidence is not deemed sufficient to allow a reasonable trier of fact to conclude that the Accused as a consequence participated in the joint criminal enterprise to execute Bosnian Muslim men.

49. The Trial Chamber finds that there is sufficient evidence which, if accepted, could lead a reasonable trier of fact to find that the Accused knowingly provided assistance in the commission of the crimes. As a result, a reasonable trier of fact could conclude beyond reasonable doubt that the Accused is responsible for the crimes of murder and extermination as an aider and abettor.

50. The reburial operation is presented in the Indictment as a “natural and foreseeable consequence of the execution and original burial plan conceived by the joint criminal enterprise”⁷⁴ of which Blagojević and Jokić were allegedly members. The Appeals Chamber has specified in this respect that a crime would be considered a natural and foreseeable consequence of a joint criminal enterprise if “everyone in the group must have been able to predict this result”. The Appeals Chamber added: “what is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to

⁷¹ Nikolić testifies that he met with Blagojević and informed him of the ongoing operations. Nikolić, T. 1699-1701.

⁷² As regards co-location of forward command posts, see for example Ex. P543 (Butler, T. 4358, 5012), and Ex. P185 (Butler, T. 4388-89). Regarding chain of command issues, see Butler, T. 4281, 5013, Ex. P495 (Butler, T. 4529-31, 4992-93) and Ex. P541 (Butler, T. 4632-33).

⁷³ P140 who was from the worker's battalion, testified regarding involvement in burials in Kravica and Glogova. P140, T. 3404-3440, 3490.

⁷⁴ Indictment, para. 51.

that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* is required (also called “advertent recklessness” in some national legal systems).”⁷⁵

51. The Trial Chamber finds that no reasonable trier of fact could reach the conclusion that the reburial operation, conducted a few months after the executions, was foreseeable at the time the executions were carried out. No evidence has been presented which would allow the conclusion that the reburial operation was a predictable result of the joint criminal enterprise. On the contrary, the evidence would rather indicate that this operation was decided in response to the scrutiny of the international community of the events following the take-over of Srebrenica, *i.e.* as a consequence of a fact that falls outside the scope of the joint criminal enterprise. As a result, the Trial Chamber finds that the efforts to conceal the crimes a few months after their commission could only be characterised by a reasonable trier of fact as *ex post facto* aiding and abetting in the planning, preparation or execution of the murder operation.

52. The “opportunistic killings” are presented in the Indictment as a natural and foreseeable consequence of the common design.⁷⁶ However, as previously stated, the Trial Chamber finds that no reasonable trier of fact could find that Blagojević was a member of the joint criminal enterprise described in the Indictment with regard to the crimes of extermination and murder. Regarding his possible responsibility for the opportunistic killings, the Trial Chamber has found that the evidence adduced, if believed, could lead a reasonable trier of fact to find the accused guilty under Article 7(3) of the Statute for the opportunistic killings found in paragraph 45 a), c), d) and f).⁷⁷ However, with regard to the opportunistic killings in paragraph 43 a) to d), paragraph 47.1, 47.3, 47.4, and 47.6, and paragraph 48 of the Indictment, the evidence does not provide any specific information as to which VRS or MUP forces committed the killings. The evidence that these killings were committed within the Bratunac Brigade zone of responsibility is, in the Trial Chamber’s opinion, not sufficient to lead to the conclusion that a reasonable trier of fact could find the Accused responsible under Article 7(3) of the Statute for these killings. Thus, with regard to Vidoje Blagojević, all factual allegations of opportunistic killings, except those contained in paragraph 45 a), c), d) and f), are dismissed.

53. The Trial Chamber finds that the Prosecution has adduced sufficient evidence for a reasonable trier of fact to conclude beyond a reasonable doubt that the Accused could incur individual criminal responsibility under Article 7(3) of the Statute for the crimes of murder and extermination in Counts 2-4.

⁷⁵ *Tadić* Appeal Judgement, para. 220.

