

# Sidste Nyt fra Albanien, Kosóva og Makedonien

*The Latest News from Albania, Kosóva and Macedonia*



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## KOSÓVA/KOSOVO

**Forhandlingerne om Kosóva's fremtid går trægt, men den Albanske og den Serbiske side mødes dog i disse dage i New York. I den kommende uge mødes Repræsentanter for Kontaktgruppen.** Den Serbiske Præsident Boris Tadic har (meddeler nyhedsbureauerne 070928) lovet Albanerne et meget vidtgående selvstyre, men ikke egentlig uafhængighed. Det sidste er til gengæld hvad Albanerne insisterer på.

**HVIS Albanerne får egentlig selvstændighed, hvordan vil de så sikre Minoriteterne sikkerhedsmæssigt og socialt?** Det foreligger der ikke sikker viden om. Jeg har spurgt mig frem, men mærker en ret kraftig irritation over spørgsmålet.

Hvordan kan det være, svares der tilbage, at Danskere nu er blevet så interesserede i det Serbiske Mindretals velbefindende? Hvorfor glemmer man at Albanerne blev undertrykt i mange år - kulminerende i tiden under Milosevic frem til NATO-interventionen i 1999?

Samme Albaner vedgik i samtalens løb at der var Albanere der havde dræbt Serbere under urolighederne i 2004 og brændt huse og kirker ned, men husk - sagde han - at der var Serbere der lige inden havde drevet Albanske børn i døden i Ibar med en hund.

Men det er jo aldrig blevet bevist, sagde jeg. Den internationale undersøger kunne ikke finde noget som helst der pegede i dén retning, hverken mht spor eller troværdige vidner; tværtimod antydede han at historien om Serberne og hunden var en »opfindelse«.

Min albanske bekendt var aldeles rasende over hvad jeg sagde og beskyldte mig for i virkeligheden at være Serber.

## DRUKNEULYKKEN I IBAR MARTS 2004

Se uddrag af UNMIK's Press Briefing 28. April 2004:

UNMIK Police and Justice Spokesperson Neeraj Singh

We have the report from the investigations into the drowning of the three children from Cabra village. But before we discuss that, let me give you a quick update on the ongoing investigations into the March riots and the Mitrovica Detention Centre shooting.

Investigations into the March riots are continuing and police have made more than 260 arrests in this connection. During the riots in Kosovopolje on 17 March 2004, a Kosovo Serbian male and female were attacked by a small group of rioters. The male, Zlatibor Trajkovic, suffered fatal injuries during the attack. Police have arrested a Kosovo Albanian male suspect for the murder of Zlatibor Trajkovic and attempted murder of Trufun Stoilovic. On 22 April 2004, an international pre-trial judge of the Pristina district court ordered detention on remand for a period of one month for the suspect.

In relation to the shooting incident in the Mitrovica Detention Centre, of the four Jordanian police officers who had been detained for questioning, three have been released from detention this morning. Investigations into the incident are

continuing and one Jordanian police officer still remains in detention.

There have been thorough investigations into the deaths by drowning of three children from Cabra village in the Ibar river on 16 March 2004. The investigations were conducted by one of the senior most International Prosecutors in the Mission Mr. Peter A. Tinsley, a highly respected [Canadian] Judge of the Mitrovica District Court who was the investigating judge in the case and experienced police investigators.

The deaths occurred on March 16, 2004 when the boys, four of an original group of six, entered the Ibar River between the Albanian village of Cabra and the Serbian village of Lower Zupce from the Zupce side where they had gone to play.

It is unquestionable that the drowning deaths of the three children is a horrific tragedy, however it came about. Investigations, however, have to be based on the sole question of whether there is sufficient evidence to support a grounded suspicion that the deaths were a result of culpable homicide, including that resulting from negligence. The question before the investigators is why the boys entered the highly turbulent river: was it accident or a threat of a nature greater than the river itself?

The facts of the incident can be summarized as follows:

- In the evening of 16 March 2004, 6 children from Cabra village crossed a bridge and went over to the Zupce side of the Ibar river.
- Approximately 500 metres downstream from the bridge, 2 children briefly separated from the group and walked further downstream while four remained at the location.
- The four children entered the river, which was swollen and turbulent. Only one of them, 13 year old Fitim Veseli, reached the other side of the river. The body of 12 year old Egzon Deliu was found in the night of 16 March and that of 11 year old Avni Veseli in the morning of 17 March. One child, 9 year old Florent Veseli, is still missing.
- The two children who had walked further downstream returned to the location where they had parted from the four children, they believe within 10 minutes of having separated. They did not see their four friends there, walked up towards the bridge and crossed back to the Cabra side of the river.

#### Conduct of investigations

The following investigative measures were undertaken:

- The investigating judge of the Mitrovica District Court, responded to the finding of the bodies of the two children on 16 and 17 March respectively.
- The investigating judge ordered autopsies for the two bodies. In both cases autopsies confirmed their deaths were by drowning.
- In the early morning hours of 17 March, the investigating judge and police investigators recorded the statements of the principal witness Fitim Veseli.
- On 22 March the case investigator once again interviewed Fitim Veseli.
- Apparently over 30 interviews with journalists, a "professor" who is writing a book and others intervened between the two interviews on 17 and 22 March.
- Despite prior agreement, the International Prosecutor was denied access to Fitim Veseli at the time of the scene visit and since.
- The two other children from the group of 6 were interviewed by the case investigator.
- An elderly Serb man who had been working in a cornfield near the scene of the incident was interviewed.
- The International Prosecutor visited the scene in the company of police investigators and the investigating judge.
- The case investigator thoroughly canvassed the houses of Lower Zupce village, particularly those along the escarpment where the two Serb males with a dog were alleged to have appeared.
- The residents of the village are primarily older Serbs and, with their children accounted for, no young Serb males fitting the descriptions provided were identified.
- The case investigator made observations and inquiries regarding dogs; such animals observed were photographed.
- Investigators re-enacted possible scenarios at the scene to fit the description provided by the witnesses.
- The steep 50 meter high escarpment and then the 200 meter of rough, partly boggy, ground between the bottom of the escarpment and the location of the boys was examined. It was demonstrated by a fit UNMIK Police officer that running from the top of the escarpment to the boys' location was difficult given the ground surface and would have taken several minutes.

