SUPREME COURT of KOSOVO

10 April 2009
Prishtine/Pristina
Ap.-Kz No. 371/2008

IN THE NAME OF THE PEOPLE

The Supreme Court of Kosovo, in a panel composed of International Judge Emilio Gatti as Presiding Judge, International Judges Maria Giuliana Civinini and Guy Van Craen and Kosovo National Judges Miftar Jasiqi and Nesrin Lushta as panel members,

in the criminal proceedings against:

S[redacted] K[redacted], the son of [redacted] and [redacted], born on [redacted] at the village of [redacted], Malishevo Municipality, Kosovo Albanian, resident in Prizren, [redacted] Commander of [redacted], General of Brigade, [redacted], charged with committing a war crime as defined in Article 142 of the SFRY Criminal Code as read in connection with Articles 22, 26 and 30 of the CC SFRY, based in the indictment dated 27 July 2004, as amended by the Public Prosecutor on 27 July 2006.

B[redacted] Z[redacted], the son of [redacted] and [redacted], born on [redacted] in Gjakova/Dakovica, Kosovo Albanian, resident in Pristina, [redacted], protocol Officer, [redacted], Lieutenant Colonel, [redacted] charged with committing a war crime as defined in Article 142 of the SFRY Criminal Code as read in connection with Articles 22, 26 and 30 of the CC SFRY, based in the indictment dated 27 July 2004, as amended by the Public Prosecutor on 27 July 2006.

A[redacted] K[redacted], the son of [redacted] and [redacted], born on [redacted] at the village of [redacted], Rahovec/Orahovac Municipality, Kosovo Albanian, resident in [redacted] charged with committing a war crime as defined in Article 142 of the SFRY Criminal Code as read in connection with Articles 22, 26 and 30 of the CC SFRY, based in the indictment dated 28 February 2006, as amended by the Public Prosecutor on 27 July 2006.

Deciding upon the appeals on the District Court of Prizren Judgment P. no. 85/2005, dated 10 August 2006, convicting the three defendants of having committed the [redacted] offence of war crime of inhumane treatment and immense suffering or viola[redacted]

bodily health of the civilian detainees and of application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 26 and 30 of the CC SFRY, appeals which were filed by the defense counsels on behalf of S[redacted] K[redacted] on 21 March 2008 and on 7 April 2008, on behalf of B[redacted] Z[redacted] on 21 March 2008 and on behalf of A[redacted] K[redacted] on 20 March 2008.

After having heard the submissions of the defense counsels [redacted], [redacted] and [redacted], the submissions of [redacted] and [redacted] and opinion and motion of the OSPK Prosecutor Ms. Anette MILK in the session held on 1 April 2009 and
after a deliberation and voting held on 1 and 10 April 2009.

Acting pursuant to Article 420 of the Criminal procedure Code of Kosovo (KCCP) renders this

VERDICT

The appeals filed in the interest of S[redacted] K[redacted] dated 21 March 2008 and 7 April 2008 are partially GRANTED as to the punishment, which is reduced to six years imprisonment.

The appeal filed in the interest of B[redacted] Z[redacted] dated 21 March 2008 is partially GRANTED as to the time of the criminal offences committed, which is reduced to the period between 2 June and 31 August 1998 and as to the punishment, which is reduced to six years imprisonment.

The appeal filed in the interest of A[redacted] K[redacted] dated 20 March 2008 is partially GRANTED as to the time of the criminal offences committed, which is reduced to the period between 2 June and 31 August 1998 and as to the punishment, which is reduced to four years and six months imprisonment.

Pursuant to article 50 of the CC SFRY, the time spent in detention on remand by each defendant is included in the amount of punishment.

The Judgment of the Court of First Instance is affirmed in the remaining parts.

The costs of the second instance proceeding will remain in charge of the State Budget.

With a separate ruling is decided about the detention on remand for each defendant, according to article 26 and 393 KCCP.

REASONING

A. Procedural History

1. Against S[redacted] K[redacted] B[redacted] Z[redacted] and other defendants the International Public Prosecutor filed an indictment dated 11 February 2005 for the charge of War Crimes against Civilian Population set out in four different counts regarding detainees at a detention center in Dranovc/Drenovac Village in Zatriq, Municipality of Rahovec/Orahovac.
The allegations were related to illegal arrest, unlawful detention, beating, torture and death of Kosovo Albanians.
For the two defendants the indictment was confirmed with ruling dated 21 may 2005.

A[redacted] K[redacted] was abroad at the time of the initiation of the investigation, but was extradited to Kosovo on 9 December 2005 and arrested.
Against him the International Prosecutor filed an indictment dated 28 February 2006 for the charge of War Crimes set out in four counts related to the detention centre referred to above.
The allegations were related to illegal arrest and/or detention, inhumane treatment, beating, torture as well as the killing of Kosovo Albanians.
The confirmation judge confirmed that indictment almost totally, dismissing the charge of killing and the other charges related to some of the victims.

2. The case against A[redacted] K[redacted] was consolidated with the ongoing trial against S[redacted] K[redacted], B[redacted] Z[redacted] and the other defendants.
This trial lasted from 29 September 2005 to 10 August 2006.
At the session of 27 July 2006 the Prosecutor amended his indictment against S[redacted] K[redacted], B[redacted] Z[redacted], A[redacted] K[redacted] and a fourth defendant, charging each of them with one count of War Crimes of inhumane treatment.
At the same session the Prosecutor dropped all charges against two other defendants.
At the hearing of 10 August 2006 the judgment was announced.

The three defendants S[redacted] K[redacted], B[redacted] Z[redacted] and A[redacted] K[redacted] were found guilty of War Crimes "of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and this constituted an application of measures of intimidation and terror in violation of Article 142 of the CC SFRY as read with Articles 22, 26 and 30 of the CC SFRY" and sentenced each to seven (7) years imprisonment.
A[redacted] K[redacted] was acquitted by the charge related to one victim.
The fourth defendant (I[redacted] G[redacted]) was acquitted too, while in relation to two other defendants (X[redacted] E[redacted] and I[redacted] G[redacted]) the charges were rejected as the Prosecutor had dropped the same.

3. S[redacted] K[redacted] and B[redacted] Z[redacted] had been arrested on 16 February 2004 and kept since then in detention on remand.
They were released by the District Court with ruling of the 10 August 2006 but, upon an appeal of the International Public Prosecutor the Supreme Court of Kosovo with ruling of 2 September 2006 reversed the decision of the first instance judge ordering that the two defendants continue in detention until the judgment becomes final.

A[redacted] K[redacted] as seen above, was arrested on 9 December 2005, at the moment of his extradition from [redacted] and since then kept in detention on remand.

4. The defense counsels of the three convicted persons filed appeal against the verdict as follows.
The appeal of [redacted] from Mitrovica as defense counsel of defendant S[redacted] K[redacted] was filed on 21 March 2008 and the supplement to this appeal was filed on 7 April 2008

The appeal of [redacted] from Prizren as defense counsel of defendant B[redacted] Z[redacted] was filed on 21 March 2008.

The appeal of [redacted] from Prishtine as defense counsel of defendant A[redacted] K[redacted] was filed on 20 March 2008.

5. After the hand over of the case to EULEX Judges in January 2009, the Supreme Court of Kosovo scheduled the appeal session on 1 April 2009, where, after the report of the reporting judge, the defendants and their defense counsels explained their appeals and the International Prosecutor replied as stated in the minutes of the record.

6. The deliberation was taken by the Court on 1 and on 10 April 2009.

B. Issues raised by the Appellants

I

Preliminarily it is necessary to examine some main points which are common to the three appeals or must be investigated ex officio.

1. The first one was actually raised only by the defense counsel of B[redacted] Z[redacted], but it involves an evaluation which pursuant article 419 PCPCK is common also to the two other defendants regarding a matter which must be investigated ex officio.

The defense counsel of B[redacted] Z[redacted] represents the opinion that the first instance judgment was given in violation of the law by a judge (the presiding judge [redacted]

Boolell and another component of the panel, Mr. Nurul Khan) who according to article 40.2 no.1 PCPCK could not be part of the trial panel having been respectively the Presiding Judge and a member of the three judge panel which during the pre-trial phase decided on the extension of detention on remand against B[redacted] Z[redacted], Judge Boolel had also approved the request of the Public Prosecutor for extending the period to submit an indictment.
This matter must be investigated ex officio pursuant Article 415 paragraph 1 item 1 PCPCK, which refers to the possible violation of provisions of criminal procedure foreseen by Art. 403.1 no.1 and 2 of the same code, that is the proper constitution of the court (no.1) and the exclusion of a judge from the main trial because of his disqualification.
The Prosecutor in his reply asks the dismissal of this point and informs the Court that also the third member of the trial panel of First Instance, Judge Leonard Assira, was in the same situation, having taken part to a decision on the extension of detention on remand and on extension of the period to submit an indictment.

The Court of Second Instance is of the opinion that this violation does not exist and that the trial panel of the District Court of Prizren was legally composed to adjudicate the matter of this proceedings.
The matter was already examined and decided by a ruling of the President of the District Court of Prizren on 4 August 2005 upon a motion of the Prosecutor.
The ruling was to reject the motion.
The reasons of that ruling and the arguments brought today to the attention of this Court by the Prosecutor are convincing.
It must be pointed out that the activity of those judges during the pre-trial phase happened according to the procedural law of SFRY in force before the PCPCK.
The judges, who later on were part of the trial panel, did not exercise the functions of the Investigating Judge of that procedural law.
The activity carried out under the previous law did not involve the merits of the case, nor was related to the collection of evidence.
The decision on extension of the period to file the indictment does not spend any word on the merits of the case, limiting itself to assess the reasons offered by the prosecutor, that is the complexity of the case and the necessity to draft accurately the indictment: the extension was allowed for fifteen days.
Moreover those judges did not participated in the confirmation of the indictment.
In other words their activity cannot be considered as "participating in pre-trial proceedings" lacking for this the exercise of the specific functions of the pre-trial judge.
The decision of the three judge panel on extension (or termination) of detention was under the previous code and it is still under PCPCK a particular activity on security matter which falls outside a specific phase of the proceedings.
According to both provisions this activity is not foreseen only for the pre-trial phase but also in other phases, such as after the announcement of the judgment of first instance (Art. 353.4 LCP SFRY and Art. 393.3 PCPCK) and therefore cannot be considered as a "pre-trial proceedings".
Finally the assessment of the grounds for a detention on remand and the final judgment on a case are object of different types of evaluation, as accepted also by the European

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Court of Human Rights (Hauschildt v. Denmark, 10486/83 [1989] ECHR 7, 24 May 1989).
The ruling not to exclude those judges from the trial panel was therefore correct.

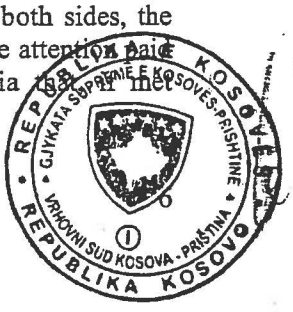
2. A second general point which has to be discussed preliminary is if at the relevant time in Kosovo, or better in the part of Kosovo where the facts allegedly happened existed a state of internal armed conflict, *condition sine qua non* of the possibility to charge the defendants with a war crime.
The point is addressed by the three appeals under the aspect that the judgment of the First Instance Court would contain a violation of the criminal law when considers existing this internal armed conflict.
The defense counsel of S[redacted] K[redacted] assumes that at the relevant time, in the Drenovc region KLA lacked of any central organization and of a commanding structure, being insufficient the simple will of all the Albanians to consider themselves as a part of KLA: there at that time and till October 1998 were present only rebellious groups.
The defense counsel of B[redacted]Z[redacted] assumes the violation of the law on war crimes, in terms of lack of the basic elements of a war crime because nobody of the supposed victims belonged to the opposite party, being all Kosovo Albanians.
The defense counsel of A[redacted]K[redacted] assumes:
- the non existence of an internal armed conflict in the critical time in that part of Kosovo;
- the non existence of a central organization and of a commanding structure of the KLA in the region of the facts.

The Court of First Instance addressed this subject in the pages 21 to 52, using the following pages to examine the concrete involvement of each defendant both in the armed conflict and in the criminal offences.

This Court is of the opinion that the evidence collected in the case file supports the decision of the first judge.

2.1 As correctly remembered by the First Instance Judgment, the existence of an internal armed conflict is decided on a case-by-case basis if it exists the positive evidence of a) a protracted armed conflict, b) the organization of the armed group which fights against the national armed forces and c) the level of the hostilities which trespass that characteristic of internal disturbance, riots, isolated and sporadic acts of violence.
This test is common to the international jurisprudence and relies on international treaties, such as Additional Protocol II to Geneva Conventions (art. 1).

As to the intensity of the armed conflict the criteria applied by the first judge appear to be correct both theoretically and in fact.
The seriousness and the increase of the attacks, the spread of clashes both on the territory and during the time, the increase in the number of the participants on both sides, the increasing supply with weapons, ammunitions and other military items, the attention paid to the conflict by the United Nations Security Council are all criteria [illegible] met



appropriately, define the seriousness and the protraction of a conflict which trespass widely the threshold of episodes of internal disturbance or of riots.
In fact the first judge has correctly demonstrated the existence in the territory of Kosovo during the first seven months of 1998 of a protracted and intense internal armed conflict between the Kosovo Liberation Army on one side and the Republic of Serbia and the Federal Republic of Yugoslavia supported by their military and by Serbian paramilitary forces on the other side.
This assumption is grounded on a large amount of evidence of different kinds (testimonies, statements of the defendants, public documents, communiqués of KLA General Staff, reports of OSCE and of non governmental organizations, Resolutions of UNSCR, judgments of ICTY).
The assessment of the first judge is not challenged in this part by the defense of A[redacted] K[redacted], which recognizes that "from 01.05.1998 and onwards there was an armed conflict in Kosovo, and that conflict existed in Drenica and Decani at the border with Albania" (appeal in favor of A[redacted] K[redacted] pages 6 and 7 English version).
This defense challenges the verdict as to the extension of the conflict at the region of Drenovc in the critical time, in other words it poses first a geographical and then a juridical problem.

The defense of S[redacted] K[redacted], on the contrary, challenges the existence of the armed conflict at the critical time under the different point of the lack of sufficient organization of the armed groups of KLA.

In the next paragraph will be examined the issue related to the organization of KLA.
This Court will here observe that, when an internal armed conflict do exist, the International Humanitarian Law finds application throughout the whole territory of the State.
This is because the whole territory can be the object of military operations and in any part of it can come true the different conducts and the facts which ground the reasons of the invoked protection.
Generally speaking, the places of internment and detention are usually located distant from the combat zone.
This is because of security reasons both of the authorities governing these places and of the prisoners: if somebody is a war prisoner must be kept away from the war.
Moreover, article 5 of APII prescribes that the detention centre are not located "close to combat zone".
The aim of this prescription is to protect from the dangers of the conflict people who find themselves in a special weak situation.
Thus, it would make no sense to pretend that a war crime related to the management of a detention centre could only exist in areas where combats take place at present.

In this sense confront the decision of the Appeals Chamber 2 of ICTY in the case Prosecutor versus Dusko TADIC[1].

[1] Prosecutor v. Dusko TADIC, 2 October 1995 decision on the defence motion for interlocutory appeal on Jurisdiction.

"68. Although the Geneva Conventions are silent as to the geographical scope of international "armed conflicts", the provisions suggest that at least some of the provisions of the Conventions apply to the entire territory of the Parties to the conflict, not just to the vicinity of actual hostilities. Certainly, some of the provisions are clearly bound up with the hostilities and the geographical scope of those provisions should be so limited. Others, particularly those relating to the protection of prisoners of war and civilians, are not so limited. With respect to prisoners of war, the Convention applies to combatants in the power of the enemy; it makes no difference whether they are kept in the vicinity of hostilities. In the same vein, Geneva Convention IV protects civilians anywhere in the territory of the Parties…

69. The geographical and temporal frame of reference for internal armed conflicts is similarly broad. This conception is reflected in the fact that beneficiaries of common Article 3 of the Geneva Conventions are those taking no active part (or no longer taking active part) in the hostilities.
This indicates that the rules contained in Article 3 also apply outside the narrow geographical context of the actual theatre of combat operations. Similarly, certain language in Protocol II to the Geneva Conventions (a treaty which, as we shall see in paragraphs 88 and 114 below, may be regarded as applicable to some aspects of the conflicts in the former Yugoslavia) also suggests a broad scope.
…
The nexus required is only a relationship between the conflict and the deprivation of liberty, not that the deprivation occurred in the midst of battle.

70. On the basis of the foregoing, we find that an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.
…
Even if substantial clashes were not occurring in the Prijedor region at the time and place the crimes allegedly were committed - a factual issue on which the Appeals Chamber does not pronounce - international humanitarian law applies. It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict".