⁷⁶ Indictment, para. 47.

⁷⁷ Đokić, T. 5446-48; P-210, T. 7375-79.

3. Blagojević's alleged responsibility for the crime of forcible transfer

54. While contesting the issue of forcible transfer, the Defence has deferred addressing this until the end of the presentation of evidence.⁷⁸ The Trial Chamber finds that the Prosecution has adduced evidence which, if accepted, could lead a reasonable trier of fact to conclude beyond reasonable doubt that forcible transfer as a crime against humanity (Count 6) was committed during the indictment period.

55. The Trial Chamber finds that there is insufficient evidence for a reasonable trier of fact to find Vidoje Blagojević responsible for planning, instigating or ordering the crime of forcible transfer.

56. The Trial Chamber finds, however, that there is evidence that could lead a reasonable trier of fact to conclude that the forcible transfer of Bosnian Muslim refugees was part of an organised and well executed operation. The Trial Chamber also finds that a reasonable trier of fact could infer that Blagojević provided assistance to other members of the joint criminal enterprise in the execution of its common purpose. There is also evidence which could lead a reasonable trier of fact to conclude that the leaders of the Republika Srpska and the VRS intended to expel the Bosnian Muslim population from Srebrenica since well before July 1995.⁷⁹ This evidence, together with the evidence provided with respect to Blagojević's senior position in the VRS, his command position during the indictment period, his awareness of the evacuation,⁸⁰ and the participation of his subordinates in criminal activities, is sufficient to enable a reasonable trier of fact to conclude that Blagojević intended the result of the joint criminal enterprise, insofar as this enterprise concerns the forcible transfer of the Bosnian Muslim population.

57. Finally, the Trial Chamber finds that there is sufficient evidence for a reasonable trier of fact to conclude that the Accused knowingly provided assistance to the commission of the crime such that he could incur criminal responsibility for aiding and abetting in its planning, preparation or execution. Moreover, the Trial Chamber finds that the Prosecution has adduced sufficient evidence for a reasonable trier of fact to find the Accused guilty under Article 7(3) for the crime of forcible transfer.

⁷⁸ Blagojević Motion, para. 40.

⁷⁹ See, Ex. P816/ P401, Radovan Karadžić "Directive 7" specifying the VRS strategy to separate Srebrenica from Žepa; Ex. P543, Drina Corps Order No. 04/156-2, "Krivaja 95" Attack Plan, 2 July 1995; Ex. P826/ P402, VRS Main Staff "Directive 7.1" issued by General Mladić directing Drina Corps to conduct "active combat operations...around the enclave".

⁸⁰ See daily combat reports authored by the Accused on 12 and 13 July 1995, Ex. P441 and Ex. P 469.

4. Vidoje Blagojević's alleged responsibility for the crime of persecutions

58. The Defence admits that "there is significant evidence that would establish the existence of certain crimes under Article 5(h) of the Statute."⁸¹ The Trial Chamber finds that the Prosecution has presented evidence which could lead a reasonable trier of fact to conclude that the crime of persecutions was committed during the indictment period.

59. The Trial Chamber finds that, upon the evidence adduced, a reasonable trier of fact could not conclude that the Accused is guilty of planning, ordering or instigating the crime of persecutions. The Trial Chamber however finds that a reasonable trier of fact could hold the Accused responsible for committing the crime of persecution, on the basis, among others, of his involvement in the evacuation of the Bosnian Muslim population. The Trial Chamber also finds that there is sufficient evidence for a reasonable trier of fact to conclude that the Accused knowingly provided assistance to the commission of the crime, and as a result could find him guilty as an aider and abettor. Finally, the Trial Chamber finds that the Prosecution has adduced sufficient evidence for a reasonable trier of fact to find the Accused guilty for the crime of persecutions under Article 7(3).