#### Findings from the investigation

The principal witness to the incident, Fitim Veseli, had alleged that two young male Serbs, approximately 20 to 22 years of age, along with a dog emerged from one of the houses in Zupce at the top of the escarpment and approached the boys. Fear of the dog prompted the four boys to enter the river. There are significant inconsistencies in the statements of Fitim Veseli as may be seen from the summary of the prosecutor's report handed out.

After a systematic and thorough investigation into the incident the International Prosecutor, with the agreement of the Investigating Judge and Police Investigators, has concluded that at this point of time there is no case to proceed further with.

The primary reasons for the conclusion are:

1. No suspects fitting the broad description given by the surviving child have been found.
2. Nothing has been uncovered to support the existence of such people.
3. No dog fitting the description provided by the surviving child has been found in the area.
4. There are very significant inconsistencies in the accounts given by the surviving child, first before the investigating judge in the morning of 17 March and then in an interview with the case investigator on 22 March.
5. There is a lack of corroboration of the statements of the surviving child. In fact, it is logically at odds in several respects with other evidence, most significantly the failure of the farmer in the cornfield, and even the other two boys, to hear or see the loud and highly visible events described.
6. Given the accepted frailties of eyewitness testimony in even the best of circumstances, which these clearly were not, the reliability of the single sourced evidence supporting the allegation is highly open to question. And it must be noted that this single sourced evidence itself has significant inconsistencies.

Under the circumstances, it is the considered opinion of the public prosecutor, investigating judge and case investigator that the evidence does not currently support a grounded suspicion of the commission of a criminal act against any individual or individuals. As such, the matter can proceed no further at this time. However, should any further credible evidence be uncovered in the future the investigation will be revived.

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Tomë Gashi: Prosecutor's report intentionally failed (All dailies)

Dailies reports that the defence counsel and families of the three children killed in river Ibar are not happy with the report of the international prosecutor and are calling for its review and the continuation of investigations until it is clear what really happened on the afternoon of 16 March in Çabra.

Tomë Gashi, the lawyer of the families of the three children killed in the Ibar river, in the presence of children's parents and journalists called the report of the international prosecutor Peter Tinsley as politically calculated. According to the report, says the lawyer, it turns out that no criminal elements were found in the Çabra case, that is, the investigation could not establish that someone, several Serbs from the neighbouring village of Zupce, chased these children with dogs and forced them to jump into the river where they met their deaths.

The prosecutor, according to Gashi, even though admitting that there must have been a strong reason that made the children jump into the river, the prosecutor failed to find the real cause for it. And it is exactly on this point that the prosecutor failed completely, because he worked under the pressure of the riots that followed in Kosovo.

Noting some of the failures and 'drastic violations', Gashi said that the statement of the child was not analysed professionally and that the argument of the prosecutor that he was not able to interview the child witness is unfounded and this was also confirmed by the boy's father Çerkin Veseli. Apart from this, the scene was not properly sealed, otherwise the paw tracks of the dog would have been preserved. The other argument of the prosecutor that there are no young Serbs in Zupce village also does not stand.

The boy's father, Çerkin Veseli described the village of Çabra as being burnt to the ground during the war with 22 of its residents killed and 5 missing, several attempts of kidnapping after the war and other facts that, according to him were neglected. Another fact was also mentioned, that on 16 March, Serbs from the village of Zallq had reported the loss of two cows and a calf and this, according to Gashi, could have been a reason for the anger of Serbs that attacked the children by forcing them to jump into the river, a fact that was not treated with sufficient attention in the report.

'It is clear that the aim of the prosecutor was to close this case as soon as possible and the reasons are not professional, but highly political' stated Gashi. The prosecutor, according to Gashi did not close this case as required by his profession, which is to find the people responsible, but instead he excludes the criminal act committed by certain people. 'The prosecutor dealt more with what didn't happen instead of with what actually happened' said Gashi.

Gashi also said, 'The work was done unprofessionally, too fast and in a short period of time'. Even though in many simpler cases the police usually say that the investigations will be continued, according to the lawyer, 'It is surprising that in this case the police took the courage and say that the case is closed'.

Gashi did not spare harsh words addressed to prosecutor Tinsley. 'The tragedy of this report is that the prosecutor attempts to change his role. He becomes an advocate of the people that were not found, an advocate to the perpetrators of the criminal act of three children's deaths, whereas I am trying to do his job. To become a prosecutor and find the people that committed this crime'.

**UNMIK deputy chief Stephen Schook anklages for uprofessionalisme og for at være for tæt knyttet til visse af Kosóva Albanerne**, særligt tidligere PM Ramush Haradinaj. Schook har udtalt at han har opført sig korrekt og at han ikke har planer om at træde tilbage.

**ICTY i Haag: Carla del Ponte fortsætter som Chefanklager året ud; hendes efterfølger er endnu ikke udpeget.**

**Appeldomstolen har netop (070927) besluttet at lade dommen mod Fatmir Limaj m.fl. stå ved magt**, ifølge dommen blev Fatmir Limaj og Isak Musliu frifundet og Haradin Bala fik 13 års fængsel for flere forskellige forbrydelser, hvoriblandt drab. Man skriver:

The Tribunal's Appeals Chamber today upheld the Trial Chamber judgement in the case against former Kosovo Liberation Army (KLA) members Fatmir Limaj, Isak Musliu and Haradin Bala. The three were indicted for the crimes committed against both Serb and Kosovo Albanian civilians in the KLA-run Llapushnik/Lapušnik prison camp between May and July 1998. It dismissed all the appeals lodged by parties, confirming acquittals of Limaj and Musliu while affirming Bala's convictions for torture, cruel treatment and murder and his sentence of 13 years.

Haradin Bala, a guard at the Llapushnik/Lapušnik prison camp was sentenced to 13 years' imprisonment on 30 November 2005. The Trial Chamber convicted Haradin Bala for his personal role in the "maintenance and enforcement of the inhumane conditions" of the camp; aiding the torture of one prisoner; and participation in the murder of nine prisoners from the camp who were marched to the Berishe/Beriša Mountains on 25 or 26 July 1998 and murdered.

In its decision, the Appeals Chamber rejected all five grounds of Bala's appeal including his claim of mistaken identity and alibi. The Appeals Chamber rejected the two grounds of Prosecution's appeal, including the argument that a systemic joint criminal enterprise existed in which "the prison camp was run by the KLA, the conditions in the camp amounted to a system of ill-treatment and the KLA soldiers in the camp intended to further this system of ill-treatment."