In the Kunara case[2] the Appeals Chamber of ICTY confirms:
"64 … The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties".

[2] ICTY Appeals Chamber 12 June 2002, Prosecutor v. Dragoljub KUNARAC, Radomir KOVAC and Zoran VUKOVIC, see http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf.

Incidentally and in contrast with the opinion of the defense of A[redacted] K[redacted] (page 15 of the English version), it can be noticed that the judgments of ICTY are related both to international and internal armed conflict.
In the mentioned case Prosecutor v. Dusko TADIC the Appeals Chamber affirms its jurisdiction over violations of the laws or customs of war (article 3 of the Statute of ICTY) and over crimes against humanity (art. 5) "regardless of whether they occurred within an internal or an international armed conflict" (paragraph 137).

It can be added, as to the factual situation of the Drenovc area that also there existed military operations during the critical period, as recognized by the defendant S[redacted] K[redacted] when he assumes to have gone to Drenovc the first time on 28 April 1998 because he had heard that there took place fights between Serbian Forces and UCK.
He returned to Drenovc on 5 May and remained there at least until July because he had "understood that there <u>often</u> were fights there" (statement to the Police of 17 February 2004) and he wanted "to be at the places where the fighting was going on", adding that in May and June there was no fighting exactly in Drenovc but in the surrounding villages (at the main trial 21 June 2006 page 11).
Drenovc and Zatriq are two small villages located close to each other and the defendant admits that Zatriq was a strategic military place.
This area became then the object of the massive Serbian offensive of mid July 1998, time belonging to that considered by the charges.
E[redacted] R[redacted] (hearing of 15 December 2005) remembered to have dug trenches between March and April to defend Drenovc.
Other witnesses (M[redacted] B[redacted], "D", "TT", "X", K[redacted] P[redacted] narrated about fights in Drenovc and in the surrounding areas during the critical time, about the lost of many lives and about the consequences of the Serbian offensive of mid July, as correctly reported in the challenged verdict.

2.2 Particularly as to the requirement of the organization of the armed groups of the insurgents fighting against the national armed forces the Additional Protocol II to the Geneva Conventions of 1949 requires that these groups a) are organized and b) under a responsible command, c) exercise control over a part of the territory, d) thus are able to carry out sustained and concerted military operations and e) to implement the Protocol.

The appeals point out that in the Drenovc region during the months from May to August 1998 did not exist any central organization and any commanding structure of the KLA: the persons there could be defined only as rebellious groups and therefore the IHL, particularly APII would be inapplicable.

This remark is not grounded in fact and, on the other side, it is not consistent with a careful reading of the legal provisions.
Generally speaking: organization, responsible command, control over a part of territory, sustained and concerted military operations and ability to implement IHL are all requirements related to the armed group as a whole: the presence of these requirements is *conditio sine qua non* of the existence itself of an internal armed conflict.

Logically the control exercised by an armed group must exist only on a part of the territory of a State, otherwise there would not be any conflict since the whole territory would be under the control of a unique party.
Some military operations are carried out in parts of the national territory which are under the control of the opposite party, by forces with a limited structure of command.
Sometimes a military group assumes the control of a region only temporarily.
Sometimes, in peripheral regions under the control of a party, the structure of command is limited to the essential elements and the supplies of weapons and other military items are not abundant.
However, these and similar situations can not limit the application of IHL only to the parts of the territory where all the requirements of the armed group exist at the same level and at the same time.
On a correct way the first judge quotes international jurisprudence[3] about the sufficiency of some degree of organization by the armed group of the insurgents, which does not require a complete and hierarchical system of military similar to that of regular armed forces.

The existence of "free zones", where are present only the armed forces and the civilian population of one of the parties in the conflict and where the enemy troops don't dare to enter is significant.
In those zones the state powers are no more present and the authority belongs to the insurgents.
It can be noticed that, besides claiming the lack of organization in that area, the appeals don't assert that KLA units in Drenovc were totally autonomous, abandoned to themselves and that they did not obey to orders coming from the central command.

2.3 In fact the remarks of the defense are not grounded.
It can be noticed that from the documents furnished by the Prosecutor (exhibit no. 15 in binder no. XVII) it results the existence of a General Command of KLA since the beginning of 1998.
The existence of a General Command is regarded as one of the most important elements of a military organization.

The General Staff of KLA since February 1998 issued communiqués on military operations, attacks against Serb forces, liquidation of collaborators.
In these communiqués KLA often states to be willingly and able to recognize and to respect the international treaties, the Geneva Conventions, the Conventions governing the conduct of war.
As required by article 1 of APII the organization of an armed group must enable it to implement IHL
KLA General Staff states its will to make true this implementation.

The Reports of the Office of the Prosecutor of ICTY of February 1999[4] refers enquiries conducted among KLA members which result in the points reported in the challenged

[3] Musema, ICTR Trial Chamber Judgment, 27 January 2000, Case no. ICTR-96-13-T, paragraph 257.
[4] Exhibit no. 15e,

verdict (page 49) about the ability of KLA since the end of 1997 to "launch co-ordinated operations over a fairly wide area, indicating the emergence of a high degree of organizational structure".
The members of KLA grow up from approximately 500 at the beginning of 1998 to "several thousand towards the summer" (between 12 and 20.000).
"At the end of June 1998, an experienced international monitor in Kosovo observed that the UCK appeared to have created structure with distinct level of command and that UCK military police controlled roads and guarded headquarters locations".
"Before the Serbian/FRY offensive at the end of July 1998, the UCK controlled significant parts of the central regions of Kosovo, from the Drenica area south to Malishevo".

The latter element of fact finds a confirmation in the Human Rights Watch report 1999, which mentions 40% of the Kosovo territory as controlled by KLA from April until mid July 1998.
The defense objects on the reliability of pieces of information obtained from media and non governmental organizations due to the uncertainty of their sources.
S[redacted] K[redacted] deemed exaggerated the figure of 40%, admitted however the existence of territories under the control of KLA, the so called "free zones".
In Drenica for instance existed according to this defendant a "consolidated organization"[5].

That at the critical period of time KLA could control wide areas of Kosovo is stated by witnesses and defendants and by the Report issued by the Office of the Prosecutor ICTY on 2 August 2004[6] which collects pieces of information from Serbian, KLA and Monitor reports sources.
Beyond the points quoted in the First Instance Judgment (page 50) about intensity, extension and protraction of the armed conflict between January and September 1998 it is worth noticing what Serbian Forces reported in mid-May 1998 about the consistency of KLA (3.500-4.500 persons), the increase of its attacks against MUP and the organization and the structure of its forces: "the terrorist forces are increasingly taking on the attributes of a military organization, and are setting up units from platoon to company/size".
According to Serbian sources at 13 May 1998 KLA controlled about 30% of the territory of Kosovo.
Serbians reports define KLA members as "terrorists" but can not deny the increasing and military (units, platoons, companies) organization of them and above all the consistent percentage of Kosovo territory hold by KLA.

According to witness "TT" at the fighting of Bellacerkve/Bela Cerkva on 18 July 1998 took part 100 KLA soldiers.

KLA had a solid structure and internal organization, as demonstrated by the issuing in 1998 of the "temporary regulation on organization of internal military life"[7].

[5] See Trial Minutes of 21 June 2006 page 12.
[6] Exhibit 15n.
[7] Exhibit no. 15m.

Here (chapter IV) it is to read "Kosovo liberation Army is the ENTIRETY OF ARMED FORCES OF KOSOVO" meaning the unification of all combatants for the independence of Kosovo under a formal and hierarchical chain of command.

The jurisprudence of ICTY quoted in the First Instance Verdict[8] confirms the existence of the hierarchical chain of command before the end of May 1998, the ability of KLA to engage in armed clashes with substantial Serbian forces as demonstration of its level of organization and the acceptance gained by KLA as necessary and valid participant in negotiations with international governments.

To the elements above mentioned it can be added that the supply of weapons, ammunitions and other military items was obviously one of the most important concerns of KLA.
For instance in the period from May to July 1998 in Tirana R[redacted] L[redacted] and other KLA activists collected weapons and ammunition to send to KLA in Kosovo, taking an advantage of a situation of general protest in Albania, through which weapon depots had fallen in the hand of civilians who sold them to Kosovo Albanians.
Other nationals arrived with weapons from the States of Western Europe.
According to L[redacted] in the period between May and July 1998 approximately 10.000 volunteers coming from Western Europe entered Kosovo through Albania.
In this period the supply of weapons was somehow regular.

On the ground of these elements it can not be denied the presence in the KLA as a whole of the requirements of organization under responsible command, control over part of Kosovo territory, the ability to carry out sustained and concerted military operations and to implement IHL as foreseen by APII.

2.4 These characteristics were also present in the area of the facts, the zone of Drenovc.
Firstly, it must be mentioned that Drenovc and the surrounding villages between Rahovec/Orahovac and Malishevo composed a so called "free zone" where the state authority had been replaced by that of the insurgents, that is of KLA.
The first judge grounds his assessment on testimonies: in that area "KLA had everything under control"(F[redacted] H[redacted]), people could not enter or leave freely the free zone due to the controls of KLA ("D", N[redacted] R[redacted]).
This zone was logically "free from Serbs"("D").
As seen above, Drenovc was defended by trenches dug in March/April (E[redacted] R[redacted]).
F[redacted] H[redacted] added that "every army had headquarters not only Drenovc".
Also "X" and "Z" mentions the presence of headquarters and the control over some villages, among them Drenovc.
N[redacted] M[redacted] mentions the free zone in Malishevo.
Also S[redacted] K[redacted], as noticed above, admitted the existence of a free zone.

Secondly, Drenovc was under control of KLA, which had there, among other, the offices of the Military Police and the Detention Centre.

[8] Fatmir Limaj et al case, ICTY Trial Judgment, 30 November 2005 paragraphs 171-173

The Military Police was commanded by G[redacted] P[redacted] till his death on mid July 1998. As seen better further, according to the evidence S[redacted] K[redacted] was first the Deputy of P[redacted] then the new Chief of the Military Police.

The existence of a Military Police and of a Detention Centre in Drenovc is one of the elements of the organization of KLA, because it was used for carrying out some state powers, as those linked with police and intelligence functions.
The Detention Centre was not managed "autonomously" by the local forces, but it operated within the more general frame of KLA activities and goals.
As admitted by S[redacted] K[redacted], the questioning of civilians suspected as collaborators of the Serbs was "vital" for KLA.
This means that the activity of the Detention Centre and of the Military Police in Drenovc fell within the frame of the more general KLA purposes and operations, the latter arriving to foresee also the "liquidation" of collaborators[9].

Thirdly, the fact that the prisoners were moved from Drenovc because of the offensive of the Serbian military is another element to demonstrate the organization of KLA and its possibility to implement the provisions of IHL, because the evacuation of prisoners from the zones particularly exposed to danger arising out of the armed conflict is foreseen by article 5.2 lit. c of Protocol II to the Geneva Conventions.

Fourthly, as stated by the witness Dr. A[redacted] H[redacted] in that region KLA had the availability of a military hospital, which moved frequently to avoid the Serbian offensive.

Fifthly, S[redacted] K[redacted] mentions the probable participations of KLA members of the unit of Drenovc in different fighting as in Ratish or Kramovik.

Finally, from the testimonies results the office of "political commissar" exercised in Drenovc by B[redacted] Z[redacted], as will be seen better further.

Thus it can not be denied the existence in the region of Drenovc at the critical time of an organization of KLA, an organization with its headquarters and structured on different levels of command, with a Chief of the Military police, his Deputy, other agents and the "political commissar".
This organization was able to carry out Police tasks, manage a Detention Centre and move the prisoners when the Serbian offensive started.
This organization provided healthy care for wounded and with probability also military units for fighting outside Drenovc.
This organization did not act autonomously but in the frame of the activities and of the more general goals of KLA.
The unit in Drenovc was a part of KLA and, together with the other units satisfied the requirements of the Additional protocol II to the Geneva Conventions and, consequently, was bound to respect IHL.

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[9] See Communiqué' No. 42 of 28/02/1998 of the General Staff KLA as furnished by the Office of the Prosecutor ICTY, references to this and other communiqués of KLA are made in the Report issued by that Office entitled "Armed Conflict in Kosovo" dated 2 August 2004.

2.5 As to the "discriminatory" character of the conduct of the defendants, as sustained in the appeal in favor of B[redacted]Z[redacted] see further point **III.9.**

3. The third point concerns the forms of liability, if direct, in complicity or within the activity of a criminal group.
The three appellants have challenged under different points of view the responsibility of the defendants whenever this was affirmed by the Court of First Instance not for direct acts, but for the participation in a joint criminal enterprise.
It is claimed that defendant S[redacted] K[redacted] was convicted for having participated in the arrest and unlawful detention of the victims, when on the contrary in the reasoning no single evidence are brought of acts of arrest made by the defendant.
In the appeal in favor of B[redacted]Z[redacted] it is claimed the violation of the provision of article 26 CC SFRY because of lack of any explanation about the participants and the aims of the group and about its exploitation.
The appeal in favor of A[redacted] K[redacted] affirms that the verdict is contradictory as to the concurrence of articles 22 and 26 of CC SFRY, which are in fact incompatible to each other.

The Court of First instance examines the different forms of liability in the pages from 78 to 82, going through the hypothesis of complicity (pursuant to art. 22 CC SFRY), aiding ("acts specifically directed to assist, encourage or lend moral support to the perpetration of a crime") and of participation in a criminal group or joint criminal enterprise (pursuant to article 26 CC SFRY) and held as proven the responsibility of the defendants according both to article 22 and article 26 of CC SFRY.

This Court deems correct the reasoning of the first judge.
Starting point is the consideration that the criminal offences charged against the defendants as war crimes are constituted by complex facts.
According to the indictment these facts lasted for three or four months, were related to many victims, each of them happened with similar but concretely different modalities.
Also the participation of each defendant is described in the indictment as having different modalities.
Thus there is no contradiction in the verdict of first instance where it affirms the responsibility of each defendant, alternatively pursuant article 22 and 26 of CC SFRY.
This is because, in the single concrete fact, the first judge has recognized this responsibility under the case of complicity or under that of participation in a joint criminal enterprise.
From the collected evidence the different conducts and forms of participation of the three defendants result clear as assessed by the challenged verdict, as well as the aims of the organized group and its exploitation.
Here must be pointed out as follows.
Complicity (art. 22 CC SFRY) can exist in relation to a single crime, committed jointly by several persons, each of them on one side is a carrier of the decision and of the will to commit the criminal offence and on the other side performs the typical act prohibited by the law (murder, theft) or a segment of this, or according to some commentators also all

act which falls outside this but represents "an essential segment in the process of committing a criminal act"[10].
The law distinguishes co-perpetrators (accomplices) from instigators and abettors also in the punishment because the conduct of the first ones (to perform the typical criminal act) is deemed more important.
The notion of "criminal liability and punishability of the organizers of criminal associations"(art. 26 CC SFRY) has a different meaning and importance.
In this case an entity, something with stabile characteristics and a certain organization is created or used for the purpose to commit one or more criminal acts according to a "criminal plan".
Here, just because of the existence of this "association", each participant is responsible for the performing of each crime deriving from the criminal plan "as if he himself committed them, irrespective of weather and in what manner he himself directly participated in the commission of any of those acts".
In other words in the case of a joint criminal enterprise the responsibility of the single does not ground necessarily on the direct participation in or aiding of a single crime but on the creation or on the participation in (to make use of) an organized criminal activity (actus reus) with the knowledge and the will (mens rea) to give his own contribution to the criminal acts of the organization.
The conduct of "making use" of the group is clearly referred to all participants, although they are not the creators or the organizers.
In the joint criminal enterprise the nature and quality of contributions of the single participant often don't coincide with the typical act foreseen as criminal offence by the law ("irrespective of weather and in what manner he himself directly participated in the commission of any of those acts").
For example participate in an illegal arrest not only the persons who materially apprehend the victim, but also the persons who order or simply plan the arrest or those who take part to activities which are the logic and necessary consequence of the arrest, as to organize the guard to the detainees, to allow or prohibit the visit of the relatives and so on.
The creation and functioning of a detention center is a complex activity, which requires organization, division of roles, facing and solving daily necessities.
On the other side detention is logically not possible without a previous act of arrest, the former is necessarily linked to the latter.
Making use of jurisprudential principles stated by ICTY the Court of First Instance has correctly stated (page 81) that:
a person can be held responsible for the criminal acts of an association whenever a) he participates directly together with other persons to the commission of the criminal offence, b) he participates willingly to a system of repression or ill-treatment, which result in criminal offences or c) the criminal offence is a "natural and foreseeable" consequence of the common plan.

Another remark must be added.
Article 26 CC SFRY does not limit its extension to the cases where somebody creates an association only for the purpose to perform criminal actions.