5. Vidoje Blagojević's alleged responsibility for the crime of complicity in genocide

60. While contesting the issue of genocide, the Defence defers addressing this until the close of the evidence.⁸² The Trial Chamber finds that the Prosecution has adduced evidence which, if accepted, could lead a reasonable trier of fact to come to the conclusion that genocide was committed in Srebrenica during the indictment period. The Trial Chamber also finds that a reasonable trier of fact could find Blagojević responsible for complicity in genocide on the basis of the evidence presented.

C. Dragan Jokić's Motion

1. The crimes with which Dragan Jokić has been charged

61. The Trial Chamber refers to its previous findings that sufficient evidence has been presented for a reasonable trier of fact to find that the crimes of extermination, murder and persecutions were committed during the indictment period.⁸³

⁸¹ Blagojević Motion, para. 38.

⁸² Blagojević Motion, para. 28.

⁸³ See *supra*, paras 38 and 58.

62. The Defence for Dragan Jokić claims that Counts 3 and 4, which respectively charge murder as a crime against humanity and as a violation of the laws or customs of war, should be dismissed. To support this claim, the Defence argues that “joining [...] two or more separate and distinct offences into a single count” is “universally condemned in jurisprudence”⁸⁴ and that cumulative charging of one single offence under several counts violates the Accused’s “basic right against double jeopardy.”⁸⁵

63. The Trial Chamber first notes that these arguments refer to the form of the Indictment, rather than to an alleged lack of evidence to enter a conviction. Under Rule 72 of the Rules, objections regarding the form of the Indictment are to be presented at the pre-trial stage and no later than thirty days after disclosure by the Prosecution to the Defence of all material and statements referred to in Rule 66(A)(i).⁸⁶ The arguments presented in this respect could therefore be rejected on the mere ground that they are not submitted in time. However, on the merits, the Trial Chamber notes that cumulative charging is authorised in the Tribunal’s jurisprudence and that it even constitutes the common practice of both this Tribunal and the ICTR.⁸⁷ Moreover, no rule prevents the Prosecution from charging several criminal acts under one single count. These objections therefore fail.

64. The Defence also points to an inconsistency in the Indictment in that according to paragraph 31 of the Indictment, Dragan Jokić is alleged to have “committed, planned, instigated, ordered, and otherwise aided and abetted genocide or complicity in genocide, crimes against humanity (including murder, persecutions, forcible transfer and inhumane acts) and murder as a violation of the laws or customs of war”. The Defence argues that this is in contradiction both with the preamble and paragraph 54 of the Indictment, which clearly indicate that Dragan Jokić is neither charged with genocide or complicity in genocide, nor with forcible transfer.⁸⁸ It is also the understanding of the Trial Chamber that Dragan Jokić is not charged with these crimes.

65. The Defence also submits that the Prosecution has failed to produce evidence, on the one hand, of opportunistic killings in the Zvornik Brigade zone and, on the other hand, of Dragan

⁸⁴ Jokić Motion, para. 16.

⁸⁵ Jokić Motion, para. 22.

⁸⁶ Dragan Jokić did submit, pursuant to Rule 72, a preliminary motion on the form of the Indictment on 21 June 2002, “Dragan Jokić Objections to Joinder and Amendment of Indictments”, 21 June 2002. This Motion was rejected by Trial Chamber II on 1 August 2002, Decision on Motions Challenging the Form of Amended Joinder Indictment. Dragan Jokić subsequently submitted a response to the Prosecution’s motion for leave to file a third Amended Joinder Indictment (Prosecution’s Motion for Leave to File Third Amended Joinder Indictment”, 26 May 2003), wherein he raised other alleged defects of the Indictment. These arguments were rejected by this Trial Chamber, Decision on Prosecution’s Motion for Leave to File Third Amended Indictment, 17 June 2003. Dragan Jokić thus had several opportunities to object to the form of the Indictment and has in fact done so.

⁸⁷ *Čelebići* Appeal Judgement, para. 400.

⁸⁸ Jokić Motion, para. 54-55.