The Appeals Chamber found that "while the Trial Chamber's factual findings show that KLA soldiers systematically committed cruel treatment and torture in the camp, the Trial Chamber was not satisfied that these KLA soldiers were participants in a systemic joint criminal enterprise to commit these crimes. The Trial Chamber did not err in this respect, because it reasonably held that it could not be ruled out that rogue KLA soldiers or so-called outsiders to the camp for personal reasons, such as revenge, mistreated or killed civilian detainees, and not in furtherance of any common plan."

This finding was also applied in the Prosecution's appeals against Limaj's and Musliu's acquittals in relation to the alleged

existence of a joint criminal enterprise.

In addition, the Appeals Chamber stated that "the Trial Chamber reasonably found that Fatmir Limaj does not incur criminal responsibility for any of the offences charged in the Indictment" in the context of command responsibility. The Appeals Chamber was satisfied, Judge Schomburg dissenting, the Trial Chamber reasonably assessed the totality of the evidence when it found "that Isak Musliu was not present inside the prison camp and did not participate in the operation of the Lapušnik prison camp."

The Trial against Fatmir Limaj, Isak Musliu and Haradin Bala commenced on 15 November 2004 and it lasted for 88 days. The Prosecution called 30 witnesses and tendered 260 exhibits and the Defence called 16 witnesses and tendered 44 exhibits.

Haradin Bala is to remain in the ICTY's Detention Unit pending his transfer to the country in which he will serve his sentence, he will be given credit for his time served in the tribunal's custody.

Se nærmere [nedenfor](#).

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### **Hvor mange bor der i Kosovo / Kosóva?**

Materialet stammer fra OSCE-rapporter og virker ikke meget sikkert; tallene er fra forskellige tidspunkter, og der er mange tal der er - mere eller mindre løst - anslåede.

For Mitrovica kendes ikke aktuelle tal; de seneste tal er fra omkring 1998 (som jeg har tilføjet nederst i tabellen), og de tal var formentlig ikke dækkende dén gang.

Sammenlagt er billedet dog således: Indbyggere i alt: 2.6 mio. Albanere: 2.4 mio, dvs. godt 90 %.

Serbere (og alle andre minoriteter), hele Kosovo/Kosóva: 250.000, dvs. 10 %. Serbere alene: omkring 125.000, dvs. 5 %.

Serbere (og alle andre minoriteter) uden for Mitrovica og de 3 områder med Serbisk dominans: Godt 190.000, dvs. at langt de fleste Kosovo-Serbere og andre minoriteter må formodes at befinde sig *syd* for Mitrovica og Ibar. Heri er medtaget Gorani'erne (ca. 18.000 slavisk talende muslimer) i Dragash/Drageas og alle Roma'er, 'Ægyptere' og Ashkali'er. Serberne alene (i de pågældende områder) udgør kun godt 70.000, godt 55 % af alle Serbere.

Følgende oversigt bygger på de OSCE-oplysninger der kan findes på: <http://www.osce.org/kosovo/13982.html>

		<b>Albanians</b>	<b>Gorani</b>	<b>Kosovo Serbs</b>	<b>Roma, Egyptians, Ashkali etc</b>	<b>Total</b>
Decan / Decani	2006	50,000		20	480	50,500
Dragash / Dragas	Jan 2006	22,800	17,975		0	40,775
Gjakovë / Dakovica	Nov 2005	143,300		6	9,694	153,000
Glllogovs / Glogovac	2001	70,400			0	70,400
Gjilan / Gnjilane	Aug 2003	116,000		12,300	13,690	129,690
Istog / Istok	2006	41,000		540	3,070	44,610
Kacanik / Kacanik	2006	43,000			0	43,000
Kamenicë / Kamenica	Aug 2003	52,000		10,500	500	63,000
Klinë / Klina	2006	53,000		94	1,806	54,900
Fushë Kosv. / Kos. Polje	Apr 2002	34,000		3,239	2,761	40,000
Lipjan / Lipljan	2000	63,478		9,300	3,365	76,143
Malishevë / Malisevo	Feb 2005	65,000			500	65,500
Novobërde / Novo Brdo	2006	2,115		1,407	50	3,572
Obiliq / Obilic	Apr 2002	24,000		3,425	1,228	28,653
Rahovec / Orahovac	2006	76,577		1,300	420	78,297
Pejë / Pec	2006	78,712		1,000	11,400	91,112
Podujevë / Podujevo	2006	125,226		21	721	125,968
Prishtinë / Pristina	Feb 2000	550,000		12,000	2,800	564,800
Prizren	2006	196,616		234	43,150	240,000
Skenderaj / Srbica	2006	70,000		326	88	70,414
Strpce / Shtërpçë	Feb 2001	4,500		9,099	34	13,633
Shtime / Stimlje	2006	28,247		0	752	28,999
Suharekë / Suva Reka	Jan 2001	80,000		0	0	80,000
Ferizaj / Urosevac	2006	140,000		147	3,695	143,842
Viti / Vitina	Aug 2003	56,400		3,300	110	59,810
Vushtrri / Vucitrn	2006	98,000		4,137	525	102,662
Mitrovicë / Mitrovica	<b>1998</b>	95,231		10,447	0	105,678
Leposavic / Leposaviq	2006	216		18,000	284	18,500
Zubin Potok	2006	800		14,000	100	14,900
Zvecan	2006	350		12,050	4,200	16,600
<b>Total</b>		<b>2,380,968</b>	<b>17,975</b>	<b>126,892</b>	<b>105,423</b>	<b>2,618,958</b>
<b>% of all</b>		<b>91</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>100</b>
Minorities Decan ... Vushtrri			<b>17,975</b>	<b>72,395</b>	<b>100,839</b>	191,209
% of Minorities total						76
<b>Minorities Total</b>						<b>250,290</b>
<b>% of Total</b>						<b>10</b>

Udskrift som PDF, brug: <http://bjoerna.net/billeder/KOS-demografi.pdf>





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Fotos fra Mitrovica-området af Jan Pock-Steen © copyright 2007



Billedet af højhusene er fra den centrale del af Nordmitrovica, få hundrede meter fra broen. Mindesmærket står lige ved broen over Ibar.