[10] Ljubisa Lazarevic, Commentaries on the Criminal Code of FRY, 1995, art. 22.

It foresees also the case where a legal pre-existent group or association is misused by some of his participants for criminal purposes[11].
What was under investigation and judgment in this case was not KLA as such and the general goals of its activity but the conducts of individual who took profit from the existence of the conflict, from the control of a part of territory, from the organization of KLA to perform illegally arrests, interrogations, detentions, beatings and the other acts charged in the indictment and in the judgment of first instance. These acts were not performed for personal or private purposes of the perpetrators but within the general aims and conduct of the operations of KLA which were misused.

As already stated by the Confirmation Judge: "the provision of article 26 CC SFRY is analogous to the doctrine of joint criminal enterprise (or common purpose or design) as interpreted by the ICTY in the Tadic case[12]. According to this doctrine when a crime results from the action of a multitude of persons, all participants are equally responsible if they participate in the action whatever their position and extent of contribution and intend to engage in the common criminal action"[13].
Here can be added that the provision of article 26 CC SFRY is substantially the same of the article 26 of PCCK, which punishes the participants in a criminal association because they agree with other persons to commit or to incite the commission of a criminal offence and undertake preparatory acts for the fulfillment of such agreement.
Apart from the different literal formulation of the two legal provisions, their identity must be seen in the agreement to commit (one or more) criminal offences (26 PCCK) which is the same of the criminal design or purpose of committing criminal acts as mentioned in article 26 CC SFRY.
The identity is also in the material conduct: making use of an association for the purpose of committing criminal acts (26 CC SFRY) is a material conduct which results either in the commission of the typical criminal act (a murder, a theft) or in the commission of ancillary or preparatory acts to the crime.
In other words, to make use of an association for the purpose of committing criminal acts (26 CC SFRY) is the same as to undertake preparatory acts for the fulfillment of the agreement to commit criminal offences (26 PCCK).
The plurality of the criminal offences is not excluded by the formulation of article 26 PCCK and gives to the criminal association an aspect of stability and duration in the time. The same aspect of stability is given to the conducts of the participant by the organization of the group, which is exploited in the case of joint criminal enterprise (26 CC SFRY).

4. The fourth point regards the time of the proceedings.
Particularly the time elapsed from the announcement of the judgment and the compilation and the serving of the verdict (from 10 August 2006 to March 2008) is defined "huge"

[11] "This form of complicity, however, also exists in the case when someone, for the commission of criminal acts, uses an association, which was not created for criminal purposes but its activities are as a rule legitimate. During World War II, associations of some national minorities which were created for specific cultural and similar goals were used for criminal purposes". Ljubisa Lazarevic, Commentaries on the Criminal Code of FRY, 1995, art. 26.
[12] P.v. Tadic, Appeal chamber Judgment, 15 July 1999, paragraphs 186-228.
[13] Ruling of Confirmation Judge, Timothy Baland, 21 May 2005.

and in contradiction of 395.1 PCPCK, the defense deems it as the background of a political judgment.
The defense points out as well the long period spent in custody by the defendants (since 16 February 2004 for S[redacted] K[redacted] and B[redacted] Z[redacted], since 9 December 2005 for A[redacted] K[redacted]) without a final judgment, fact which prevents them to obtain eventual penitentiary benefits, i.e. the conditional release.

This Court deems that, although the time as indicated was very long, that of a political judgment is only an assumption of the defense counsel.
The international instruments prescribe the "reasonable" duration of a proceeding both criminal and civil.
Particularly article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms sets forth that "everyone is entitled to a fair and public hearing within a reasonable time".
This represents a right of the defendant and a duty of the State.
It is related not only to the time by which a trial should begin, but also to the time by which it should end and judgment be rendered.
At all stages, both in first instance and in appeal the proceeding must take place without undue delay.
Trials carried on for a long unreasonable time allow to introduce the equivalence between "justice delayed" and "justice denied", because they keep for a long time the individual in a situation of uncertainty which is incompatible with the rule of law.
The criteria laid down in the Court's case-law in order to assess the reasonableness of the length of the case regard usually the complexity of the case, the applicant's conduct and that of the competent authorities.
In criminal cases when the defendant is in detention the concept of "reasonableness" is tighter, since he must be provided with a final decision as soon as possible, that is in a time which does not make for him practically impossible to have recourse to alternative institutes as i.e. the conditional release.
According to the jurisprudence of the European Court of Human Rights and to the legislation of the Member States of the Council of Europe the length of a proceeding when it is "unreasonable" may conduct to form of economic compensation.

This case is of particular complexity: the first instance was related to six defendants, each of them charged with specific criminal offences, during the main trial were heard thirty four witnesses and were necessary forty four hearings, due to the participation of international judges and prosecutor everything was translated in English and in Albanian, the dimensions of the case file include at least ten thousand pages, almost six thousand of them during the pre-trial phase, the written judgment amount to one hundred two pages.
It is undeniable that this complexity requires time for conducting the main trial, for deciding and for writing the judgment.
Nevertheless the time from the announcement of the judgment of first instance (10 August 2006) to the moment when the written decision was filed in the registry of DoJ of UNMIK (6 March 2008) was in itself unreasonably long.
This length may have had also collateral effects on the rights of the defendants to have access to alternative institutes.

It is not within the competence of this Court to decide on a form of economic compensation grounded on the unreasonable delay of the criminal proceeding.
Nevertheless and in case of conviction, this point can be considered under the provision of article 42 no. 2 of SFRY CL (which was replied in the provision of article 66 no. 2 of PCCK) as a particularly mitigating circumstance[14] which indicates that the aims of punishment can be achieved by imposing a lesser punishment, as it will be explained further on.

5. The conclusion of this point is that in the first instance proceedings not a single violation of the criminal procedure and of the criminal law has been made which the Court is obliged to point out ex officio according to article 415 PCPCK.

II

As said above, the appeal of [redacted] from Mitrovica as defense counsel of defendant S[redacted] K[redacted] was filed on 21 March 2008 and the supplement to this appeal was filed on 7 April 2008.
The judgment of first instance is challenged due to:

- essential violations of criminal proceedings,
- erroneous and incomplete corroboration,
- violation of the criminal law and
- the decision on the conviction.

The defense counsel proposes:

- to change the verdict finding that it is no established that the accused has committed the criminal offence he is charged with and consequently to acquit him, or
- to send the case to the First Instance Court for a re-trial, ordering at the same time the termination of detention in order to permit to the accused to defend himself in liberty, or
- to impose to the accused a more lenient punishment.

The grounds of the appeal are as follows.

AD1. Essential violations of criminal proceedings as:
- alleged inconsistency between the enacting clause and the reasoning part,
- lack of consideration for decisive facts,
- considerable contradiction between the given reasons, between the given reasons and the content of the case file and the minutes of the statements, and between the minutes themselves.

This ground of appeal is developed in the following points.

[14] In this sense confront District Court of Pristine 9 November 2007 Shkumbin M[redacted] District Court of Pristine 5 October 2007 B.M.

1. The **time** of the proceedings and particularly that elapsed between announcement of judgment and the compilation of the verdict is claimed by the defense.
This point was examined above (see point **I.4**) and will have an effect for each defendant.

2. **Inconsistency** between the enacting clause, where S[redacted] K[redacted] is convicted for having participated in the arrest and unlawful detention of the victims, thus making himself responsible for the war crime of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees and the reasoning (page 73) where no single evidence are brought of acts of arrest made by the defendant.

This point is ungrounded for the reasons made clear above (confront point **I.3**).
It can not be seen any contradiction between the enacting clause and the reasoning of the challenged verdict because the responsibility of S[redacted] K[redacted] for both illegal arrest and unlawful detention of persons held under inhuman conditions is considered in the judgment of first instance as the result in some cases of direct conduct and of his participation in that joint criminal enterprise in other cases.

3. The defense counsel deems to find a **contradiction** between the reasoning on one side and the content of the case file and the minutes of the statements on the other side in the part of the verdict (pages 87 and 88 of the English version) which examines and refuses the alibi of S[redacted] K[redacted] not to have been present in Kosovo for a large part of July and August 1998.
The alibi is allegedly grounded on a number of witnesses of the defense, whose testimonies, according to the defense counsel, were not correctly considered, or were simply contradicted or avoided by the Court of First Instance.

The challenged verdict deems to find a contradiction between the testimonies of R[redacted] R[redacted] (but also of M[redacted] J[redacted] on one side according to which the defendant left Tirana in direction Kosovo in the period from 8 to 12 August going through Vlora (south west coast of Albania) and the testimony of R[redacted] L[redacted] according to which the path of the defendant to Kosovo went through Kukes (north east of Albania on the border with Prizren in Kosovo).
The verdict adds that the name of the town of Vlora (testimony of M[redacted] J[redacted] was typed incorrectly in the minute as Vlane.
The defense counsel points out the fact that the witness spoke of Vlane and not of Vlora, adding that Vlane is a village located near the Albania-Kosovo border, close to the small town of Kruma.
Kruma was the station of KLA fighters who had decided to cross Albania-Kosovo border to join the units inside Kosovo.
Kruma was also the place where weapons were gathered to transport them to Kosovo.
Thus Vlahne not Vlora, because the latter should have never been mentioned by the witnesses.
The defense counsel remarks furthermore that the statement of H[redacted] K[redacted] was left without any analysis and that the statement of anonymous witness "Z" was simply avoided.

Witness "Z" stated to have met the defendant S[redacted] K[redacted] on 15 June and on 17 August and to have been informed by him that at the time of the Serbian offensive against the town of Rahovec (dated 17 July 1998) he was not in Kosovo.

A preliminary remark of the Court of Second Instance is that the lacking of assessment of one or more testimonies by the Judge of First Instance does not automatically lead to an evaluation of inconsistence of the challenged verdict.
It depends, obviously, on the content of those testimonies: if they are superfluous or in other way not influent on the judgment it is not mandatory to examine them in each single part.

On this point a second general remark must be done on the reliability of the testimonies.
Duty of a witness is to speak the truth (Art. 164.2 PCPCK) about the investigated facts saying what fell under the perception of his sense or he learned from other sources.
A testimony is the result of the acts of observing and of recalling.
Discrepancies or inconsistencies in a testimony are not automatically considered a sign of false being possible that they are the result of a simple mistake in the perception or in the memory of the witness or that perception and memory have been influenced by external factors and circumstances, as convincingly made clear by the challenged verdict in the part specifically dedicated to the "Evaluation of the credibility of the witnesses".
Mistakes in the testimonies are not rare and they are comprehensible particularly when the events are remote and linked with painful and dangerous experiences, from which people would like to escape also in the memory
This, as it must be borne in mind, is valid for all witnesses, both of the prosecution and of the defense.
One of the most important tools elaborated by the jurisprudence in order to assess the reliability of a witness is the presence or the absence of an interest of the witness on what he is referring.
The question to answer in this case is "cui prodest?", that is who can have an advantage from this testimony and why.
On the eventual interest of the witnesses of the Prosecutor we will return further on, when examining also the problem raised in the appeals about the plot supposed as existing against the defendants.
Here must be remarked that the witnesses of the defendant S[redacted] K[redacted], upon which relies the alibi of the latter can not be considered neutral to him and to the result of this trial.
As stated in the verdict of first instance they were "former comrades in arms, close friends or current TMK officers with whom he had been serving at the time of his arrest".
As stated also by his defense counsel, S[redacted] K[redacted] is deemed to have been an important shape in the war against the Serbs, among other having been one of the founders of an armed forces, which later on developed in the Kosovo Liberation Army.
This must induce a particular prudence in evaluating the statements of these witnesses, being clear the possibility that they, also not willingly, are taken to refer details which are wrong or not true but are in favor of this important person, of this comrade or friend of them.

Prudence and attention above all on the elements which are external to these testimonies and therefore could corroborate or contrast them.

Coming to the above mentioned points of the appeal, the Court of Second Instance observes as follows.
Witness M[redacted] J[redacted], member of KLA since 1993, told the Court to have met for the first time "General S[redacted] K[redacted]" in Vlane between 8 and 12 August 1998 when the witness was going to enter Kosovo with a group of immigrants who wanted to be engaged in the war and S[redacted] K[redacted] was going to Kosovo as well.
J[redacted] had never met K[redacted] before.
Present to the meeting in Vlane was also R[redacted] R[redacted], whom J[redacted] knew from before.
That day J[redacted] remained in Vlane, while General S[redacted] K[redacted] left that place heading towards Kosovo.
Each KLA fighters coming from Albania carried weapons and ammunition for the other fighters in Kosovo.
The trip to and from Kosovo could last days because of the security measures on the border taken by the Serbs.
The witness remembered that his travel back from Kosovo to Albania lasted 3 days, other times it took 10 days.

Witness R[redacted] R[redacted] stated to have met S[redacted] K[redacted] in Tirana between 8 and 10 July 1998, he was not quite sure about the date, to have spent a month with him in the same town, meeting him on a daily basis, morning, lunch and dinner.
They both entered Kosovo on 9 August driving together through Kruma and Vlane, village where R[redacted] left behind K[redacted].
The road taken by R[redacted] was easier than that of K[redacted] because the former was accompanied by people who were injured and lightly armed.
Few days later the witness heard that S[redacted] K[redacted] was on his own way to Kosovo.
The witness stated to have met S[redacted] K[redacted] in Germany since 1996 at the house of R[redacted] L[redacted], the three of them were members of KLA and worked closely for the liberation movement.
R[redacted] and K[redacted] became close friends after 1997.
R[redacted] returned from Germany to Albania one of the first ten days of July 1998 but was not able to show any passport or other piece of document stating his entrance in Albania at that time.
In Tirana he lived alone in an apartment of a certain S[redacted], whose family name he did not get, he paid cash.
He met S[redacted] K[redacted] and the intention of the latter was to get armaments for the war.
He remembered the day he entered Kosovo as the 9 August, it was an important day for him, he had no documentary evidence on this fact.
Upon a question of the Prosecutor the witness stated to have travelled from Tirana to Vlane together with the defendant and with M[redacted] J[redacted].
He and K[redacted] had spent time with J[redacted] also in Tirana, even though not often.
The witness mentioned other people he and the defendant met in Tirana.

He met S[redacted] K[redacted] one or two days after his own arrival in Tirana.
R[redacted] recalled an attempt to enter Kosovo made by him and nine other people in May 1997.
On that occasion they were ambushed by Serbian forces and the witness was wounded.
That day with R[redacted] were present among others also S[redacted] K[redacted].
In the statement given to the Investigating Judge on 5 November 2004, R[redacted] R[redacted] had remembered the presence on that occasion also of R[redacted] L[redacted].

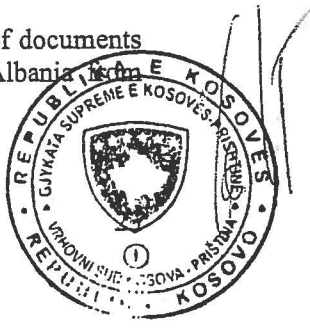
Witness R[redacted] L[redacted] stated to have lived in Germany some years since 1993 preparing the war in Kosovo together with his brother F[redacted] the wife of his brother X[redacted] and X[redacted]'s brother, that is the defendant S[redacted] K[redacted].
He knew K[redacted] since the latter was a child in 1984 and they are extremely good friends.
He also recalled the attempt to enter Kosovo in May 1997 culminated in an ambush by the Serbs.
After that attempt, the witness, S[redacted] K[redacted] and G[redacted] P[redacted], all members of KLA, returned in Albania from Germany in March or April 1998, the witness remained there, whereas K[redacted] and P[redacted] went to Kosovo.
In Tirana L[redacted] on behalf of KLA was taking care of the journalists who were interested in the war and wanted to enter Kosovo.
He met again S[redacted] K[redacted] in Tirana by the end of the first week of July 1998, when the latter had come to that town in order to receive weapons and to collect people.
K[redacted] had come alone.
The witness met often, almost every day K[redacted], who remained in Albania till the last week of August when he returned to Kosovo through Kukes.
The witness corrected his testimony saying that it was not the last week of August but the last bit of the first week of August.
From his brother F[redacted] the witness received a telephone call confirming that S[redacted] K[redacted] had reached Kosovo with some friends, this happened by the end of the second week of August, then explained that it could be 11 or 12 August without being sure of the date.
In Tirana S[redacted] K[redacted] met among others also A[redacted] and X[redacted] H[redacted]
The witness and others in Tirana collected weapons and ammunition to send to KLA in Kosovo, taking and advantage of a situation of general protest in Albania, through which weapon depots had fallen in the hand of civilians.
In the period between May and July 1998 approximately 10.000 volunteers coming from Western Europe entered Kosovo through Albania.
The supply of weapons was somehow regular.
The witness did not know the address of S[redacted] K[redacted] in Tirana, he was there with some relatives.
In Tirana the witness and K[redacted] met also R[redacted] whit whom the defendant left Albania to Kosovo end of first week of August.
The witness did not know if the defendants and R[redacted] travelled to Kosovo alone or with some other and if they carried weapons.
Asked about the route followed by the defendants the witness mentioned two main roads to the north border: through Kukes or Bajram Curri.