Jokić's involvement in such killings.⁸⁹ It appears that the Defence is of the opinion that the Indictment only alleges responsibility of Jokić for the opportunistic killings that occurred in the Zvornik Brigade zone. As has been noted above, the Trial Chamber does not agree with this position and will consequently examine whether a reasonable trier of fact could convict Dragan Jokić on the basis of the evidence adduced, if believed, for all opportunistic killings. The Trial Chamber refers in this respect to its earlier findings regarding which of the opportunistic killings remain for consideration.⁹⁰

2. Dragan Jokić's role, as chief of engineering of the Zvornik Brigade, in the burial and reburial operations

66. The Defence argues that the Prosecution failed to prove that Dragan Jokić was "responsible for planning, directing, organising and monitoring the activities of the Zvornik Brigade Engineering Company" or "empowered to issue orders to the Engineering Company", as is alleged under paragraph 13 of the Indictment. On the contrary, the Defence claims that the evidence demonstrates that the Accused had no command authority over the Zvornik Brigade Engineering Company.⁹¹ The Defence further argues that the evidence adduced by the Prosecution is insufficient to prove the participation of Dragan Jokić or the Zvornik Brigade Engineering Company in the burial operations conducted between 14 and 17 July 1995 in connection with the killings at the Kravica Warehouse,⁹² Orahovac,⁹³ Petkovci Dam,⁹⁴ the Branjevo military Farm and the Pilica Cultural Centre,⁹⁵ or Kozluk.⁹⁶ Moreover, the Defence submits that there is no evidence indicating that Dragan Jokić in any manner directed the Zvornik Brigade Engineering Company with regard to the reburial operation.⁹⁷ On the contrary, the Prosecution's witnesses confirmed that Dragan Jokić did not participate in this operation.⁹⁸

67. The Prosecution responds that it does not allege that Dragan Jokić was the commander of the Zvornik Brigade Engineering Company or that it is relying on a theory of command responsibility when pleading Jokić's responsibility for the crimes charged.⁹⁹ Furthermore, while the Prosecution argues that, "in the practical exercise of engineering duties, Dragan Jokić had more authority than called for in the rules", it emphasises that "it has never been the Prosecution's

⁸⁹ Jokić Motion, para. 89.

⁹⁰ See *supra*, paras 41-46.

⁹¹ Jokić Motion, paras. 24 to 33; see also para. 63.

⁹² Jokić Motion, paras 63-68, citing Stanojević, T. 5693; Butler, T. 5223, 5227.

⁹³ Jokić Motion, paras 69-74, citing Ristanović, T. 5406-08, 5381-82, 5412-13; Butler, T. 5209-10.

⁹⁴ Jokić Motion, paras 75-78, citing Ristanović, T. 5415; Butler, T. 5211.

⁹⁵ Jokić Motion, paras 80-85, citing Ristanović, T. 5389, 5418-19; Butler, T. 5212.

⁹⁶ Jokić Motion, paras 86-87, citing Mitrović, T. 5603-04, 5611, 5618-19.

⁹⁷ Jokić Motion, para. 91.

⁹⁸ Jokić Motion, para. 92, citing Obrenović, T. 2545-46.

position that Dragan Jokić was the '*de facto*' commander of the Engineering Company in July 95".¹⁰⁰ The Prosecution specifies that this consideration would only be presented as an aggravating circumstance to be taken into account while determining an appropriate sentence.¹⁰¹ The Prosecution however maintains that there is evidence showing that:

- Dragan Jokić, as the chief of engineering, was tasked, under the rules, to "advise the Brigade Commander on the appropriate uses for the Engineering Company and make proposals and recommendations for various projects for the Engineering Company,"¹⁰² and to "oversee and assist in implementing the Commander's orders related to carrying out various projects in which the Engineering Company is engaged;"¹⁰³
- The Zvornik Brigade Engineering Company was involved in the burial and reburial operations;¹⁰⁴ and
- Dragan Jokić was personally involved in the burial¹⁰⁵ and reburial operations.¹⁰⁶

68. The Trial Chamber finds that a reasonable trier of fact could conclude that the evidence presented is sufficient to find that Dragan Jokić and the Zvornik Brigade Engineering Company were involved in the burial and re-burial operations.