Billedet af det ødelagte hus er fra Prishtina. Huset står i et komplet ødelagt område mellem Velania og Sunny Hill. Det var umuligt at få entydigt bekræftet, hvorfor netop dette område var så hærgnet, for det er noget nær den mest lukrative del af byen, højt oppe på den østlige skråning med udsigt over hele byen. En forklaring gik på at det er serbiske huse, der var blevet ødelagt i 1999. Jeg har også hørt, at de få jøder, der var i byen før bombardementet, og som flygtede sammen med serberne, boede i det område. Der skulle i øvrigt ligge en jødisk gravplads i bakkerne i Velania-området [Nærmere oplysninger modtages gerne, skriv til: [post@bjoerna.dk](mailto:post@bjoerna.dk)]

Det sidste billede er fra Zvecan, der også huser en del mineindustri, som mere eller mindre er lukket ned.







## UDFLUGT TIL FORTIDEN - ET GANSKE UVIDENSKABELIGT INDSLAG I DEBATTEN

Mitrovica er stadig, her mere end otte år efter NATOs intervention, en delt by. Den er delt rent fysisk af floden Ibar, som stadig bevogtes nidkært af KFOR og kan spærres af på få minutter i tilfælde af optøjer, men den korte spadseretur over Austerlitz-broen afslører også, at her er ethvert forsøg på integration af områdets befolkningsgrupper sat fuldstændig i stå.

På den nordlige side er bilerne udstyret med serbiske nummerplader, bogstaverne er kyrilliske, og her er det Vladimir Putins kontrafej, frem for Bill Clintons, der smykker kioskfacaderne. Ingen tvivl om, hvem der er helten i spillet om Kosovos fremtid.

Men der er også, og det bliver stedse mere tydeligt på taxituren nordpå ud af byen til søvnige landsbyer, andre forskelle mellem dette serbisk dominerede område og resten af Kosovo på den anden side af floden.

Den økonomiske saltvandsindsprøjtning, der er blevet tilgodeset de større byområder som følge af tusindvis af udlændinges indtog - på den albanske side ligger to militærbaser samt afdelinger af UNMIK, OSCE samt et ukendt antal større og mindre hjælpeorganisationer - er gået de serbiske områder forbi.

Her findes ikke det samme bugnende udbud af varer i forretningerne, bilparken er betydelig mere beskeden og består næsten uden undtagelse af Zastava, Yugo og andre østeuropæiske bilmærker i modsætning til hovedreglen om VW og Mercedes på den anden side, og Kosovos ellers alt dominerende byggeboom er ikke at se her.

Men på trods af dette hersker der langt mere orden på den serbiske side. Husene er ganske velholdte, færdigbyggede, malede, facaderne pudsede. Vejforholdene er tålelige, grøftkanterne så godt som uden affald, og velplejede haver om omkring husene viser, at beboerne bekymrer sig om det nære miljø, hvilket er umådelig sjældent på den anden side af floden. Men det er ikke overraskende; det er en mentalitetsforskel.

Det er samme indtryk, der møder en i hver eneste mindre serbisk enklave, der ligger som små velplejede skønhedspletter i et landskab plaget af halvfærdige byggerier uden byggetilladelse eller overordnet planlægning. Og jeg kan ikke lade være med at tænke på, at dette - denne utrolige forskel i æstetisk og vel også samfundssind - blot er endnu en brik i den mur af modsætninger, som denne konflikt er bygget op af.

Eller måske er det blot endnu en fordom på linje med dem, som vores albanske bekendte gav udtryk for, da vi

bekendtgjorde weekendplanerne om at tage op til Mitrovica og fortsætte nordpå gennem det serbiske område: »De kaster bare sten efter jer. De er skøre i hovedet deroppe«.

Jan Pock-Steen, September 2007

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## ALBANIEN

**Er Mjaft ved at lukke ned? Eller tværtimod ved at skrue op for blusset?, i det mindste er »de gamle« ved at træde tilbage** Flg. meddelelse er netop rundsendt:

Dear Friends,

September has been a special month for Mjaft! Movement. The Movement's four founders, Marinela Lika, Arbjan Mazniku, Endri Fuga, and Erion Veliaj, have decided to pass the torch onto a new team.

We would like to invite you to a ceremony at the Academy of Arts' amphitheater on Wednesday, September 26th at 18:00. At this event we look forward to celebrating some of our achievements by sharing them with you and to officially introduce the new team.

Mjaft! will continue to fight for an Albania where every citizen feels that he plays a crucial role in the decision-making process and where debate is more important than empty political rhetoric. We have been afforded the opportunity to make this country a better place, to urge politicians to understand that they are our servants rather than our patrons, and to improve our country's image abroad through setting good examples with concrete initiatives.

We highly appreciate your wish to be informed about Mjaft! Movement's activities. Thus, we would be honored by your presence at this event on Wednesday.

Mjaft! Movement

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The Hague, 27 September 2007  
CVO/MOW/ PR1184a

*Please find below the summary of the judgement today read out by Judge Pocar:*

### **I. INTRODUCTORY REMARKS**

As the Registrar announced, the case on our agenda today is Prosecutor versus Fatmir Limaj, Haradin Bala and Isak Musliu. In accordance with the Order Rescheduling the Hearing issued on 18 September 2007, the Appeals Chamber will deliver its Judgement today.

Following the practice of the International Tribunal, I will not read out the text of the judgement except for the disposition. Instead, I will summarise the issues on appeal and the findings of the Appeals Chamber. This summary is not part of the written judgement, which is the only authoritative account of the Appeals Chamber's rulings and reasons. Copies of the written judgement will be made available to the parties at the conclusion of this hearing.

### **II. BACKGROUND**

This case concerns the events that occurred in a prison camp in the village of Lapu'nik and in the nearby Beri'a Mountains between May and July 1998. The three accused were indicted for crimes committed in this period against Serbian civilians and Kosovo Albanian civilians who were perceived to be Serbian collaborators. The Indictment alleged that these civilians were detained in the Lapu'nik prison camp where they were subjected to inhumane conditions and routine assaults, beatings, and torture. Some detainees were alleged to have been

murdered in the course of their detention, while others were allegedly executed in the nearby Beri'a Mountains on or about the 26th of July 1998.

On 30 November 2005, the Trial Chamber found Haradin Bala guilty of acts of torture, cruel treatment and murder, all violations of the laws or customs of war under Article 3 of the Statute. Haradin Bala was sentenced to a single sentence of thirteen years' imprisonment. Fatmir Limaj and Isak Musliu were acquitted of all charges against them.