Upon a question he added that Vlahn is "another road towards the border" but he had no asked the defendant about his route.
Vlahn was defined by the witness as a strategic point for KLA near the border, in Vlahn or in the nearest villages it must have been houses used by KLA.

In the statement given to the Investigating Judge on 5 November 2004 H[redacted] K[redacted] recalled to have been in Switzerland for 12 years because of the politics of the Serbian government and to have made return to Kosovo in 1998 with a formation of KLA.
He entered Kosovo illegally.
On 6 July 1998 he met S[redacted] K[redacted], whom he did not know before, in Rogova village (Kosovo) at the house of the local H[redacted] (cleric), both of them were going to Albania, S[redacted] in order to collect weapons, H[redacted] since he wanted to return to Switzerland for health reasons.
The two left Rugova in the evening and arrived in Tirana the following afternoon or evening.
H[redacted] left S[redacted] in Tirana.

Witness "Z" stated that S[redacted] K[redacted] told him to have been in Albania during the time the prisoners had been removed from Drenovc because of the attack of the Serbs, without stating anything he could know directly nor the duration of the travel to Albania of the defendant.

The Court of Second Instance shares the assessment of the challenged verdict according to which the alibi of the defendant S[redacted] K[redacted] to have not been in Drenovc and to have stayed in Albania for about a month can not be demonstrated by the evidence above mentioned.
The evaluation of the First Instance judge however must be précised.
According to the minutes of the record the witnesses spoke about Vlane, not Vlora.
The explanations of the witnesses about the strategic importance for KLA of Vlane, Kruma and other villages can be accepted.
This is however not decisive in favor of the defendant.
It can not be completely excluded that S[redacted] K[redacted] traveled through the border, reached Albania and Tirana in that period, but it is not demonstrated at all that he stayed in Tirana a month long, from the first week of July to the first of August.
The first witness who states this, R[redacted] R[redacted] falls in contradiction with the testimony of M[redacted] J[redacted], saying that he himself and S[redacted] K[redacted] met J[redacted] in Tirana what the witness J[redacted] completely excludes.
This contradiction between these witnesses is clear and it can not be explained with a simple mistake in the memory of R[redacted], because he states that these meetings in Tirana with J[redacted] happened more than once and that the three of them spent also time together, even though not often.
This is excluded by J[redacted] who stated to have met S[redacted] K[redacted] for the first time in Vlane in August.
The testimony of R[redacted] has another weak point in the lack of any piece of documents (passport or equivalent) which could confirm the date of his arrival in Albania from Germany.



The Court deems not reliable the testimony of R[redacted], it contradicts other witness of the defense and is without external documentary corroboration.

The second witness who affirms the presence of S[redacted] K[redacted] in Tirana is R[redacted] L[redacted]
He met the defendant often, even though not every day as stated by R[redacted].
Both R[redacted] and L[redacted] are close friends, comrades, the latter also relative of S[redacted] K[redacted]
Despite this close, professional and familiar relationship and the quite long period spent together in Tirana L[redacted] was not able to indicate the address where the defendant lived in Tirana and this is not credible, especially if it were true that the two men met often.
Another point, a change in the date when K[redacted] returned to Kosovo (first or last week of August) was promptly corrected by the witness and can be assessed as a simple memory mistake.
Also this testimony is not reliable and not able to ground the alibi of the defendant to have spent a month in Tirana.
Too strong is the suspect of an interest of these witnesses to help their friend.

Witness "Z" is not relevant for this point because he refers what the defendant told him, thus nothing adding to the version of the latter.
The other witnesses J[redacted], H[redacted] K[redacted] and F[redacted] B[redacted] refers about the presence of the defendant respectively: the first one in Vlahne, the second one on the way to Tirana and in this town and the third one in a village on the road to Albania **only in singular moments and not for a long period.**
This is important, because it can not be excluded that the defendant went to Albania in order to collect volunteers and weapons for the war, but it is not demonstrated at all that he spent a long and continuative time out of Kosovo.
In fact the need of KLA to receive constantly men and weapons for the war is quite clear.
In that period according to L[redacted] approximately 10.000 volunteers and a lot of weapons reached Kosovo through Albania in a regular way.
This can explain also one trip of the defendant to Tirana.
Going through the border represented a dangerous activity because of the Serbian control.
However the supply is defined as "regular", that means constant.
The time needed to cross the border could vary from some days (witness J[redacted]) to few hours.
In fact, witness S[redacted] D[redacted] K[redacted] (hearing 14 June 2006) speaking about an illegal entrance in Albania at the end of June 1998, stated to have gone from his village Dejne to Albania taking six or seven hours including breaks.
Dejne is located only 10/12 Kilometers distant from Drenovc.
H[redacted] K[redacted] remembers to have spent one day from Rogova in Kosovo to Tirana.
Also R[redacted], answering to questions put by the defendant, stated the possibility to choose different roads, the one he chose was easier because he was travelling together with wounded people and soldiers lightly armed.
This made it possible for S[redacted] K[redacted] to go to Albania and to return within few days.

This seems also consistent with the need of the war, to have as much fighters available on the field in the shortest time as possible.

4. The appeal claims that the enacting clause would be **incomprehensive** and **inconsistent** with the evidence because the verdict convicts the defendant for conducts happened "on a date between 1 May and 31 August 1998".
According to the defense counsel the verdict deems the defendant as a member of KLA of Drenovc of Zatriq for the entire this period but this would not be demonstrated by any piece of evidence in the case file and would be in contrast with the statement of the defendant.
Moreover the First instance Court had refused the hearing of the witness V[redacted] M[redacted] who, before the Investigating Judge, stated that at that time the defendant was not listed to any unit but went to the places where the fights were taking place.

This point of the appeal is ungrounded.
Criminal Law takes in consideration the conducts of the persons, the qualities and functions which the persons concretely exercises more than the names of these qualities or functions.
The defendant admits to have come to and have been present in the place of the facts in the beginning of May, which is the starting date object of the verdict.
To be officially listed or not listed in a specific group of combatants is an important issue but not so important to exclude the criminal responsibility of somebody who concretely acts as a part of a group, sharing with the others the actions and their risks, giving and receiving orders, assuming responsibilities of direction.
That's why the testimony of V[redacted] M[redacted], as quoted in the appeal seems to be completely irrelevant.

5. The appeal criticizes the assumption of the First Instance Court (page 20 of English version) according to which "defendant S[redacted] K[redacted] admitted the existence of the Detention Centre in Dranovc/Drenovac".
This conclusion would be **contradicted** by the different statements of the defendant.

The challenged verdict quotes the statements of S[redacted] K[redacted] about his knowledge of the existence of the Detention Centre also on page 54, 55 and 65 to 67 where those statements are examined deeply.
The conclusion of the Court of First Instance, that the defendant knew about the Detention Centre, appears to be correct to the examination of this Court.
Actually the admission to have been informed of the existence of this centre is against the interest of the defendant, as an element of the *mens rea* of the charged crime.
In his statements especially during the main trial it is clear the attempt to deny this knowledge, within the framework of a general denial of the criminal offences and of his own responsibility.
Nevertheless, as correctly reconstructed by the first judge, he admits some basic elements of fact which demonstrate beyond any doubt his knowledge of the existence of that Detention Centre.

Particularly.
In the statement given to the Police on 17 February 2004, in the presence of his defense counsel, the defendant clarified to have gone to Drenovc of Zatriq the first time on 28 April 1998 and to have returned there on 5 May when he remained in the village.
Two or three days after the 5th of May in Drenovc arrived also G[redacted] P[redacted], friend and comrade of the defendant, who was the commander of the Military Police of KLA in the village.
P[redacted] was later on killed during the attack of Serbian forces of July 1998 and his name was given to the KLA Brigade 124 of Drenovc of Zatriq.
"Questioning if there was a detention center in Drenovc of Zatriq, the suspect says that he knows that they had some offices where they kept some people. These offices were located in the school building, approx 500 meters away from the UCK HQ. G[redacted] P[redacted] was responsible for this, and he also has his office in the same building.
Questioning who kept some people there, the suspect says that only G[redacted] P[redacted] had the right to take people to this building. Questioning who were brought to this building, the suspect says that he does not know this. G[redacted] P[redacted] told him once that he brought Kosovo Albanians who were suspected to be collaborators to the Serbian Forces, and that some of them were caught in action. ...
The suspect says that he visited G[redacted] in his office several times, and three or four times he saw G[redacted] had people in his office who he questioned", he spoke briefly to his friend and left, without noticing anything, only saw that the people questioned by P[redacted] were adults, male.
In those offices P[redacted] interviewed also UCK soldiers suspected of undisciplined behavior and some Serbian soldiers who had deserted.
The defendant was present to these interviews even though "questioning was not his duty".
Only at this point he said not to know anything about a detention centre in Drenovc.
The defendant admitted that G[redacted] P[redacted] had mentioned to him the name of S[redacted] S[redacted] but he did not remember what was said about this man nor if this S[redacted] was a soldier or not.
Asked about the names of some victims he knew that one person with the rare family name P[redacted] had been questioned by the same P[redacted] and he saw with his eyes H[redacted] K[redacted] on the way to the school, where the offices of P[redacted] were situated.
H[redacted] K[redacted] arrived with somebody and the defendant supposed he had to be questioned by P[redacted] being this the only reason for coming to G[redacted]'s office.
The defendant remembered also the name of M[redacted] R[redacted], whose brother was a part of Serbian forces.
He supposed that also M[redacted] R[redacted] had been questioned by P[redacted].

It must be observed that, apart from the final denial, to the first question about the existence of a detention centre the defendant answers **not denying this** but mentioning some offices where people were **kept**, explaining that only P[redacted], the chief of Military Police and responsible for those offices, had the right "to take people" to that building.

The offices were quite near (500 m.) to the HQ and the defendant was informed by P[redacted] that the latter **brought** Kosovo Albanians suspected to be collaborators of the Serbs.
The defendant knows also some of these persons, and saw them during these interviews.
Even though "questioning was not his duty" he was present not only to the questioning of the Serbian deserters, but also of the undisciplined UCK soldiers and sometimes of the civilians suspected as collaborators of the Serbs.
The defendants denies to have taken part to the interviews of these civilians, but he knows the name of some of them
Thus: **offices** were people **suspected** to be collaborators to the **Serbian Forces**, or caught in action were **brought, kept** and **questioned** by the **Chief of Military Police.**
These all elements indicate the existence of a detention centre **and** the knowledge of this.

Before the Investigating Judge on 18 February 2004 the defendant confirmed what he had told the Police the day before about the offices where some people stayed under the responsibility of G[redacted] P[redacted] to be questioned, these people were suspected of being collaborators to Serbian forces.
P[redacted] was known also as R[redacted], he was the Chief of the Military Police of UCK, whose offices were in the old school, located 500 meters from the UCK Headquarters.

During the main trial the defendant confirmed his previous statements but gave his interpretation of them.
No detention centre existed in Drenovc.
According to him the word "detention", which was the object of the question, had to be intended correctly.
In his previous statements the defendant had only spoken about the offices where P[redacted] allowed people to come and to give information in order to help the civilians and to offer assistance.
People went there on their own will in order to offer information or to ask help.
He added to have never stated that people were kept for days or one week, they offered information and P[redacted] considered them as his collaborators.
With the suspected Serbian collaborators the intention and the policy of KLA was to "correct" them, to put them in the right way, to give them the chance to collaborate for their own people and no more with the enemy.
The people were not "kept" but stayed there until they gave their statements or until they made their reports".
The interrogation of suspected Serbian collaborators was a vital component of the fight of KLA and P[redacted] had mentioned this to the defendant.
"And any one of them was subject of the education of the KLA, in order to make them work for their people".
The persons who spoke with these suspected collaborators did so very humanely, the defendant would have heard about eventual inhumanely treatments.
Actually, P[redacted] mentioned him the name of S[redacted] S[redacted] as a collaborator but probably he was talking about a person who now is a General of TMK.

Thus in the explanation of the facts and of his previous statements given during the main trial, the defendant denies to have known about the existence of the detention centre but admits that one of the main (vital) tasks of the offices leaded by P[redacted] was to interrogate and then to "**educate**" or "**correct**" the suspected Serbian collaborators.
It must be noticed that the **correctional** function is one of the functions of a detention centre.

The assumption of the First Instance Judge as to the acknowledgment of the existence of a detention Centre in Dranovc/Drenovac made by the defendant is therefore correct.
His statement before the Police is clear in this sense, it is confirmed also before the Investigating Judge and, formally, also during the main trial.
The denial of this consciousness during the main trial doesn't prevent the defendant to admit to have been informed about the "correctional" function of those offices, another typical function of a detention centre.

6. The last point of the part of appeal AD/1 is about the **legality** of the statement given by anonymous witness "A" before the Investigating Judge on 26 February 2004. This should be considered as an inadmissible piece of evidence because lacks the part of the legal instruction to this witness.
This point had been raised already during the main trial of first instance (hearing of 25 May 2006) and decided by that Court, which rejected the motion of the defense.
The reason given on that occasion is that the violation of the provisions of the criminal procedure is a cause of inadmissibility of a piece of evidence only if this consequence is expressly prescribed by the law (Art. 153 PCPCK) and in this case no provisions of the law prescribes the inadmissibility of a witness statement if the witness was not given the legal instructions as affirmed by the defense.
The statement given by anonymous witness "A" before the Investigating Judge was admitted as evidence (ruling of 22 June 2006 and page 11 of the verdict of first instance).
This Court shares the opinion of the First Instance Judge.
Since Article 153 PCPCK is a provision of strict interpretation there is no the possibility to interpret it in a broad sense, so to make inadmissible a piece of evidence out of the hypothesis foreseen by the law.
As to the testimony of a witness the cases of inadmissibility are set forth in Article 161 PCPCK.
No provisions of the PCPCK indicate the inadmissibility of a witness statement if this person has no received the legal instruction prescribed by the law, that is those (now) foreseen by the Article 164.2 PCPCK.

AD2 Erroneous and incomplete corroboration.

7. The appeal challenges the verdict as to the assessment of credibility of the witnesses and the use of the testimony of an Anonymous Witness in a decisive manner, the appeal deems that the factual situation made by the Court of First Instance in this criminal proceedings case is totally wrongfully and incompletely situated.

In the present judgment it seems necessary to avoid general remarks on the rules about credibility of a witness or the way to make use of the testimony of an Anonymous Witness because these rules are written in the law.
Here will be examined the points of each piece of evidence where the appeal affirms there are inconsistencies with other pieces of evidence.

As to the Anonymous Witnesses however it can be noticed that the claim of breach of the law in the evidence retrieval is not grounded.
The criminal procedure provides the judge with instruments (article 170.1 no. 3 PCPCK) aimed to avoid the disclosure of the features or physical description of the witness.
The list of instruments contained in this norm is to be intended only as an example and does not prevent the judge to use other items for the same aim.
The above mentioned norm foresees the use of opaque shields, of image or voice-altering devices, the contemporaneous examination in another place linked to the courtroom through closed circuit television.
According to article 172.1 the Court can issue an order for anonymity where protective measures provided under article 170 are insufficient.
Complete anonymity means not only the prohibition to use any information about the identity of the witness but also the admissibility of more incisive instruments to prevent the disclosure of his personal data.
It seems therefore to be acceptable as to the applicable law, that the answers of these witnesses were given, if and where they were given in such a way, through the interpreter.
It can be imagined that one of these witnesses were a woman, in which case her voice could be easily recognized as that of a woman and this could lead to a concrete danger for her safety.
It can not be accepted the remark of the defense that on this way the doubt exists whether the witness was giving the evidence or the interpreter was simply reading the testimony.
This is not acceptable because by reading the minutes of the record it is clear that the questions, from both parties and the trial panel, were followed by answers linked to each question and this would be impossible if the witness were not present and if the interpreter were reading previous statements.
The prejudice for the concrete exercise of the defense rights that the anonymity and the use of the above mentioned instruments can take with himself has been accepted by the PCPCK in the pertinent part.
The credibility of each witness and his weight on the final judgment will be appreciated in each concrete case object of evaluation.

As to the assessment of this kind of witnesses the Court of First Instance (page 19 of the verdict) has explained to have chosen the more safe interpretation of Article 157 paragraph 3, according to which the testimony of one or more Anonymous Witnesses can not be used alone or in a decisive extent for a conviction.
According to the first judge "the pattern of events as described by the anonymous witnesses did not stand alone but was supported to a large extent by the testimony of non-anonymous witnesses and by what some of the defendants stated".
Generally speaking this way of assessment is consistent with the procedural law

Particularly for this case the observation of the first judge is correct because the testimonies of anonymous witnesses did not ground alone or to a decisive extent the judgment.