3. Dragan Jokić's role, as brigade duty operations officer on 14 and 15 July 1995, in co-ordinating communication between VRS officers and commands involving the transportation, detention, execution and burial of Srebrenica Bosnian Muslims

69. The Defence does not contest that Dragan Jokić was the Zvornik Brigade duty operations officer on 14 and 15 July 1995. It argues, however, that the Prosecution failed to prove the other allegations contained in paragraph 14 of the Indictment and that the evidence does not allow a reasonable trier of fact to conclude that Jokić was "the central point of co-ordination and communications for the Zvornik Brigade zone of responsibility."¹⁰⁷ In the Defence's opinion the

⁹⁹ Response, para. 64.

¹⁰⁰ Response, paras 64-65.

¹⁰¹ Response, para. 65.

¹⁰² Response, para. 72, citing Ex. D23/3, para. 40; Obrenović, T 2433; Butler, T 4324-29.

¹⁰³ Response, para. 73.

¹⁰⁴ Response, para. 75 for the burial operation, citing Ex. P513; Ex. P 521; Ex. P535; Ex. P537; Ex. P358, p. 63-78; Butler, T 4555-56; Ex. P515; Ex. P516; Ex. P517; Ex. P522; Ex. P523; Ex. P524; Ex. P536; Ex. P538; and paras 71(3) and 102 to 105 for the reburial operation, citing generally Manning, P130, Ristanović, Stanojević and Mitrović.

¹⁰⁵ Response, paras 76 to 80, citing Mitrović, T. 5594-95; Stanojević, T. 5676-77, 5693-94; Ristanović, T. 5363-64, 5361-62, 5372-75, 5377-78, 5387-93, 5396-5401; Butler, T. 4558, Ex. P358, paras 7.17-7.27, 7.33-7.35, 7.43-7.44, 7.52, 7.55-7.58; Ex.s P514, P515, P516, P521, P522; P507, p.34; P130, T. 6646-47; P538.

¹⁰⁶ Response, paras 102 to 105, citing generally Manning, P130, Ristanović, Stanojević and Mitrović.

¹⁰⁷ Jokić Motion, paras 34 to 44 and 57 to 61.

evidence shows that other commanding officers were always present at the Zvornik Brigade command when Jokić was the duty operations officer.¹⁰⁸ In the Defence's view, such evidence could only lead to the conclusion that Jokić did not exercise any role in co-ordinating communications between VRS officers and commands involved in the transportation, detention, execution and burial of Bosnian Muslims from Srebrenica.¹⁰⁹ The Defence adds that this inference is confirmed by the absence of any direct evidence establishing that Jokić was the central point of co-ordination of the brigade on 14 and 15 July 1995.¹¹⁰ It avers that no evidence shows that Dragan Jokić ever authored or transmitted any report of the Zvornik Brigade.¹¹¹

70. According to the Prosecution, the evidence adduced proves that Dragan Jokić was aware of the plan to murder the Bosnian Muslims in the Zvornik Brigade zone and assisted in carrying out that operation.¹¹² In particular, the Prosecution submits that Jokić's central role in co-ordinating communications between VRS officers and commands on 14 and 15 July is proved by evidence describing the tasks generally attributed to the duty operations officer,¹¹³ evidence showing that Jokić issued orders on 14 and 15 July,¹¹⁴ intercepted conversations involving Dragan Jokić,¹¹⁵ the entries written by Dragan Jokić into the Duty Operations Officer Workbook,¹¹⁶ and the testimony of Zvornik Brigade members who communicated with Dragan Jokić on 14 July 1995.¹¹⁷

71. The Trial Chamber finds that a reasonable trier of fact, on the basis of the evidence adduced, could conclude that Dragan Jokić, as the brigade duty operations officer on 14 and 15 July 1995, played a significant role in co-ordinating communication between VRS officers and commands involving the transportation, detention, execution and burial of Bosnian Muslims and was aware that the crimes were being committed.