Haradin Bala and the Prosecution appealed the Trial Judgement on 30 December 2005. The parties made oral submissions before the Appeals Chamber in the appeal hearing on 5 and 6 June 2007.

### **III. THE GROUNDS OF APPEAL**

I will now address the grounds of appeal in turn, beginning with Mr. Bala who brings five grounds of appeal after having previously withdrawn four grounds of appeal. I will then address the Prosecution appeal against all three accused, beginning with Haradin Bala and followed by the appeals against Fatmir Limaj and Isak Musliu. The Prosecution's common ground of appeal against all three accused in relation to the existence of a systemic joint criminal enterprise will be addressed in the context of the Prosecution's appeal against Haradin Bala. Finally, at the end of the hearing, I will read out the Disposition of the Judgement.

### **IV. THE APPEAL OF HARADIN BALA**

#### **Ground 1: Identification of Bala as the Guard Known as "Shala"**

I now turn to Haradin Bala's appeal.

In his **first ground of appeal**, Haradin Bala argues that the Trial Chamber erred in law and fact in finding beyond reasonable doubt that he was the guard Shala who committed the crimes for which he was convicted. Haradin Bala submits that the Trial Chamber did not apply - or misapplied - the principle of *in dubio pro reo* when it failed to give any weight to the failure of three eye-witnesses to identify him as the guard known as Shala from a photo spread.

The Appeals Chamber considers that the Trial Chamber reasonably assessed all of the evidence including the failure of the three eye-witnesses to identify Bala in concluding beyond a reasonable doubt that Haradin Bala was the guard known as Shala. Consequently, the Appeals Chamber finds that the Trial Chamber did not misapply the principle of *in dubio pro reo*.

Haradin Bala further submits that the Trial Chamber's failure to attach any weight to the mistaken identifications reversed the burden of proof. The Appeals Chamber finds, however, that the Trial Chamber did not reverse the burden of proof as it was satisfied that the cumulative effect of the other evidence on the identification of Haradin Bala as the guard Shala established this fact beyond reasonable doubt.

Lastly, Haradin Bala argues that the Trial Chamber erroneously relied on in-court identifications of him as the guard known as Shala. The Appeals Chamber finds that the Trial Chamber did err in law when it ascribed, even slight probative weight to the in-court identifications, however, the Appeals Chamber finds, that the error does not invalidate the decision.

The Appeals Chamber recalls that the Trial Chamber reasonably found Ivan Bakrač's identification evidence to be particularly convincing. Therefore, having found that the Trial Chamber reasonably attached significant probative weight to the testimony of Ivan Bakrač and only slight probative weight to the courtroom identification evidence, the Appeals Chamber declines to find that the Trial Chamber would have reached a different conclusion had it not taken account of the courtroom identification evidence.

As a result, Haradin Bala's first ground of appeal is rejected.

#### **Grounds 2 and 4: Participation in Nine Murders in Beri'a Mountains and in Cruel Treatment of Witness L12.**

In his **second ground of appeal**, Haradin Bala submits that the Trial Chamber erred in fact in finding that he participated in nine murders in the Beri'a Mountains on 25 or 26 July 1998, because he was incapable of walking the prisoners into the Beri'a Mountains. Alternatively, Haradin Bala argues that the Trial Chamber erred in law by shifting the burden of proof and requiring him to demonstrate that he was physically incapable of engaging in the nine murders.

The Appeals Chamber is satisfied that the Trial Chamber reasonably held that Haradin Bala was physically capable of walking the prisoners into the Beri'a Mountains, because he had already shown that his medical condition did not prevent him from partaking in certain physical duties in service to the KLA. As to Haradin Bala's alternative submission, the Appeals Chamber is not satisfied that the Trial Chamber improperly shifted the burden of proof and required him to demonstrate that he was physically incapable of engaging in the nine murders. The Appeals Chamber notes that the Trial Chamber was reasonably satisfied that the Prosecution had fulfilled its burden of negating any reasonable doubt that he was physically capable of engaging in these acts.

For similar reasons, the Appeals Chamber also rejects Haradin Bala's claim under his **fourth ground of appeal** that the Trial Chamber shifted the burden of proof in relation to his alleged physical incapability of engaging in the cruel treatment of Witness L12.

With respect to his alleged personal participation in the murders the Appeals Chamber finds that the Trial Chamber carefully weighed the evidence when it held that Haradin Bala was "present and directly involved in the shooting". Although the ballistics evidence neither established nor precluded the participation of a third KLA soldier in the murders, there was no evidence to suggest that Bala left the execution site prior to the murders, and thus the Trial Chamber's failure to discuss this issue does not constitute an error of fact. Furthermore, the Appeals Chamber notes that there was evidence demonstrating that "Shala" was seen with an automatic weapon, which was the type of weapon the ballistics evidence determined was used in the murders.

As a result, Haradin Bala's second and fourth grounds of appeal are rejected.

#### **Ground 6: Rejection of Bala's Alibi**

In his **sixth ground of appeal**, Haradin Bala argues that the Trial Chamber erred in law and fact in rejecting his alibi defence. He submits that the Trial Chamber erroneously shifted the burden of proof in requiring him to establish that his alibi was consistent and credible rather than requiring that he simply show a reasonable possibility that the evidence of alibi is true. The Appeals Chamber considers that the Trial Chamber correctly satisfied itself that the Prosecution had eliminated any reasonable possibility that the evidence of alibi was true and thus committed no legal error in its assessment of Haradin Bala's alibi. As to Bala's allegations of factual errors in the assessment of his alibi evidence, the Appeals Chamber finds his submissions to be without merit.

Haradin Bala further argues that the Trial Chamber erred in law by holding his decision not to give sworn evidence against him. The Appeals Chamber notes, however, that the Trial Chamber specifically held that no adverse finding could be drawn on the basis of Haradin Bala's decision not to give sworn evidence and that he has failed to show that his decision not to testify was in fact held against him.

Lastly, Haradin Bala submits that the Trial Chamber erred in failing to provide a reasoned opinion for the rejection of his alibi. The Appeals Chamber notes however, that the Trial Chamber thoroughly considered Haradin Bala's alibi defence in a nine-page section of the Trial Judgement, and finds that the Trial Chamber offered a reasoned opinion for its rejection of Haradin Bala's alibi.

Haradin Bala's sixth ground of appeal is rejected.