8. S[redacted] S[redacted]
As to the disappearance of S[redacted] S[redacted] the appeal quotes the testimonies of H[redacted] M[redacted] and F[redacted] H[redacted] according to which the victim had decided to join the KLA on June 2nd 1998.
In the appeal S[redacted] is described as a distinguished activist whose disappearance should be ascribed to the Serbian Forces.
The name of the defendant does not result in the testimony of the two above mentioned witnesses nor in that of the S[redacted] family members.
Before the Police the defendant mentioned the name not of the victim but of a different S[redacted] S[redacted], who now is an official of KPC.
The testimony of anonymous witness "A" should be considered full of contradictions, as explained below.

This Court notices that the conclusion of the first judge as to the circumstances of the disappearance of this person is correct.
He went to the KLA offices in Dranovc/Drenovc with two friends, was arrested and kept there and never more returned back.
The suggestion that Serbian Forces can have arrested or killed him is groundless and can not deny what is positively stated by the witnesses.
In fact:
- F[redacted] H[redacted] stated that at the time he met S[redacted] "there were no Serb units in our area because KLA had everything under control".
- According to the testimonies of his wife and relatives, the victim S[redacted] S[redacted] had been affiliated with the movement for liberation of Kosovo, LDK for two years in the nineties.
Then S[redacted] had to quit his position because of some threats received by Serbian Police.
And immediately after he resigned from LDK there were words spread out that he was suspected to be a collaborator of the Serbs.
Because of these great rumors S[redacted] S[redacted] left his job as a lawyer.
S[redacted] asked LDK to reconsider his case, in his letter he defined the members of LDK presidency branch as they who had acted as judges and prosecutors "to label him as UDB (Serbian spy)".
This request remained without any answer
On 2nd June 1998 S[redacted] S[redacted] went to Drenovc to join KLA.
Two days before he had written a letter to that KLA Headquarter and sent it through H[redacted] M[redacted].
The answer of M[redacted] was that they did not want a letter but asked for S[redacted] personally, so he went there on Tuesday and remained there (witness M[redacted] S[redacted] 9 November 2005).

- Also H[redacted] M[redacted] confirms the existence of the rumors about a collaboration of S[redacted] S[redacted] with the Serbs: S[redacted] S[redacted] hurried to go to Drenovc because he had been blackmailed as a spy for the Serbs.
M[redacted] says that in Drenovc he was sent back home by a soldier, while S[redacted] S[redacted] was not allowed, but had to stay there because "this is a very important individual perhaps much more important than you and I".
Also S[redacted]'s car remained there.
- The following day the witness R[redacted] S[redacted] went to Drenovc looking for his son and a person confirmed that S[redacted] was there but did not allow him to meet his son.
Few days later R[redacted] S[redacted] returned to Drenovc in a school, two persons told him that S[redacted] was no more there, he had left for Drenica.
In both occasions R[redacted] saw S[redacted]'s car in Drenovc near the place where he had looked for his son.
No one of his family saw again S[redacted].
- Both M[redacted] and H[redacted] refer to have been asked by the soldiers to go to Sebniq where S[redacted] had left his car and to take this car to Drenovc, they did so together with a KLA soldier.

Thus, from these testimonies results that S[redacted] S[redacted] was suspected to be a spy of Serbs, this suspicion was so heavy that he left his job and was in a hurry to go to Drenovc in order to join KLA and to dissipate any doubt about him.
However in Drenvoc he was kept and never returned home.
S[redacted] did not join KLA, otherwise he had been allowed to go to Sebniq and pick up his own car.
Furthermore this car would have not remained in Drenovc when S[redacted] was supposed to have left for Drenica.
Again: if S[redacted] had been free his father would have been allowed to visit him.
This is enough to conclude that S[redacted] S[redacted] was detained in Drenovc.
Anonymous witness "A" gave a confirmation of this stating to the Court to have been detained in Drenovc and that, among others, also S[redacted] S[redacted] was one of the detainees.

As to the involvement of the defendant this Court deems correct the positive assessment of the first instance judge.
The first Court has examined the statements of the members of family S[redacted], according to which M[redacted] provided them with some names of persons who had stopped S[redacted] in Drenovc among these names was present that of S[redacted] K[redacted] the statement of M[redacted], who denies having provided any name, but after the confrontation with his previous statements admitted to have given two nicknames; the statement of anonymous witness "A" related to the time spent in detention in Drenovc together with S[redacted] S[redacted], to the beating up he had to suffer there and about the presence of C[redacted], S[redacted] K[redacted], the statements of the same defendant and other statements of witnesses which will be examined further and which are related to the involvement of the defendant in the management of the Detention Centre of Drenovc.

To this Court the statements of S[redacted] family members appear to be sincere and M[redacted] finally had to admit to have heard some nicknames even though not that of the defendant.
As reported before, in his statement before the Police the defendant S[redacted] K[redacted] spoke about one S[redacted] S[redacted], saying to have heard something about him by P[redacted] and not to be able to remember having ever met this person, he did not know if this S[redacted] was a soldier or not.
At the main trial K[redacted] explained that before the Police he meant to speak not of the victim but of another S[redacted] S[redacted], whom he had got to know later on; this S[redacted] now is a General of TMK, that's why he did not know at the time of the talk with P[redacted] if that S[redacted] was a soldier, meaning a soldier or an official.
This S[redacted], the General, had been mentioned by P[redacted] as a collaborator of his not of the enemy.
This explanation of the defendant does not convince because before the Police he said not to remember to have ever met this S[redacted] and before the Court said to have got to know the S[redacted] who now is a General.
Another reason is that K[redacted] stated before the Police not to know if S[redacted] was a soldier, that means was in KLA or not, while he would have had any possibility and facility to mention an high official or at least a comrade, whom K[redacted] knew at the moment of his arrest and of the interview by the Police.
The justification given by the defendant does not convince also because it was given only at the main trial, after all the period of the investigation, it seems therefore not to be genuine.
These elements are sufficient to conclude that S[redacted] S[redacted] was actually detained in Drenovc and that the defendant S[redacted] K[redacted] knew about him and was involved in that detention.

The assessment of the statements of anonymous witness "A" will be done later on, since his testimony is related to the disappearance not only of S[redacted] S[redacted] but also of B[redacted] B[redacted], H[redacted] K[redacted] and H[redacted] P[redacted].

9. B[redacted] B[redacted]
As to the disappearance of now late B[redacted] B[redacted] the **appeal** challenges the credibility of the members of the family of the victim and of anonymous witnesses "A" and "B".
The familiars had stated that B[redacted] was arrested by KLA members, that "A" and "B" went there, that these, especially "A", had contacts together with all the defendants.
On his side "B" never mentioned, during the investigation, the name of S[redacted] K[redacted], whereas during the main trial said to have met him together with others, among whom X[redacted] E[redacted] and the "German" X[redacted] G[redacted].
On that occasion "B" said also to have heard the name of S[redacted] K[redacted] as mentioned by others, but was not able to recognize his photo nor to give a correct physical description of the defendant.
Despite the fact that the International Prosecutor withdraw the charge against X[redacted] E[redacted] not believing to "B" statements, the Court of First Instance convicted Selim K[redacted] also on the ground of the statements of "B".

The statements of "B" are contradictory and mention also I[redacted] G[redacted] as the person who together with S[redacted] K[redacted] and others beat "B" during his detention.
In this case the Court of First Instance did not believe to "B" as to the involvement of I[redacted] G[redacted] who at that time was severely injured, but trusted to the witness as to S[redacted] K[redacted]
Furthermore the family of B[redacted] B[redacted] was involved in a blood feud conflict with another family and "B" would have tried to put the responsibility on members of KLA in order to avoid his obligation deriving from the Kanun.
Finally the remain of B[redacted] B[redacted] was founded in the cemetery of Peja and it would not be possible to make S[redacted] K[redacted] responsible for that fact.

This Court deems this part of the appeal as ungrounded.
Reserving to return later on about the testimony of "A" and other evidence here must be examined the testimony of "B".
The anonymity of Witness "B" was put in question during the main trial, due to the remarks of two defense counsels expressing to him their condolences for the death of a close relative of him and to the comment made by the defendant X[redacted] E[redacted] who stated that his family and that of the witness "knew each other very well".
Before this witness and despite his anonymous status the defendants could defend themselves.
The witness himself spoke about the murder of a close relative of him.
This witness was examined and cross examined by all parts and his statements seem to have been sincere, being the apparent contradictions not decisive for his credibility.
He was present on 3 June at the moment of the arrest of B[redacted] B[redacted] by two persons of KLA whom he knew.
On 4 June a person different from "B" went to Drenovc looking for B[redacted] and was detained for three days.
"B" remembered to have gone to Drenovc more than 30 times, looking for B[redacted] B[redacted], not every time he was allowed to approach the prison, the men who were there belonged to KLA.
He recognized in the pictures the school, which was situated near the Headquarter of KLA.
Finally on 13 July 1998 he succeeded in meeting B[redacted] B[redacted], who was very skinny, unshaved and hungry, his clothes had bloodstains, he cried, the meeting took place in a 4 x 4 room and lasted only 20 minutes.
He never more met B[redacted] B[redacted], despite his visits to Drenovc KLA Headquarters.
In his testimony at the main trial Anonymous Witness "B" does not state to have been beaten by I[redacted] G[redacted] and S[redacted] K[redacted], nor gives any description of the latter.
This point of the appeal is actually not referred to witness "B".
In Drenovc some persons near the headquarters told "B" that the people who could solve his problems were B[redacted] Z[redacted] and S[redacted] K[redacted]
"B" met B[redacted] Z[redacted] on 16 July, while never met personally K[redacted]
As to E[redacted] witness "B" stated at the main trial to have met him both in Brestovc and in Drenovc, while to the Investigating Judge he had spoken only of Brestovc denying the meeting in Drenovc.

E[redacted] denied any meeting in Drenovc but recognized that the two families knew each other very well.
During the main trial on this point there was a remark about the possible danger that the answer to questions on E[redacted] could represent for the anonymity of "B".
Thus, it is possible a mistake in the memory of "B" about his meetings with E[redacted] this does not affect the general credibility of the witness.
The withdrawal of the charge against X[redacted] E[redacted] made by International Prosecutor does not mention, nor challenges the statements or the credibility of "B".

Finally, nothing suggests that the B[redacted] family or other persons have tried to put the responsibility of the disappearance of B[redacted] B[redacted] on members of KLA in order to avoid obligations coming from the common law, Kanun, about a blood feud conflict.

10. H[redacted] K[redacted]
The appeal challenges the credibility of anonymous witness "TT" because of some discrepancies, pointing out that the role this witness attributes to S[redacted] K[redacted] is only that of a soldier without any particular military functional position.

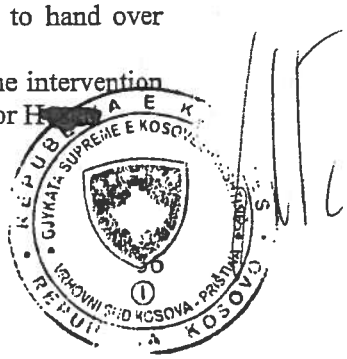
The Court deems this part of the appeal as ungrounded, whereas the judgment of the First Instance Court results correct.
As to the defendant S[redacted] K[redacted] the challenged verdict examines the testimonies of "N" and "TT" in four points: the description of the detention centre in Drenovc (page 64 English version), the abduction of H[redacted] K[redacted] (page 68), the description and the recognition of the defendants (pages 75 and 76) and the involvement of this defendant (pages 85 and 86).
"N" and "TT" among others describe the detention centre of Drenovc.
They describe the moment and the circumstances of the abduction of H[redacted] K[redacted] by defendant A[redacted] K[redacted] and two others of KLA.
The two witnesses went many times to Drenovc in order to visit H[redacted] and for this aim spoke to three of the defendants of the first instance trial.
"TT" remembered that S[redacted] K[redacted] addressed him to speak to B[redacted] Z[redacted] whereas the latter told him to speak to S[redacted] K[redacted] because this issue was of his competence as commander of the Police.
According to "N", finally and due to a permission of P[redacted] he managed to visit H[redacted] for 15/20 minutes.
"TT" remembers that once was S[redacted] K[redacted] to accept by him cloths and foodstuff for H[redacted] and later on both "TT" and "N" were allowed to visit H[redacted] together and in presence of S[redacted] K[redacted]
Contradictions in the statements of "N" are addressed and solved by the Court of First Instance emphasizing and accepting his statement before the Police on 29 November 2001 when this witness identified the photo of S[redacted] K[redacted] as the man who gave him the permission to visit H[redacted] and rejecting on this point the testimony at the main trial when he spoke of Z[redacted] and not of S[redacted] K[redacted]
Also "TT" identified S[redacted] K[redacted] in the photo line up.

The pieces of evidence in the case file confirm the assessment of the First Instance Judge.

"N" stated that S[redacted] K[redacted] nickname "C[redacted]" was one of KLA present at the visit the witness paid to H[redacted] already in his statement to the **Police** of 3 July 2000.
H[redacted] was very thin and had blood on his clothes.
On 29 November 2001 witness "N" recognizes the photo of the defendant S[redacted] K[redacted] 90% sure: this man is described as the "commander of the police in the prison in Drenovc", who gave the permission to visit H[redacted]
Before the **Investigating Judge** "N" mentioned S[redacted] K[redacted] as one of the persons he spoke to in Drenovc about the fate of H[redacted]: the witness and two friends had asked I[redacted] S[redacted] G[redacted] who had addressed them to B[redacted] Z[redacted], the "political commissar" who had addressed them to S[redacted] K[redacted]I, who addressed them to X[redacted] G[redacted], known as the "German".
They tried to speak also to A[redacted] K[redacted] but without any result.
"N" went to Drenovc often, approximately 5/6 times, finally five weeks after the abduction of H[redacted] "N" and "TT" spoke to S[redacted] K[redacted], G[redacted] and B[redacted] Z[redacted].
S[redacted] K[redacted] and G[redacted] said to have to speak to someone else, but later on they made it possible for "N" and "TT" to speak to H[redacted]
H[redacted] was in bad condition, had lost a lot of weight, was unshaven, had unclipped nails, his cloths were very muddy, since he slept in muddy stables, and stained with blood.
"N" described S[redacted] K[redacted] as not very tall, black hair, not very fat, quit small, around 40 or little younger and recognized him with sureness (100%) in the photo line up no. 1 photo no. 23.
Photo no. 23 results to be that of the defendant S[redacted] K[redacted]
At the **main trial** (hearing of 24 may 2006) "N" spoke about a commander Z[redacted] K[redacted] and a person called P[redacted], the latter enabled the witness and "TT" to meet H[redacted], who looked a "little bit pale".
Asked to say who had arrested H[redacted] "N" answered mentioning A[redacted] K[redacted], whom he knew very well.
Asked where he knew A[redacted] K[redacted] from, "N" did not give a clear answer, saying at first to know him from that day in the courtyard of H[redacted], then that he knew him already, then "N" asked to speak to the Prosecutor and was not allowed, finally stated to have met A[redacted] K[redacted] for the first time two weeks before the abduction of H[redacted]
Every question had been accompanied by the warning in the answer not to compromise his anonymity and safety.
The persons who arrested H[redacted] were three: A[redacted] K[redacted], Z[redacted] K[redacted] B[redacted] and a third one, whose name the witness did not remember.
Confronted to the answer given to the Investigating Judge, where "N" had mentioned also I[redacted] G[redacted], the witness denied, meaning that G[redacted] was not present and this was a mistake in the translation.
In Drenovc "N" remained outside the headquarter while "TT" went inside; there "N" met Z[redacted] B[redacted], he did not speak to anybody at the headquarter.
Confronted with which he had stated to the Investigating Judge "N" answered not to remember this.
It was "TT" who mentioned to have spoken to those people.
B[redacted] Z[redacted] told "N" not to know anything about H[redacted] and addressed him to P[redacted].