¹⁰⁸ Jokić Motion, paras 37-43 and 59, citing Ex. P394, Manual for the Work of Commands and Staffs; Butler, T. 4271, 5112- 13, 5268-72 and Ex. P133, Zvornik Brigade Duty Operations Officer Workbook.

¹⁰⁹ Jokić Motion, paras 56-58, citing P138, T. 3680-82; and Obrenović, T. 2511.

¹¹⁰ Jokić Motion, para. 44. Jokić's Defence specifically contests the evidence related to the entries and notes in the Duty Operations Officer Workbook.

¹¹¹ Jokić Motion, paras 34-36, 60-61.

¹¹² Response, paras 85-101.

¹¹³ Response, paras 81-83.

¹¹⁴ Response, paras 82-83, citing Butler, T. 4329-32; Obrenović, T. 2434-37; Ristanović, T. 5363- 64.; Mitrović, T. 5597, 5603; Stanojević, T. 5677; Ex. P394, para. 66.

¹¹⁵ Response, paras 85 to 88, citing Ex. P227 and Ex. P229; Ex. P125 and Ex. P307/a; Obrenović, T. 2587-90 and Butler, T. 4573-74; Ex. P126 and Ex. P233.

¹¹⁶ Response, paras 89 to 93, citing Ex. P507, Ex. P 716, Ex. P717, Ex. P718, Ex. P133, Ex. P232, Ex. P125; generally testimony of Barr; see also Obrenović, T. 2498, 2525, 2587, 2612, 2616-17; Butler, T 4582-83, 4585, 4588-89; P130, T 6637-49.

¹¹⁷ Response, paras 94-100, citing Milošević, T. 5646, 5648, 5650; P130, T 6584, 6600-22; Petrović, T. 5499-5507; P113, Ex. P784, KT 2963-65; Obrenović, T. 2520-2522, 2611; Ex. P115, p.3.

4. Dragan Jokić's alleged responsibility for the crimes of murder, extermination and persecutions

(a) Planning, instigating, and ordering

72. The Trial Chamber is of the opinion that the Prosecution has not led such evidence on the above three heads of responsibility that a reasonable trier of fact could conclude that Dragan Jokić planned, instigated or ordered any of the alleged crimes. While there is evidence that may lead a reasonable trier of fact to find that Jokić ordered certain actions that contributed to the commission of the crimes charged, no reasonable trier of fact could reach a finding beyond reasonable doubt that he ordered the crimes of murder, extermination or persecutions *per se*. The Trial Chamber consequently removes these three heads of responsibility for all crimes with which Dragan Jokić has been charged.

(b) Committing as a member of a joint criminal enterprise

73. The Defence submits that Jokić was not a member of the joint criminal enterprise and that he did not know what individuals outside Zvornik had planned. Moreover, it is alleged that he was not in the Zvornik Brigade command on 12 and 13 July 1995 but that he only arrived there on 14 July in order to assume duty as the duty operations officer.¹¹⁸ Furthermore, no personnel from the Zvornik Brigade Engineering Company had any knowledge of the development in Srebrenica and Bratunac, nor did they possess any plan of utilization of engineering assets.¹¹⁹ It is also contended that Dragan Jokić left the Zvornik Brigade premises in the morning of 15 July 1995.¹²⁰

74. The Defence argues that the Prosecution has failed to prove that Dragan Jokić possessed the criminal intent and state of mind required to commit, or significantly assist and facilitate the commission of, the alleged crimes.¹²¹

75. The Prosecution refers to the evidence set out in its Response which in its opinion proves Jokić's agreement and/or silent consent to the common goal of the joint criminal enterprise and his level of co-ordination and co-operation.¹²²

76. The Trial Chamber has previously assessed Dragan Jokić's significant role as duty operations officer co-ordinating communications in relation to the transportation, detention, execution and burial of Bosnian Muslims. The Trial Chamber has also analysed Jokić's participation in the burial operation as both the Zvornik Brigade chief of engineering, as well as

¹¹⁸ Jokić Motion, para.47.