#### **Ground 8: Error Finding Witnesses L04 and L06 Credible**

In his **eighth ground of appeal**, Haradin Bala submits that the Trial Chamber erred in fact when it found Witnesses L04 and L06 to be credible despite obvious inconsistencies between their post-testimony interviews given to the Prosecution and their prior statements made to Serbian authorities. The Appeals Chamber notes that the Trial Chamber found the witnesses to be honest and credible after having carefully examined their testimonies and numerous factors touching upon their credibility. The Appeals Chamber concludes that, in light of the fact that the evidence of several other witnesses corroborated much of their respective testimonies, a reasonable trier of fact could have found these witnesses to be credible despite the identical discrepancy in their testimonies relating to the length of their interviews with Serbian authorities.

Haradin Bala's eighth ground of appeal is rejected.

### **V. THE APPEAL OF THE PROSECUTION REGARDING HARADIN BALA**

I will now turn to the **appeal of the Prosecution**.

#### **Ground 1: Bala's Alleged Participation in a JCE**

In its **first ground of appeal against Haradin Bala**, the Prosecution submits that the Trial Chamber erroneously failed to find that Haradin Bala was a member of a joint criminal enterprise and thus individually responsible for the crimes committed in furtherance of a system of ill-treatment in the Lapu'nik prison camp, and for those crimes which were reasonably foreseeable as a possible consequence of this system.

The Prosecution argues that a systemic joint criminal enterprise existed: first, the prison camp was run by the KLA; second, the conditions in the camp amounted to a system of ill-treatment; and third, the KLA soldiers in the camp intended to further this system of ill-treatment.

The Prosecution argues in particular that the identification of the members of a joint criminal enterprise, beyond being members of that enterprise, is not an additional element of joint criminal enterprise liability.

The Appeals Chamber does not consider that the Trial Chamber adopted an erroneously narrow approach to the identification of the participants in a joint criminal enterprise. Rather, it is clear that the Trial Chamber was not satisfied that the Prosecution had adduced sufficient evidence of the identity of the alleged participants in the joint criminal enterprise to establish that a plurality of persons sharing a common plan existed.

The Prosecution alternatively submits that the Trial Chamber erred in fact in failing to draw the only reasonable inference from the evidence, namely, that members of the systemic joint criminal enterprise were sufficiently identified by their category as KLA soldiers in the Lapu'nik prison camp, including the three Accused.

The Appeals Chamber finds that the Trial Chamber did not commit a factual error when it found that there was insufficient evidence to identify a plurality of persons who furthered a common plan to commit cruel treatment in the Lapu'nik prison camp. While the Trial Chamber's factual findings show that KLA soldiers systematically committed cruel treatment and torture in the camp, the Trial Chamber was not satisfied that these KLA soldiers were participants in a systemic joint criminal enterprise to commit these crimes. The Trial Chamber did not err in this respect, because it reasonably held that it could not be ruled out that rogue KLA soldiers or so-called outsiders to the camp for personal reasons, such as revenge, mistreated or killed civilian detainees, and not in furtherance of any common plan.

The Prosecution further submits that any member of the alleged systemic joint criminal enterprise who contributed to an outsider's crime must be considered as having at the same time committed this crime together with the outsider in a basic joint criminal enterprise. The Appeals Chamber finds, however, that Haradin Bala was not given adequate notice of such an alternative basic joint criminal enterprise charge. Hence, the Appeals Chamber does not consider it appropriate to address the merits of this argument.

Alternatively, the Prosecution submits that Haradin Bala would incur individual criminal responsibility for crimes committed by outsiders as an aider and abettor. The Appeals Chamber is not satisfied, however, that it is the only reasonable inference from the evidence that, in addition to the convictions for aiding and abetting already entered by the Trial Chamber, Haradin Bala incurs criminal responsibility for having aided and abetted other crimes of cruel treatment and torture. It was open to a trier of fact to conclude that the evidence did not show beyond a reasonable doubt that Haradin Bala knowingly provided substantial assistance as an aider and abettor to each act of cruel treatment or torture in the prison camp.

As a result, the Prosecution's first ground of appeal is rejected.

## **Ground 2: Bala's Sentence**

In its alternative **second ground of appeal**, the Prosecution submits that the Trial Chamber erred in exercising its sentencing discretion by sentencing Haradin Bala to thirteen years of imprisonment. First, the Prosecution argues that the sentence does not reflect the gravity of Haradin Bala's crimes; second, that the Trial Chamber erred in its assessment of mitigating and aggravating circumstances; and third, that when comparing his sentence to that of others the sentence imposed is manifestly inadequate.

The Appeals Chamber is satisfied that the Trial Chamber did not err in comparing the crimes for which Haradin Bala was convicted with those committed by other KLA members when assessing the gravity of his crimes. Furthermore, the mere submission that the Trial Chamber gave insufficient weight to Haradin Bala's role as a committer or aider and abettor does not show that the Trial Chamber ventured outside its sentencing discretion, and the Prosecution does not establish an error in this respect. As to the Prosecution's arguments in relation to the mitigating effect of his acting under orders and the absence of a sadistic motive, the Appeals Chamber notes that these factors were not considered by the Trial Chamber as mitigating circumstances but were instead taken into account as particular circumstances in the assessment of the gravity of the crimes. The Prosecution does not show that the Trial Chamber committed a discernible error in this respect.

With respect to its argument that Haradin Bala's sentence is manifestly inadequate when compared to the sentences imposed in other similar cases, the Appeals Chamber considers that the Prosecution fails to demonstrate the commission of a discernible error by the Trial Chamber.

Finally, the Prosecution submits that the Trial Chamber erred in disregarding the vulnerability of the victims as an aggravating factor and in double-counting Haradin Bala's subordinate role in mitigation of the sentence. The Appeals Chamber notes, that the defencelessness of the victims was accounted for by the Trial Chamber in its assessment of the gravity of the crimes and that no error was committed as a result. The Appeals Chamber finds however, that the Trial Chamber did err in double-counting Haradin Bala's subordinate role in mitigation of the sentence but that this error was so slight as to be harmless. The Appeals Chamber believes that even if it had not fallen into error, the Trial Chamber would have arrived at the same sentence.

The Prosecution's second ground of appeal against Haradin Bala is rejected.