Confronted with the previous statements, "N" said that he meant G[redacted] called R[redacted] and Z[redacted] but not S[redacted].
"N" returned to Drenovc three times and on the third time managed to meet H[redacted]
Present at the visit were Z[redacted], G[redacted] and a person called I[redacted]
Confronted with previous statements where he had mentioned as present also I[redacted] G[redacted], "N" answered mentioning a mistake with somebody else and not to remember to have said this.
Also the statement to the Police could have been not accurate, since the Police Officer interviewed him for 10 hours, later on "N" corrected this time in 4 hours.
He denied to have met S[redacted], he had met Z[redacted] B[redacted].
"N" never met S[redacted] in Drenovc before the offensive of the Serbs, and stated never had said this to the Police.
Confronted to the previous statements about having met S[redacted] in Drenovc, "N" repeated to have spoken of Z[redacted] and not of S[redacted].
As far as he knew Hysen could have been released, returned to Prizren and have been arrested or have fallen in an ambush of the Serbs.
In the photos (exhibit C) "N" recognized the pictures of A[redacted], B[redacted] Z[redacted] and I[redacted]

Before the **Police** (2/6/2001) "TT" spoke of A[redacted], Z[redacted] and S[redacted] as KLA members in Drenovc.
Specifically referred to S[redacted] "TT" said that this defendant had accepted clean clothes for H[redacted], while later on it was A[redacted] to give back the dirty ones.
S[redacted] was present when P[redacted] allowed the visit to H[redacted]; again S[redacted] together with others of KLA was present to this visit.
Few days later the prisoners were no more in Drenovc due to security measures.
On 29 November 2001 "TT" recognized the photo of the defendant S[redacted] described as the "commander of the police in the prison".
Before the **Investigating Judge**, "TT" stated to have talked to some of KLA when he and others went to Drenovc the day after the abduction of H[redacted]
Among KLA members he spoke also to S[redacted] who addressed him to B[redacted] Z[redacted] who was the "political commissar".
"TT" returned some times to Drenovc, without having the consent to visit H[redacted].
He spoke again with Z[redacted] and S[redacted]
Each of them addressed "TT" to the other who should have had the competence on the case: B[redacted] Z[redacted] as political commissar and S[redacted] as commander of the Police.
Both Z[redacted] and S[redacted] warned "TT" and the others not to come any more.
Since "TT" was insistent in asking the reasons of the apprehension of H[redacted], Z[redacted] asked him if he wanted to be arrested too.
"TT" returned to the prison and asked A[redacted] to allow him to hand over cloths to H[redacted]
Between "TT" and A[redacted] there was a quarrel, which was terminated by the intervention of S[redacted] who sent A[redacted] to his work and accepted the cloths for H[redacted]
The dirty ones were given back to "TT" by I[redacted] and A[redacted]



The following day "TT" returned to Drenovc bringing clean cloths and receiving the dirty ones, which were stained with blood.
"TT" and the other friends of him managed to meet H[redacted] once on 16 July 1998, the day before P[redacted] was killed.
Present at this visit were some KLA soldiers, among them S[redacted] K[redacted] and also Z[redacted] K[redacted] B[redacted].
H[redacted] looked like he lost weight, was unshaved, his cloths were dirty, his nails uncut.
The visit lasted 15 minutes, after that "TT" did not meet H[redacted] any more.
A Police Officer, I[redacted] B[redacted], later on killed during the war, told "TT" that the people inside the detention centre were being held like cattle and ill treated.
The prison was located in the basement of an old school and was heavily guarded by military police, there were other people who paid visits to other prisoners.
"TT" described S[redacted] K[redacted] as of average height with black hair, age approximately as that of X[redacted] G[redacted]: 42/43 years.
He recognized the photo of S[redacted] K[redacted] (photo line up no. 1 photo no. 23).
Answering to the defense Counsel on how he got to know S[redacted] K[redacted], "TT" explained that he was introduced to him by the people of the Army, because "everyone in that area knows S[redacted] K[redacted]", whose nickname was C[redacted].
Every time "TT" paid a visit to Drenovc he met S[redacted] K[redacted], this was about 10 times.
S[redacted] K[redacted] was deputy commander of the Police at the beginning, "TT" had this piece of information from I[redacted] G[redacted], B[redacted] Z[redacted] and others of the Police of Drenovc.
Later on, after the death of G[redacted] P[redacted], S[redacted] K[redacted] became commander of the military police.
At the **main trial** (hearing of 17 May 2006) "TT" remembered the arrest of H[redacted] who was taken to the old school in Drenovc, in the premise of the Military Police of KLA.
"TT" was a soldier in Drenovc.
"TT" told the Court to have spoken to S[redacted] K[redacted] only incidentally and few times, two or three, then after the confrontation with his previous statements he mentioned ten times, S[redacted] was in Police uniform at the military area near the headquarters.
He spoke to B[redacted] Z[redacted], the political secretary, who did not take into consideration the requests of "TT" and of the others regarding H[redacted].
This witness did not recall to have been sent to speak to S[redacted] K[redacted] about H[redacted], nor if S[redacted] was present at the visit he paid to H[redacted], nor who authorized this visit, nor if S[redacted] received the clean cloths for H[redacted].
He did not remember how many visits he had paid to H[redacted] and answered that "A[redacted] knows".
The day of the visit H[redacted] looked well and told "TT" to "go to A[redacted]'s family".
"TT" went 20 or 30 times in order to take clean cloths and take away the dirty ones.
The dirty cloths had bloodstains, the T-shirt from inside was covered in blood.
The witness was confronted with previous statements where he had denied the presence of bloodstains on the cloth he received the day of the visit.
He did not know the people who were frequenting the Police Station, he and his friends had dealt only with A[redacted] and Z[redacted].

He did not remember of I[redacted] nor the comments made by this man on the conditions of the detainees.
To many questions "TT" answered that "A[redacted] knows all" and to ask him about.
He denied to have had a row with people of the detention center and when confronted with his previous statements answered not to remember.
Asked by the defense counsel whether his previous statements before the Investigating Judge were the result of anger "TT" answered that maybe there had been mistakes in the translation, but not anger.
Nothing had happened between him and S[redacted]

This Court notices that the statements given by "N" and "TT" at the main trial try to deny what they had said before the Investigating Judge about the concrete involvement of S[redacted] in the detention of H[redacted]
As correctly deemed by the first instance judge this attempt is not convincing.
The statements of the two witnesses before the Investigating Judge were given in the presence both of the Prosecutor and of the defense counsels.
They were clear, consistent, repeated and accompanied by the recognition of the photos of the defendant.
Both of them mentioned either S[redacted] and Z[redacted] explaining the different roles played by the two of them in this case, "N" mentioned also the nickname of S[redacted]: C[redacted] stating that this C[redacted] was present at his visit to H[redacted].
At the end of the statements before the Investigating Judge there is the sentence "my statement was read out to me in Albanian and I hereby confirm that it reflects the true and correct record of my testimony and have signed it without coercion".
Thus, no possibility of mistakes in translation or misunderstanding in the statements of the two witnesses when they distinguish between S[redacted] and Z[redacted]
The statements given by both the witnesses at the main trial appear uncertain, accompanied by too many "don't remember", by the necessity to speak to the Prosecutor ("N") or by the expressing of a certain disease ("TT" says not to feel well, page 33).
Both of them tried to explain that it was somebody else who knew things: "N" repeating to ask "TT" and the latter repeating to ask A[redacted] who knows everything.
They sound reductive about the condition of H[redacted]: on this point "TT" went beyond any reasonable possibility stating that H[redacted] "looked well", even though his shirt was covered in blood.
It must not be forgotten that "TT" was a soldier in Drenovc, he then was constantly there, went 20/30 times taking clean cloths to H[redacted] and nevertheless he pretends not to have known the people who frequented the Police Station.
Both of them contradict themselves even in the statements at the main trial: "N" stating first to have been examined by the Police ten hours and then reducing the time to four hours, "TT" mentioning three occasions when he met S[redacted] then correcting this in ten times.
The statements given by both witnesses at the main trial excluding any involvement of S[redacted] result thus incredible.
The Court of First Instance based his judgment on the previous statements of this two witnesses and this assessment is correct.

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These statements are only a part of the evidentiary materials related to the involvement of S[redacted] K[redacted] in the Detention Centre of Drenovc and in the concrete event regarding H[redacted] K[redacted]
It must not be forgotten either that anonymous witness "A" mentioned the presence of H[redacted] K[redacted] and that the defendant S[redacted] K[redacted] admitted to have met H[redacted] in the courtyard of the prison and to have asked information about him.
Anonymous witness "W" remembers to have been questioned and beaten by S[redacted] K[redacted], who asked him also about H[redacted] K[redacted].
All these elements are converging on the responsibility of this defendant.

11. H[redacted] P[redacted]
The appeal challenges the verdict and affirms that the statements given by witnesses "Z" and "D" in fact don't contain direct charges against S[redacted] K[redacted], stating both that as to H[redacted] they had contacts only with G[redacted] P[redacted], who allowed a visit to the detainee and confirmed to them that no violence had been used to H[redacted]
On the contrary they state that S[redacted] K[redacted] was seen in the office of P[redacted] was seen only two times in Drenovc in June and told the witness to have been in Albania in July and August.

The First Instance Court examines the abduction and the detention of H[redacted] P[redacted] specifically in four points (pages 8, 55, 68-70 and 85-86) and grounds his judgment on the testimony of "Z", "D", "A", "E" and on the other pieces of evidence referring to the involvement of the defendant S[redacted] K[redacted] in the management of the detention centre.
H[redacted] P[redacted] had been stopped a first time and asked about H[redacted] R[redacted], a collaborator of Serbian Police.
Later on, on the 6th June the son of H[redacted] P[redacted] had been arrested in Drenovc by KLA soldiers who proposed to exchange this boy with his father.
Thus the following day H[redacted] had gone to the detention centre and had been arrested, while his son had been released.
"Z" looked for H[redacted] at the detention centre in Drenovc, met B[redacted] Z[redacted], R[redacted] but also S[redacted] K[redacted] and I[redacted] B[redacted].
From I[redacted] B[redacted] he was informed that A[redacted] K[redacted] and R[redacted] were the ones who dealt with the maltreatment and beating up if such had been done.
R[redacted] told him that H[redacted] was in the hand of the Police and proposed to the witness to exchange H[redacted] with another person.
"Z" saw H[redacted] with the hands tied or handcuffed from behind, "his facial expression was not good", in that moment H[redacted] was taken to R[redacted] and was followed by A[redacted] K[redacted]
"Z" met also S[redacted] K[redacted] there, the latter wore a military uniform.
On one occasion, on 12 or 13 June, "Z" asked of the Chief of the Police and after some waiting was received by S[redacted] K[redacted].
"Z" asked him about H[redacted] and the defendant answered mentioning a visit made by people from the headquarters and that they were waiting for information.

On page 86 the judgment of first instance mentions another point of the testimony of "Z" where he stated that S[redacted] was doing the negotiating, giving the conditions for the release of H[redacted].
"D" (page 55) remembers that he and H[redacted] were stopped by KLA who wanted to know about H[redacted], a person whom both "D" and H[redacted] knew as working for the Serbian Police.
H[redacted] was consequent arrested by KLA.
"D" went to Drenovc looking for H[redacted] and spoke of this with S[redacted] who sent him away.
"D" stated that H[redacted] was detained in Drenovc.
"A" saw H[redacted] in the detention centre of Drenovc, where he also was kept. "A" knew H[redacted] since before and remembered that in the detention centre H[redacted] was covered in blood.
Also "E" confirms to have heard that H[redacted] was in the detention centre.
The text of the judgment of first instance results logic as to the involvement of defendant S[redacted] in the detention of H[redacted], he is considered as participating in the management of the prison because speaks on behalf of the Chief of the Police when this is absent and because he negotiates the release giving the conditions.

The pieces of evidence in the case file confirm the assessment of the First Instance Judge.
Before the **Investigating Judge** (20 September 2004) "D" remembered that H[redacted] had already been stopped in May by KLA and questioned about H[redacted], a collaborator of Serbian Police, a person to whom H[redacted] had given some money.
After the questioning H[redacted] had been released.
Among KLA soldiers was present also S[redacted], C[redacted], who had given the order to take H[redacted] to the headquarters for the questioning.
Some days later M[redacted] the son of H[redacted] had been arrested by KLA who proposed to exchange the young with his father.
The exchange happened and Hidaj was arrested on 7 June.
"D" met S[redacted] a second time between June and mid July and asked him about H[redacted].
The answer was that H[redacted] was alright, was safe and sound, nevertheless "D" was not allowed to visit H[redacted] and was sent back.
In September "D" retuned to Drenovc, where in the school met S[redacted], to whom he asked again about H[redacted]'s fate.
The defendant pretended not to know anything.
"D" described S[redacted] as shorter than 177 cm., reddish hair, 26-28 years.
At the **main trial** "D" added that on the first occasion, to the question why he was detaining H[redacted], S[redacted] answered "I have to ask him something".
H[redacted] was actually questioned by another KLA officer, called G[redacted].
"D" recognized S[redacted] in the photos line up and explained that in September when he went to ask about H[redacted] he looked purposely for S[redacted] who was "the main person of the area there".

Before the **Investigating Judge** (8 September 2004) "Z" remembered to have gone to Drenovc on 16 June 1998 looking for the whereabouts of H[redacted] who had been arrested on 7 June.
"Z" was introduced to R[redacted] who informed him that H[redacted] had done nothing wrong and that they proposed an exchange between H[redacted] and N[redacted] P[redacted], a collaborator of Serbian Police.
"Z" replied not to be able to take N[redacted] to KLA.
The following day "Z" returned to Drenovc and in the office of R[redacted] met the latter, S[redacted] K[redacted] named also C[redacted] and a third man.
"S[redacted] K[redacted] did not let R[redacted] speak" and asked "Z" why he was there.
Again "Z" explained not to be able to take N[redacted], to this S[redacted] K[redacted] answered "that condition still stands and if you bring that person you can have H[redacted]".
Then S[redacted] "ordered" the witness and the friend who had accompanied him to go back home.
Some days later H[redacted] sent home his false teeth for reparation and then "Z" and another man went to Drenovc to hand over the teeth repaired.
On this occasion "Z" was received by R[redacted] in his office, present were also C[redacted] and another Policeman.
It was S[redacted] K[redacted] who asked a policeman to bring H[redacted] there.
The visit happened in the school, which "Z" recognized in the pictures.
During the visit "Z" did not see any injuries on H[redacted], the latter did not want to exchange his cloths.
After a talk with H[redacted] "Z" and his friend were told by S[redacted] K[redacted] that the visit was finished and to go home.
Through S[redacted] K[redacted] "Z" asked H[redacted] if he needed some money, but the latter refused.
From I[redacted] B[redacted] "Z" learned that against H[redacted] there were no negative testimony except "that he bought a car from H[redacted] R[redacted] who belonged to the Serbian police".
Some days later "Z" went to meet S[redacted] K[redacted] because R[redacted] had already died.
S[redacted] told him that during the time of the offensive of the Serbians he was in Albania and did not know where H[redacted] had been removed to.
S[redacted] added that the day before he had been visited by persons of the headquarters and he had provided them with a list of persons whose relatives were looking for.
As to these persons and also to H[redacted], S[redacted] was waiting for an answer from the headquarters.
"Z" described S[redacted] K[redacted] as 165-171 cm. tall, 75 kilos and recognized him in the photos, "Z" learned that the name of C[redacted] was S[redacted] K[redacted] by I[redacted] B[redacted].
"Z" met S[redacted] K[redacted] three times, the first one was on 17 June, the second one at the beginning of July, the last one at the end of August or beginning of September when the defendant explained to him about the visit of persons from the Headquarter.
During the first two times he met S[redacted] K[redacted], the defendant was R[redacted]'s deputy, the third time K[redacted] held the position of the now late R[redacted] that is Senior Chief of the Police.
At the **main trial** "Z" repeated his previous statements and the positive recognitions by the photos both of the defendant and of the school.

He added that when he met H[redacted] in the prison the latter claimed that somebody of the village had made allegations against him.
In September "Z" learned by Z[redacted] B[redacted] that the prisoners had been moved from Drenovc at the time of the Serbian offensive.
"Z" asked for the Chief of the Police and S[redacted] K[redacted] received him and explained about the visit of the persons of the headquarters.

Anonymous witness "O"[15] narrated to have met H[redacted] P[redacted] and other detainees (H[redacted] T[redacted] and a certain H[redacted] with Roma origin) in the detention centre of Malishevo in the days after 20 or 21 July 1998, where he spent six days.
"O" gave a description of H[redacted] and recognized his photo.
"O" added that the bodies of H[redacted] and of the other detainees appeared swollen and with bruises, they said to have been detained in the village of Drenovc and that they were beaten up many times.

Reserving for a later moment the examination of the testimonies of witnesses "A" and "E" it can be noticed that the testimonies of "D" and "Z" describe the defendant S[redacted] K[redacted] as deeply involved in the management of the prison, able to give orders to the Military Police in order to stop H[redacted] and accompany him to an interview, to bring H[redacted] from the prison to a visit, and above all to dictate the conditions for his release.
He is described as the Deputy Chief of Military Police and is recognized in the photos by both the witnesses.
The testimony of "O" confirms indirectly that H[redacted] had been beaten up in Drenovc.