¹¹⁹ Jokić Motion, para. 47.

¹²⁰ Jokić Motion, para. 48.

¹²¹ Jokić Motion, para. 49.

duty operations officer during a crucial time period.¹²³ The Trial Chamber therefore believes that a reasonable trier of fact could conclude that Dragan Jokić was aware of, and shared, the common design of the joint criminal enterprise as described in the Indictment. A reasonable trier of fact could consequently also conclude that Dragan Jokić was a member of this joint criminal enterprise, and that he participated in the execution and furthering of its common design with the mental state required for the crimes charged in Counts 2-5 of the Indictment. The Trial Chamber is therefore also convinced that a reasonable trier of fact could find Dragan Jokić guilty of the opportunistic killings that remain for consideration, *i.e.* paragraph 43 a), b), c), and d); paragraph 45 a), c), d) and f), paragraph 47.1, 47.3, 47.4, and 47.6.

(c) Aiding and Abetting in the planning, preparation or execution of the crimes

77. The Trial Chamber finds that there is sufficient evidence which, if accepted, could lead a reasonable trier of fact to find that Dragan Jokić knowingly provided assistance in the commission of the crimes he is charged with and that he could incur individual criminal responsibility as an aider and abettor under Article 7(1) of the Statute.

¹²² Response, para. 108.

¹²³ *Supra* paras 68 and 71.

IV. DISPOSITION

FOR THE FOREGOING REASONS,

TRIAL CHAMBER I, SECTION A

PURSUANT TO Rule 98 *bis* of the Rules,

ENTERS a judgement of acquittal in respect of Vidoje Blagojević on Counts 2 to 4 of the Indictment insofar as his individual criminal responsibility is alleged, under Article 7(1) of the Statute, for planning, instigating, ordering and committing the crimes;

ENTERS a judgement of acquittal in respect of Vidoje Blagojević on Counts 5 and 6 of the Indictment insofar as his individual criminal responsibility is alleged, under Article 7(1) of the Statute, for planning, instigating, and ordering the crimes;

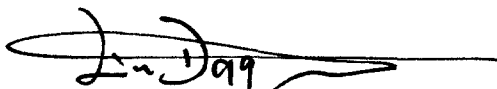
ENTERS a judgement of acquittal in respect of Dragan Jokić on Counts 2 to 5 of the Indictment insofar as his individual criminal responsibility is alleged, under Article 7(1) of the Statute, for planning, instigating, and ordering the crimes;

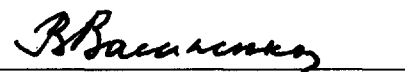
REJECTS the factual allegations contained in paragraphs 45 b) and e), 47.2, 47.5 except for the victim named Rešid Sinanović, 47.7, and 47.8; and

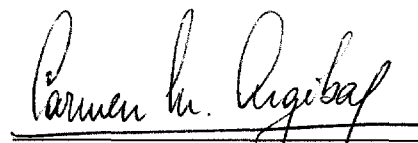
REJECTS, with regard to Vidoje Blagojević, the factual allegations contained in paragraphs 43 a) to d), 47.1, 47.3, 47.4, 47.6, and 48;

DISMISSES the remaining grounds of the Motions.

Done in English and French, the English version being authoritative.


Judge Liu Daqin, Presiding


Judge Volodymyr Vassilenko


Judge Carmen Argibay

Dated this fifth day of April 2004
at The Hague, Netherlands

[Seal of the Tribunal]