## **VI. THE APPEAL OF THE PROSECUTION REGARDING FATMIR LIMAJ**

### **Ground 1: Limaj's Alleged Participation in Lapu'nik Prison Camp**

I will now turn to the Prosecution's appeal regarding Fatmir Limaj's acquittal.

Under its **first ground of appeal**, the Prosecution argues that the Trial Chamber erred in law and in fact by taking a piecemeal approach to the evaluation of evidence that did not have to be "proven beyond a reasonable doubt" and by applying a standard of proof beyond any doubt instead of a standard of proof beyond reasonable doubt. It submits that, as a result, the Trial Chamber erred in not finding that Fatmir Limaj personally participated in the operation of the Lapu'nik prison camp.

The Appeals Chamber finds that it was on the basis of the totality of the evidence that the Trial Chamber found that the Prosecution had failed to establish Fatmir Limaj's personal participation in the prison camp rather than on the basis of a piecemeal evaluation of the evidence as argued by the Prosecution. The Appeals Chamber further dismisses the Prosecution's arguments that the Trial Chamber erred in applying a higher standard of proof than the standard of proof beyond a reasonable doubt.

The Prosecution's first ground of appeal is dismissed. The Prosecution's allegations that the Trial Chamber erred in failing to consider Fatmir Limaj's alleged command position and his ability to make release decisions in examining whether he personally participated in the prison camp will be addressed under the second ground of appeal.

### **Ground 2: Limaj's Alleged Position of Command and Control**

Under its **second ground of appeal**, the Prosecution argues that the Trial Chamber erred in law by misapplying the standard of proof beyond reasonable doubt and erred in fact by failing to consider and erroneously evaluating all the evidence pertaining to Fatmir Limaj's alleged command position over the KLA in the Lapu'nik prison camp.

With respect to the Trial Chamber's alleged failure to consider the evidence of eyewitnesses in the camp as relevant to Fatmir Limaj's command functions rather than solely to the question of identification, the Appeals Chamber notes that the Trial Chamber did in fact refer to the identification evidence when addressing Fatmir Limaj's position of command and control. With regard to the Trial Chamber's alleged failure to *properly* evaluate the relevant evidence, for the reasons given in the Judgement, the Appeals Chamber finds that the Prosecution's submissions are insufficient to call into question the reasonableness of the Trial Chamber's findings

Lastly, the Prosecution's further submission that the Trial Chamber erred in its evaluation of evidence that Fatmir Limaj disarmed soldiers and consequently erred by unreasonably concluding that this did not demonstrate an exercise of his command authority is also dismissed. The Appeals Chamber is satisfied that the Trial Chamber reasonably found that Fatmir Limaj did not have powers of discipline in the sense of effective control when disarming subordinates, as required for criminal responsibility pursuant to Article 7(3) of the Statute.

The Appeals Chamber is satisfied that the Trial Chamber did not err in applying the standard of proof beyond a reasonable doubt to the totality of the evidence and finds that Trial Chamber reasonably found that Fatmir Limaj does not incur criminal responsibility for any of the offences charged in the Indictment whether under Article 7 (1) or 7(3) of the Statute. As a result, the Appeals Chamber dismisses the remainder of the Prosecution's first ground of appeal and its second ground of appeal.

Finally, the Appeals Chamber recalls that the Prosecution's submissions under the **third ground of appeal** pertaining to Fatmir Limaj's alleged participation in a systemic joint criminal enterprise have already been addressed together with the Prosecution's first ground of appeal in relation to Haradin Bala. As a result, the Prosecution's allegations under the third ground of appeal in relation to Fatmir Limaj have already been disposed of.

## **VI. THE APPEAL OF THE PROSECUTION REGARDING ISAK MUSLIU**

### **Ground 1: Musliu's Alleged Participation in the Camp**

I will now turn to the Prosecution's appeal against the acquittal of Isak Musliu.

Under its **first ground of appeal**, the Prosecution submits that the Trial Chamber's piecemeal approach to the evaluation of the evidence on Isak Musliu's participation in the camp was legally erroneous. The Prosecution argues in particular, that the Trial Chamber erroneously restricted its evaluation of his participation in the camp to a limited portion of the evidence, namely direct visual identification evidence. The Appeals Chamber notes, however, that in addition to visual identification evidence, the Trial Chamber took into account witness testimonies that Isak Musliu was at the relevant time known as Qerqiz, that certain prisoners heard this name while they were beaten and that a person called Qerqiz was almost continuously present in the camp between around 28 June and around 23 July 1998. The Appeals Chamber therefore rejects the argument that the Trial Chamber applied a piecemeal approach to the evidence.

The Prosecution further submits that the Trial Chamber erred in law by failing to apply the standard of proof beyond reasonable doubt; and instead, applied a standard that entertained *any* doubt, including doubt not based upon evidence, logic or common sense. Furthermore, the Prosecution argues that the Trial Chamber erred in fact by failing to properly consider relevant evidence on Isak Musliu's participation in the prison camp.

The Appeals Chamber examined whether the Trial Chamber erred in rejecting the evidence of several witnesses which identified a person who went by the pseudonym Qerqiz in the prison camp. With respect to Ruzhdi Karpuzi's testimony on this issue, the Appeals Chamber considers that he saw Isak Musliu inside the prison camp and not only *heard* him as held by the Trial Chamber. However, the Appeals Chamber finds, Judge Schomburg dissenting, that even if Isak Musliu had been singing inside the camp, the Prosecution has not shown that this would have made it unreasonable for the Trial Chamber not to find that he was responsible for crimes committed in the camp.

The Prosecution further submits that the Trial Chamber erred in failing to find from the cumulative evidence of Witnesses L10, L04, and L12 that Isak Musliu was identified inside the camp. In relation to Witness L10 the Trial Chamber held that while he stated that he identified Qerqiz in the prison camp as the, I quote, "masked perpetrator", end of quote, who was addressed by Shala as Qerqiz, Witness L10 also, I quote, "acknowledged that he could not distinguish Qerqiz from the other soldiers at the camp because of the mask he wore", end of quote. Thus, the Appeals Chamber finds, Judge Schomburg dissenting, that the Trial Chamber reasonably held that it could not conclude from Witness L10's evidence that Isak Musliu was in fact the man Witness L10 knew as Qerqiz.

With respect to the remaining witnesses, the Appeals Chamber finds that the Trial Chamber reasonably held that Witness L04's testimony did not provide a reliable basis for a finding that Isak Musliu participated in the operation of the prison camp and that it reasonably refrained from finding on the basis of Witness L12's testimony that Isak Musliu was present when he was beaten in the prison camp.