12. Here must be added the assessment of the statements of anonymous witness "A" which in the appeal were challenged under the aspect of the consistency and of the reliability.
Actually "A" results to refer the fact related to his own arrests, detention and release in a correct and logical way.
Any time he was questioned, from the first statement to the Police to the second hearing of the main trial where the defense counsels cross examined him, "A" repeated to have gone to Drenovc a first time looking for B[redacted] B[redacted] (before the Police and the Investigating Judge this name was covered) and to have been arrested and detained for three days, then he was released but after some days on request of witness "B" he returned to Radoste, looking again for B[redacted] B[redacted], where he was arrested another time, brought to Drenovc, detained for three or four days and finally released.
In any interview "A" stated to have met B[redacted] B[redacted] and H[redacted] from the village of Dajne only during his first period in Drenovc, to have met S[redacted] S[redacted] on both occasions and to have also met H[redacted] P[redacted]
"A" knew B[redacted] B[redacted] and H[redacted] P[redacted] since before the critical period and recognized them.
This witness did not know S[redacted] S[redacted], he did not hear his name in the Detention Centre, but later on when he visited S[redacted]'s mother.

[15] 23 April 2004 before the Investigating Judge, statement admitted as evidence only in relation to K[redacted] and B[redacted] Z[redacted] with ruling of 22 June 2006.

The description given by "A" is of a short and chubby man, with a grey T-shirt, green sweat pants with a strip and clean white sneakers.
S[redacted] was very strong, showed a very high endurance even though had been beaten badly.
H[redacted] from the village of Dajne was a tall man, approximately 1,88 and had light skin.
These elements of descriptions seem to match with those given by S[redacted] S[redacted] (her son was shorter than average, round face, blue eyes, natural hair color, corpulent) and with a piece of description of H[redacted] K[redacted] given by the defendant S[redacted] K[redacted] (a very tall guy).
To this extent the statements of "A" are not challenged.

"A" stated to have been repeatedly beaten by three individuals, who looked like soldiers of KLA: two of them he has always indicated as I[redacted] and C[redacted].
Of C[redacted] he learned the name only later on. This man was S[redacted] K[redacted].
This witness has referred to have got personal injuries from that experience, he showed to have a scar on his head, since then he does not see and hear well and sometimes loses his equilibrium.
"A" recognized the picture of the defendant S[redacted] K[redacted] two times: the first time during the statement given to the Police (23 November 2001), the second time during the statement given to the Investigating Judge on 26 February and 3 march 2004 (page 10 of English version, photo line up no. 1 photo no. 23).
At the main trial (in the year 2006) the witness was given a magnifying glass in order to examine the photos, but could no more recognize the defendant.
He has explained to have been sure of his recognitions before the Investigating Judge, since then however his sight had worsened a lot.
It must be noticed that in the statement before the Police "A" does not indicate the picture of the defendant S[redacted] K[redacted] as that of one of the men who threatened him but only as a man of the staff, with a pistol and a high rank.
Before the Investigating Judge "A" indicated the picture of the defendant as that of an officer or similar.

The statements of "A" were challenged by the defense counsel because of many alleged inconsistencies and contradictions, which can be summarized as follows.
He has constantly indicated the names of only two of the three men who beat him as C[redacted] and R[redacted], son of I[redacted], whereas for the third he has indicated the name of R[redacted] before the Police and at the main trial, while before the Investigating Judge he spoke of G[redacted]
Before the Police "A" stated to have heard these three men calling each other by those names and described:
C[redacted] as 165 cm. tall, slim, receding hairline, black eyes and black-grayish hair;
R[redacted] was 180 cm., square building, long beard, brown eyes and brown hair;
the third one was young, 24/25 years, slim, 170 cm., thick beard, black eyes.
Before the Investigating Judge "A" described C[redacted] as 183 cm. tall, around 88 kilos, chubby.
I[redacted] was not tall, dark complexion, 26/28 years old.
G[redacted] was bit taller than C[redacted], well built.

At the main trial "A" described I[redacted] as slim, young and short;
C[redacted] was a middle age man, not fat, nor slim, he was more corpulent, fatter and taller than I[redacted], was 170/175 cm. tall.
At the main trial "A" stated to have asked around in Drenovc and to have learned that C[redacted] was S[redacted] K[redacted] then changed the place where he had heard this name from Drenovc in Rahovec.
Answering to a question of the defense, "A" said not to have ever seen S[redacted] K[redacted] through media, TV or newspapers.
Before the Police "A" stated to have met also H[redacted] T[redacted] in Drenovc, while at the Investigating Judge denied this and explained that T[redacted] was detained after him.
He did not know S[redacted] S[redacted] before the events, nor learned his name during the detention.
He had heard that S[redacted] S[redacted] and H[redacted] were in prison, went to Prizren and met S[redacted]'s mother and compared the description of the man and of his clothes above mentioned.
As to H[redacted] he remembered his height and heard about him from the people.
When he saw them, both were all in blood.
Before the Investigating Judge "A" remembered five women who were kept and beaten in Drenovc, the same he stated at the main trial, but he had not spoken about this before the Police.
Before the Police this witness remembered H[redacted] P[redacted] as present in Drenovc during the first period of his own detention (statement of 20 March 2000) and during his second period of detention (statement of 27 June 2001), whereas before the Investigating Judge and at the main trial he remembered P[redacted] as present in his room only during the second period of his own detention.
At the main trial "A" with difficulties due to his bad sight examined the photo line up of the victims recognizing B[redacted] B[redacted], A[redacted] B[redacted] and I[redacted] P[redacted]
He recognized also the shirt with which B[redacted] B[redacted] was dressed and which was taken home by witness "B".

This court deems the statements of "A" fully reliable as to the part referring to the existence of a detention centre in Drenovc, to his periods of detention there, about whom he met there, particularly B[redacted] B[redacted] and H[redacted] P[redacted] whom he knew since before and referring to the injuries he and the other detainees suffered at that time.
He went to Drenovc to rescue B[redacted] B[redacted] managed to meet him (and recognized also his shirt), all the rest was not the main aim of his travel and also of his attention.
There is no proof that "A" had an interest to blackmail the defendants or generally KLA.
"A" is also credible about the fact that in the detention centre he met S[redacted] S[redacted] and H[redacted] K[redacted], since these two persons were detained in Drenovc as mentioned by other sources and because their description given by this witness matches with that of the two missing persons.
The fact that "A" learned the names of these two persons in a particular way must not surprise, given the difficult conditions under which he met them: in jail, repeatedly beaten and threatened of death.
It is credible also the fact that "A" heard the names of C[redacted], R[redacted] and [redacted] proven by other pieces of evidence that these persons were in Drenovc at the time.

Particularly "A" has recognized twice the photo of S[redacted] K[redacted], as that of a person seen in the detention centre.
All this above mentioned forms the core part of the testimony of "A" and is credible.
The discrepancies in his statements don't diminish the credibility of this witness on the above mentioned points because they are referred to different and in a certain way "marginal" elements (as the presence of H[redacted] T[redacted]), or to details which in a first moment could not be deemed of the same importance of the rest (the five women not mentioned before the Police where "A" narrated the story of B[redacted] B[redacted] arrested by KLA), or with a confusion in the memory of the witness probably due to his age and to the circumstances of war time (the presence of H[redacted] P[redacted] during the first period as "A" told the Police or the name of the village where he learned the name of S[redacted] K[redacted]).
The discrepancies related to the physical description of the defendant S[redacted] K[redacted] seem to be more important.
Anyway, also as to this kind of discrepancy it must be noticed that the witness can have made mistakes but and despite of his bad sight he has recognized twice the defendant in photo.
It must be concluded that actually "A" saw the defendant in Drenovc, otherwise he would not have recognized his photos.
It must be added that "A" did not recognize the defendant as one of the three who had beaten him, but only as one officer, of high rank of the KLA headquarters, seen from the cell of the prison.
And this role as an officer at the KLA headquarter who was seen in the premises of the detention centre is proven also by other sources, as i.e. the statements of the defendant himself.
The Court deems the testimony of "A" as a piece of corroboration about the above mentioned elements.
Even though this testimony can not be used to prove that S[redacted] K[redacted] personally beat "A" it can be used together with the other pieces of evidence to demonstrate that the defendant was one of the persons in charge of the prison and of the detainees.

13. M[redacted] R[redacted] and H[redacted] T[redacted]
The two points of the appeal must be treated together, being common a part of its reasoning.
As to M[redacted] R[redacted] the appeal claims that no one of the witnesses reported facts about S[redacted] K[redacted], but only about B[redacted] Z[redacted], whose involvement seems to be due to a personal dispute with the family of the missing person.
As to H[redacted] T[redacted] the appeal affirms that the witness Z[redacted] I[redacted] never went to Drenovc to check if there was the victim, secondly that witness "O" spoke about H[redacted] T[redacted] as kept prisoner in Malishevo not in Drenovc on 21 or 22 July 1998.
In both cases personal disputes (between family R[redacted] and B[redacted] Z[redacted], and between family T[redacted] and the former accused X[redacted] E[redacted] would ground the charges.

As to M[redacted] R[redacted] the First Instance Court makes use of the testimonies of S[redacted] N[redacted], E[redacted] and H[redacted] R[redacted] as well of Anonymous Witness "X".

demonstrate the existence of the detention centre in Drenovc, the abduction of M[redacted] R[redacted], the conditions and the beating up he suffered during his detention and the direct involvement of the defendants B[redacted] Z[redacted] and A[redacted] K[redacted] (to be borne in mind that against A[redacted] K[redacted] the Court did not make any use of the statements of witness "X").
As to **H[redacted] T[redacted]** the first judge makes use of the testimony of Z[redacted] T[redacted] on the circumstances of the abduction of the victim and makes use of the testimony of witness "X" on the fact that the victim was detained in Drenovc and was beaten during his detention.
On page 89 of the challenged verdict it is to read that "there was no evidence presented during the Investigation to directly implicate the accused (S[redacted] K[redacted]) in the abductions, detention and mistreatment of either M[redacted] R[redacted] or H[redacted] T[redacted], who were arrested and detained on 10 June 1998 and 2 July 1998 respectively. However, given the fact that these two detainees were taken to Dranovc/Drenovac at a time when the accused was known to be participating in other detentions and associated beatings, the trial Panel found that it is reasonable to conclude that these two detainees were also detained as part of the wider joint criminal enterprise of which S[redacted] K[redacted] was a clearly part".

This Court finds this reasoning theoretically correct inasmuch it is proven a) that the two victims were detained in Drenovc in the critical period and b) that defendant S[redacted] K[redacted] was one of the persons responsible for the management of this Detention Centre as a member of a joint criminal enterprise.
As to the first point it must be noticed that the abduction of M[redacted] R[redacted] by KLA soldiers and that this victim was kept as a prisoner in the old school of Drenovc in the critical period was convincingly stated by witnesses N[redacted], E[redacted] and H[redacted] R[redacted], who went several times over there and recognized the building in the pictures.
N[redacted] R[redacted] on one occasion heard also somebody screaming in the prison.
The abduction of H[redacted] T[redacted] is stated by his brother Z[redacted]: the witness was advised by the abductors to go the following day to Drenovc in order to pick up H[redacted], his nephew confirmed him that H[redacted] was in Drenovc.
Witness "X" was detained in Drenovc and met there both M[redacted] R[redacted] and H[redacted] T[redacted]
"X" did not know before the two victims, he was able to recognize the picture of M[redacted] R[redacted] and to say correctly that he was from Drenovc, to give a physical description of H[redacted], which was not challenged and to say that he was from Pirane village, which was correct.
According to "X" the three of them were beaten.
In his statement anonymous witness "O" mentions H[redacted] as one of the detainees he met in the detention centre of Malishevo, in the days after 20 or 21 July 1998: H[redacted] narrated to have been detained and to have been beaten up in Drenovc, "O" could see the traces of the beating up.
"O" did not know the family name of H[redacted], but gave of him a physical description and recognized him in the photo of H[redacted] T[redacted]

"O" added to have learned by H[redacted] that the latter had been arrested by a person whom H[redacted] himself had wounded some years before, the arrest happened while H[redacted] was going to get a bride.
The same explanation had been given to the Court by Z[redacted] T[redacted].
"O" recognized also the photo of M[redacted] R[redacted] adding that the detainees he met in Malishevo said that M[redacted] had died due to the beatings.
All these elements corroborated the decision of the first judge as to the detention of M[redacted] R[redacted] and H[redacted] T[redacted] in Drenovc and to the injuries they suffered on that occasion.
As to the second point, as noticed above (confront part. I.3), a person can be held responsible for the criminal acts of an association whenever a) he participates directly together with other persons to the commission of the criminal offence, b) he participates willingly to a system of repression or ill-treatment, which results in criminal offences or c) the criminal offence is a "natural and foreseeable" consequence of the common plan.
As to the personal involvement of S[redacted] K[redacted] this Court notices that the defendant participates in the illegal arrest of persons (confront the evidence as to S[redacted] S[redacted] and to H[redacted] P[redacted]), in the management of the detention centre (confront the evidence as to H[redacted] K[redacted]), was considered the Deputy Commander of the Police in the prison (witness TT, Z) or the "man in charge of the military police" (witness M[redacted] B[redacted] about whom see more further), who made it possible for the witnesses to visit the prisoners (witnesses N and Z), who negotiates the conditions of the release of H[redacted] P[redacted] (witness Z).
Thus the responsibility of the defendant as to illegal arrest and the detention under inhuman conditions of M[redacted] R[redacted] and H[redacted] T[redacted] relies on his willingly participation in that joint criminal enterprise consisting of a system of repression or ill-treatment of the persons detained in Drenovc, which results in a criminal offence.
The nature of this criminal offence is that of a war crime, even though in relation only to M[redacted] R[redacted] the witnesses have mentioned a long lasting dispute between his family and that of B[redacted] Z[redacted].
This issue is convincingly addressed by the first judge[16] and will be examined further on in the part related to witness "U", regarding to whom existed the same problem (see point **II.17**).

14. A[redacted] B[redacted]
The appeal points out that in this case the sources of information (the son of the victim, M[redacted]) had met S[redacted] K[redacted] in the second half of August 1998 receiving from him the answer that no one prisoner were there. This would confirm that no detainees were kept in Drenovc after 17 July and that the defendant, who had been in Albania till mid august had nothing to do with the victim.

The First Instance Court emphasizes the testimony of M[redacted] B[redacted] as to the involvement of S[redacted] K[redacted] the witness was looking for his father in early August, by B[redacted] Z[redacted] was referred to S[redacted] K[redacted] C[redacted] (whom the witness recognized in photo) as the main person in charge of the police.

[16] See pages 53-56 of the verdict.

S[redacted] K[redacted] told the witness that his father had been moved in Drenica and that because of the condition of the road he could not be brought back.

This Court finds that the evidence in the case file confirms the assessment of the first judge.
M[redacted] B[redacted] returned from Switzerland at the end of July or the beginning of August 1998 and joined KLA at the Albania Kosovo border crossing.
He wanted to defend his house and his fatherland.
As soon as he arrived at home was informed by his brothers that their father, A[redacted] had been abducted on 13 July by seven KLA soldiers.
He found this totally unacceptable, because his family supported KLA.
He was informed that his father had been taken to Drenovc.
Thus some days later the witness and one of his brothers headed to Drenovc where they asked for a KLA leader and were sent to B[redacted] Z[redacted], who was known as a "political commissar", a "high official".
The latter listened the request to know about the reasons of the arrest and about the fate of A[redacted] and replied addressing the two young men to the school/prison and to speak with C[redacted], S[redacted] K[redacted], who was in charge of the military police.
From a soldier, I[redacted] B[redacted] a guard of the prison, the witness learned that his father had been kept in that prison and that guard had bought some water and other foodstuff for him.
At the arrival of S[redacted] K[redacted] that soldier did not dare to speak any more.
The witness asked then the defendant about the fate of his father and the answer was: "there is no one here in Drenovc, they are somewhere in Drenica. We cannot bring them over here given the very bad road conditions. This is why they are in Drenica". To other questions of the witness the defendant replied inviting him to Drenovc for the end of the week "in order to clear out something".
The witness could not return to Drenovc due to the offensive of the Serbs.
The witness recognized the pictures of S[redacted] K[redacted], of B[redacted] Z[redacted] and of the school.
The witness stated also that his brother S[redacted] was a soldier of KLA, who was killed during a fight against the Serbs.
Despite of being a member of KLA, in July 1998 for some days S[redacted] B[redacted] had been kept as a prisoner by KLA in the headquarters of R[redacted] because there was a letter, which described his family as collaborators of the Serbs.
The reason seems to be that B[redacted] family had bought land from the Serbs.