In sum, the Appeals Chamber is not satisfied, Judge Schomburg dissenting with respect to the evidence of Ruzhdi Karpuzi and Witness L10, that the Trial Chamber erred when it did not conclude from the testimonies of the above-mentioned witnesses that they identified Isak Musliu in the prison camp.

With respect to the testimonies of Witnesses L64 and L96 who allegedly saw Qerqiz entering the prison camp and inside the prison camp, respectively, the Appeals Chamber recalls that the Trial Chamber reasonably held that their evidence had to be independently confirmed in some material particular. Since the Trial Chamber reasonably rejected the evidence of Witnesses L10, L04 and L12 on having seen Qerqiz, or Isak Musliu, inside the camp, the relevant evidence of Witnesses L64 and L96 was unsupported and thus reasonably rejected.

Finally, the Prosecution submits that the Trial Chamber unreasonably failed to consider evidence of Isak Musliu's near continuous presence in the village of Lapu'nik and his proximity to the camp. In light of the above findings on the witnesses' testimonies, however, the Appeals Chamber is satisfied that it was open to a reasonable trier of fact to find that the close proximity to the prison camp alone does not support the inference that Isak Musliu was present and personally participated in its operation.



In sum, the Appeals Chamber is satisfied, Judge Schomburg dissenting, that notwithstanding some minor errors in the Trial Chamber's reasoning which do not have an impact on the verdict the Trial Chamber reasonably assessed the totality of the evidence and found that Isak Musliu was not present inside the prison camp and did not participate in the operation of the Lapu'nik prison camp.

The Prosecution's first ground of appeal against Isak Musliu is thus rejected.

## **Ground 2: Musliu's Alleged Command and Control over the KLA Soldiers in the Prison Camp**

In its **second ground of appeal**, the Prosecution submits that the Trial Chamber erroneously failed to find Isak Musliu responsible as a commander pursuant to Article 7(3) of the Statute. The Prosecution argues that since the Trial Chamber found that Isak Musliu exercised command and control over the Çeliku 3 unit, it would have also found that he exercised command and control over the KLA soldiers in the camp had it not failed to find that the Çeliku 3 unit was responsible for operating the prison camp.

With regard to the role of the Çeliku 3 unit and its members in relation to the camp, the Appeals Chamber concludes that the Prosecution does not show that the Trial Chamber found that the Çeliku 3 unit was the only KLA unit that was regularly stationed, during the Indictment period, south of the Peć-Pri'tina main road where the prison camp was situated. The Appeals Chamber notes, in this regard, that the Trial Chamber found that the Pellumbi unit was stationed to the south of the prison camp for a time in July 1998.

The Prosecution further submits that neither the Pellumbi unit nor outsiders to the camp could have operated the Lapu'nik prison camp. The Appeals Chamber finds, however, that the Prosecution does not show that the operation of the camp had to be carried out by soldiers of a single, specific KLA unit such as Çeliku 3. Moreover, it could reasonably be inferred from the evidence that soldiers from the Pellumbi unit or from other KLA units in the vicinity of the prison camp participated in operating the camp.

The Appeals Chamber further dismisses the Prosecution's submission that the Trial Chamber neglected to consider circumstantial evidence in assessing whether the Çeliku 3 unit was responsible for operating the prison camp as it is evident from the Trial Judgement that inferential or circumstantial evidence was in fact considered. Moreover, the Appeals Chamber is satisfied that the Trial Chamber did not apply an erroneously piecemeal approach to its assessment of the evidence relating to the proximity of Çeliku 3 to the prison camp as suggested by the Prosecution.

The Prosecution makes the alternative submission that the Trial Chamber erred in failing to find that members of the Çeliku 3 unit participated in the operation of the camp. The Prosecution specifically submits that the Trial Chamber erroneously failed to find that Haradin Bala and two prison guards named Tamuli and Salihi were members of the Çeliku 3 unit and that their involvement in the operation of the prison camp as members of this unit entailed the command responsibility of Isak Musliu. The Appeals Chamber finds, however, that it was reasonable to infer from the evidence, that these three guards were not members of the Çeliku 3 unit throughout the Indictment period. As such, the Appeals Chamber is satisfied that it was a reasonable conclusion for the Trial Chamber not to find that soldiers of the Çeliku 3 unit participated in the operation of the prison camp.

The Appeals Chamber is satisfied that the Trial Chamber did not err when it did not find that Isak Musliu incurred criminal responsibility pursuant to Article 7(3) of the Statute for crimes committed in the Lapu'nik prison camp. The Prosecution's second ground of appeal is thus rejected.

Finally, in relation to the Prosecution's **third ground of appeal** with respect to Isak Musliu's alleged participation in a systemic joint criminal enterprise, the Appeals Chamber recalls its finding, Judge Schomburg dissenting, that it was not the only reasonable inference from the evidence that Isak Musliu participated in the operation of the prison camp. Thus, the Appeals Chamber finds that the Prosecution's allegations under the third ground of appeal have already been disposed of.

I will now read out the disposition of the appeal judgement. Mr. Bala, will you please rise.

For the foregoing reasons, **THE APPEALS CHAMBER**,

**PURSUANT TO** Article 25 of the Statute and Rules 117 and 118 of the Rules of Procedure and Evidence;

**NOTING** the respective written submissions of the Parties and the arguments they presented at the hearing on 5 and 6 June 2007;

**SITTING** in open session;

**DISMISSES** Haradin Bala's appeal in its entirety;

**DISMISSES**, Judge Wolfgang Schomburg dissenting with respect to the Prosecution's first ground of appeal in relation to Isak Musliu, the Prosecution's appeal;

**AFFIRMS** the sentence imposed by the Trial Chamber against Haradin Bala, subject to credit being given under Rule 101(C) of the Rules for the period Haradin Bala has already spent in detention; and

**ORDERS** in accordance with Rule 103(C) and Rule 107 of the Rules, that Haradin Bala is to remain in the custody of the International Tribunal pending the finalisation of arrangements for his transfer to the State in which his sentence will be served.

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

Judge Mohamed Shahabuddeen appends a declaration.

Judge Wolfgang Schomburg appends a partially dissenting and separate opinion and declaration.

Dated this twenty-seventh day of September 2007

At The Hague, The Netherlands

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