From the testimony of M[redacted] B[redacted] results that S[redacted] K[redacted] was in a position, the main person in charge of the police, which enabled him to know about the detainees of the prison.
The witness met S[redacted] K[redacted] in August, that means after the death of G[redacted] P[redacted] (happened mid of July), this corroborates the statements of anonymous witness "Z" about the role the defendant held after that fact.
Also the object of the communication he received by the defendant corroborates the hypothesis that S[redacted] K[redacted] was responsible for the detainees, because he knew

about their location, about the need to let them return to Drenovc, and about the difficulty due to the bad conditions of the road ("We cannot bring them over here").
It is clear that the movement of the detainees fell under his tasks as the main person in charge of the police.
M[redacted] B[redacted] was a soldier of KLA, his brother S[redacted] too and was killed fighting against the Serbs, his was a family of martyrs, these elements make the Court exclude any hypothesis of a plot against the defendant as a KLA member.
It must be added that M[redacted] B[redacted] makes no declaration about any travel of defendant S[redacted] K[redacted] to Albania.

15. Anonymous witness "X".
The appeal claims that "X" affirmed categorically that his arrest and detention on Drenovc happened on September 1998, out of the charged period of time.
He stayed there one month, met M[redacted] R[redacted] and H[redacted] T[redacted], was given regularly food, was not beaten, never met S[redacted] K[redacted].

The First Instance Court bases its verdict on the testimony of "X" as to the contemporary detention of the latter, of M[redacted] R[redacted] and of H[redacted] T[redacted] and as to the beating they suffered in Drenovc.
The first judge deems that the contradiction of this witness as to the beating is to be attributed to memory elapses because of the time.

This Court is of the opinion that the contradiction related to the month when "X" was detained in Drenovc is to be explained with a mistake in the memory.
Before the Investigating Judge "X" spoke of spring, whereas at the main trial mentioned September.
That "X" met actually M[redacted] and H[redacted] is confirmed by the fact that he, although did not know before the two of them, was able to describe them in a correct way and to recognize at least M[redacted] R[redacted] in the pictures.
That it was spring and not September is confirmed confronting the statements of "X" with them of witness "O", who in the prison of Malishevo in the days after 20 or 21 July 1998 met among other detainees just H[redacted] T[redacted] who was coming from Drenovc.
The issue of the beating up is not to be considered a real contradiction and beyond a memory elapse or the removal from the memory can find other explanations.
Actually at the main trial in the first moment to this question he denied to have been beaten, saying that other prisoners, sitting in other rooms were beaten.
Only after the confrontation with what he had said before the Investigating Judge (that he had beaten also twice a day with a wooden stick and that he had seen also M[redacted] and H[redacted] being beaten) he admitted to have forgotten many things, confirmed to have been beaten and to have heard that in another room also M[redacted] and H[redacted] were beaten.
Also about the identity of the persons who beat him "X" showed some memory problems: first spoke of I[redacted], who late died, the added Z[redacted] B[redacted] whom he was not able to describe without the confrontation with his previous statements.
He explained to have been beaten "whenever it pleased them" "perhaps once a week".
He remembered to have been taken in the school of Drenovc, to have been questioned if he was a collaborator of the Serbs and confirmed to have undergone a special treatment

"something like an electric shock" caused by a white tool put on his Adam's apple "and the entire body was shocked".
As to the food received, while before the Investigating Judge "X" had said to have been fed only after two days and later on "they fed us with whatever they had themselves", at the main trial he stated "the food was very good".

Thus the version given by "X" at the main trial is reductive if compared to his previous statements, nevertheless he confirmed to have been beaten and that M[redacted] and H[redacted] underwent the same treatment.
He reduced the number of times he was beaten, mentioned as authors a person who is dead and another who is out of this proceedings, reached the incredible point to try to describe the conditions of the detention almost as normal because the food was "very good".
This attempt to reduce the extension of the facts does not convince for the same reasons given in the case of witnesses "N" and "TT" (see above point **II.10**): the statements before the Investigating Judge were taken in presence of both Prosecutor and Defense Counsels, they were clear, detailed and logic, they find a corroboration in the statements of "O" who, speaking about H[redacted] T[redacted] and others remembered that they narrated to have been beaten in Drenovc.
More than by elapse or removal from the memory, the explanation seems to be the difficult condition, if not the real fear of this witness, who was anonymous exactly for security reasons.
This Court deems credible the fact that "X" was detained in Drenovc in the critical period together with M[redacted] R[redacted] and H[redacted] T[redacted] and that the three of them were beaten by the soldiers.
As to the involvement of S[redacted] K[redacted] in this detention must be here recalled the considerations developed at previous point **II.13** regarding his participation in the joint criminal enterprise related to the management of the detention centre of Drenovc in the period of time under consideration.

16. Anonymous witness "E"
The appeal claims the contradictory of the statements of this witness as to the time he was arrested, the length of his detention, the fact that he said first to have been arrested personally by S[redacted] K[redacted] and G[redacted] P[redacted] to have been beaten by S[redacted] K[redacted] and then to have been beaten by two masked persons.
The appeal remarks that the Prosecution did not believe to this witness as to his statements related to I[redacted] G[redacted] and X[redacted] E[redacted] for whom the charge was dropped.

The First Instance Court makes use of the testimony of "E" as to existence of the Detention Centre in Drenovc, as to the involvement of B[redacted] Z[redacted], who interrogated him accusing him of spying in favor of Serbs (page 55), as to the presence of H[redacted] P[redacted] M[redacted] R[redacted] and H[redacted] K[redacted] (from Denje, pages 68 and 69) and as to the involvement of S[redacted] K[redacted] (page 86).
The witness was examined three times at the main trial (15 and 22 march and 10 May 2006) and the Court of First Instance explains the contradictions found in his statements

with the passage of time, memory failure and illiteracy, adding to have appreciated the explanations given by the witness as honest about what s/he "had actually seen".

This Court deems the testimony of this person, who defines himself as a shepherd of 47 years and illiterate, as credible inasmuch it is logic, consistent and finds external corroboration.
Certainly the cultural degree of this person, the inability to read his own statements in order to make eventual corrections, the time elapsed, the injuries suffered during the critical period (object of some photographic documents[17]), the difficulties connected with his quality of anonymous (and protected) witness, that means the fear to be "liquidated" ("too many people were killed" as quoted also by the first judge) play an important role in the explanation of these contradictions, as well as the way he tried to make clear not to be able to speak about people he did not know, way that the first judge correctly appreciated as honest.
In this case there are no traces of false testimony or of slander against the defendants: "E" has nothing to do with or against B[redacted] Z[redacted] and S[redacted] K[redacted] and stated sincerely what he saw, heard and believed to have understood, as clarified further.
The statements of "E" appear to be logic and consistent as to the fact that he was detained in Drenovc, because he gave a description both of a wooden barrack, where he was at the first moment and of the school where he was kept for three days abd he recognized the school in the pictures of the photo line up.
Also the conditions of the detention and the fact to have been beaten are convincingly stated: he was given nothing to eat and to drink, had to sleep on the floor in a room in which was kept the coal, had no toilet facilities and had to relieve himself in the same room where he slept, was not allowed to wash away his blood.
Corroborations about the difficult situation as to the food and hygienic conditions are to be found in the statements of witnesses examined in the previous chapters.
That "E" was beaten up during his detention is corroborated by the photos he brought to the attention of the Court and related to injuries to his back and his head: in both photos it is possible to see marks and scars.
"E" appears to be credible when states to have been examined by B[redacted] Z[redacted] he gives a physical description of Z[redacted] which matches with the shape of the defendant; "E" describes the cloths of Z[redacted] (plain cloths) in the same way of other witnesses; "E" recognizes the pictures of Z[redacted] adding that the defendant was a KLA member and also this detail is confirmed by other witnesses and admitted by the defendant himself as seen in other part of this judgment.
This witness is credible also when he says that in Drenovc were kept several detainees: this results also from other sources.
"E" states to have known of the abduction of H[redacted] from Denje.
Once he was in Drenovc "E" heard the names of other prisoners, among them also H[redacted] P[redacted], but clarified not to have met these persons in prison.
The presence in Drenovc of H[redacted] P[redacted] and H[redacted] K[redacted] is corroborated by other sources.

[17] Photos admitted by the Court of First Instance with ruling 22 June 2006. See the in Confidential Binder no. 4, point I, pages 4009 and 4010.

As to the time he was arrested "E" told the Police it was mid June 1998, before the Investigating Judge confirmed this date, but later on spoke of 17 May explaining not to be literate and not to know, however it was before the starting of the bombing by NATO.
At the main trial the witness spoke of 1999, but then confirmed 9 June 1998, adding not to be able to say the exact date.
To a question of the defense counsels "E" he mentioned spring as the time of his detention in Drenovc.
As to this point the contradictions seem to be linked with the modest culture and memory problems.
The first declaration to the Police, the nearest to the facts, appears therefore to be the most reliable.
As to the duration of his detention "E" stated to the Police to have been detained in Drenovc for three days, the same he said to the Investigating Judge and at the main trial.
On other points the testimony of "E" results sincere but not able to demonstrate what he says.
It is the point of the abduction and of the beating up by S[redacted] K[redacted] and G[redacted] P[redacted], C[redacted] and R[redacted]
"E" stated not to know these two persons before and to have heard their nicknames as being mentioned by the population.
Particularly he heard that R[redacted] got killed and on that occasion he learned he was G[redacted] P[redacted] while from people he heard that "C[redacted] did this, C[redacted] did that" and only after the war got to know that C[redacted] was S[redacted] K[redacted]
The witness appears to be sincere since he states how he reconstructed the identity of the persons he met, and on the other side there is no doubt that both P[redacted] and S[redacted] K[redacted] were in Drenovc at that time.
Only, this Court deems that this is not enough to demonstrate with enough sureness that at the moment of the abduction C[redacted] was present and beat "E" since the latter was not able to recognize the photo of the defendant.
In this case the direct participation of S[redacted] K[redacted] in the arrest of "E" is likely to be a mistake, not of the memory but of the process of identification followed by the witness.
Other contradictions in the statements of "E" (particularly the fact that the Prosecutor withdrew the charge against I[redacted] G[redacted] because of a discrepancy in his testimony) don't seem to affect in a decisive way his credibility on the points listed above.
From the act of withdrawal from prosecution of 27 July 2006 results that "E" was at that moment the unique evidence against the accused and that evidence showed to be inconsistent when stating before the Police and the Investigating Judge that during the examination was B[redacted] Z[redacted] to threaten "E" with a weapon, while I[redacted] G[redacted] incited the former to shoot, while at the main trial he stated that the weapon was in possess of G[redacted]
This Court can not discuss the act of withdrawal from the prosecution, only notices that the other points listed above appear to be corroborated from other elements and thus reliable.
As to the responsibility of S[redacted] K[redacted] in the detention of witness "E" must be recalled the considerations developed at previous point **II.13** regarding his participation in the joint criminal enterprise related to the management of the detention centre of Drenovc in the period of time under consideration.

17. Anonymous witness "U".
The appeal firstly claims that the statements of this witness are in contradiction about the date of his arrest (June or 12 or 16 July), fact that should demonstrate a manipulation of the witness and secondly underlines the unreliability of the reasons alleged by "U" for his arrest (a private dispute against the components of a Z[redacted]family) which are denied by the witness of the defense H[redacted]Z[redacted]

The First Instance Judge gives importance to the testimony of witness "U" as to his abduction by KLA (A[redacted]K[redacted] and Z[redacted]B[redacted]), as to his examination by S[redacted]K[redacted]and as to the beating up ordered against the victim by the latter defendant.
The reason of the unlawful arrest was a private dispute between the witness and a KLA soldier.
The first judge explains two contradictions in the statements of "U" (as to the date of the arrest and of the length of his interrogation) as simple and "genuinely" mistakes which were "honestly" corrected, thus not affecting his testimony.

This Court shares the opinion of the first judge, since the reasons taken in the appeal don't seem to be decisive.
"U" had the status of anonymous witness and remained such type of witness.
In this case one point of the testimony was related to the sale of a real estate from the witness to other people and the defense was in condition to bring as a witness one of the purchasers.
Thus, despite of the anonymity of this witness the defendants were able to defend themselves.
Three statements of "U" are here interesting: the one before the Investigating Judge and the two at the main trial.
Before the **Investigating Judge** (6 August 2004) "U"stated to have sold a real estate to the brothers Q[redacted], H[redacted] and R[redacted] Z[redacted]the price had not been paid completely and still at present he waited for 2525 DM.
In the year 1998 "U" was arrested twice: the first one in July and the second in the period of time between 10 to 16 December, this happened because of his credit.
First he spoke of the arrest happened in December when three armed men abducted him from his home in Drenovc and brought him to the basement of the school.
The three men were masked, but in front of the crying of the parents of "U" they took off the masks.
They were N[redacted]Z[redacted], Q[redacted]Z[redacted] and I[redacted]B[redacted].
On the way to the school the three men asked "U" why are you asking money to Q[redacted] and N[redacted] told him: you will see how much money we will give you.
Q[redacted]threatened "U" of death.
During the detention in December 1998 "U" was not questioned.
Questioning happened in July 1998, when the witness had been arrested because of the same issue.
About this arrest "U" stated to have been picked up by A[redacted]K[redacted] and Z[redacted] K[redacted]from Polluzhe and to have been brought to the headquarters of the military police where S[redacted]K[redacted]questioned him for about four hours.

S[redacted] K[redacted] asked "U" why he was asking for money from Q[redacted] and his brothers H[redacted] and R[redacted]
"U" answered to have some debts and in order to pay them he had sold a property to those guys, who had still to pay some money.
S[redacted] K[redacted] ordered A[redacted] and Z[redacted] to take "U" to another room, where he was beaten up by A[redacted] with a baton and by Z[redacted] with a piece of steel.
The beating up lasted about 15 minutes till "U" lost his consciousness.
He was taken again before S[redacted] K[redacted] who asked him "do you ever dare to ask for your money back from Q[redacted] and his brothers?" "U" renounced to the money and was released.
At home "U" decided with his parents not to ask any more for that money.
However later on he asked again for the money and in December he was abducted, threatened and detained, as seen before.
Answering to a specific question about how he learned the identity of S[redacted] K[redacted] "U" stated that some soldiers had told him that this person was the head of the office and other soldiers greeted him "hello S[redacted] K[redacted] how are you?".
T[redacted] Z[redacted], who later on during the war died, asked the witness what he was doing in that office and told him that the person who was interrogating him was S[redacted] K[redacted]
The nickname of S[redacted] K[redacted] was C[redacted], he wore a black KLA uniform.
During the questioning was present also G[redacted] P[redacted], R[redacted] who wore a black uniform and did not ask any question.
T[redacted] Z[redacted] gave him the names of A[redacted] K[redacted] and of the others mentioned by the witness.
"U" did not recognize the picture of S[redacted] K[redacted] or of other persons he had mentioned as involved in his arrest, however he recognized the headquarters and the detention centre of KLA and the pictures of other members of KLA he knew.
To a question of the defense counsel "U" was not able to remember the exact date when the Serbian army burned down his house and his village, that is Drenovc, he only could say it was two or three months before his departure from Drenovc, which was on 20 December 1998.

The first testimony of "U" at the **main trial** (14 December 2005) appears to be conditioned by the worry not to reveal his own identity.
"U" actually confirmed to have been arrested by A[redacted] K[redacted] and Z[redacted] K[redacted], to have been brought to the military headquarters of Drenovc where he was interrogated by S[redacted] K[redacted] at the presence of G[redacted] P[redacted].
S[redacted] K[redacted] asked "U" why he had bad relations with a KLA soldier.
The questioning lasted about 40 minutes, present was also G[redacted] P[redacted]
After the questioning S[redacted] K[redacted] ordered to A[redacted] K[redacted] and Z[redacted] K[redacted] to beat the witness.
The beating up took approximately half an hour.
After the beating up "U" was told by S[redacted] K[redacted] "if anything else happens we are going to waste you" and then released.
A friend of his indicated to "U" who S[redacted] K[redacted] and G[redacted] P[redacted] were

As to the date of this arrest, "U" started his testimony saying to have met S[redacted] K[redacted] on occasion of his arrest on June 16, 1998.
This was the first time he had been in the headquarters of Drenovc.
About the "several" occasions he was there after the first one "U" did not want to speak for fear on this way to reveal his identity.
"U" was confronted with his statement before the Investigating Judge when he had indicated the month of July.
To this question "U" answered firstly with the date of 12 June, then corrected himself with the 16 June, saying that in front of the Investigating Judge he had got confused and now he could be precise thanks some notes he had brought with himself and which he had not when was examined by the Investigating Judge.
He explained also to have spent two months in prison during 2004 because of some unpaid debts. At his release he was interrogated by the Investigating Judge but he had not his notes.
The panel saw the notes of the witness where was reported 16 June, while another date had been erased.
As to the length of his interrogation by S[redacted] K[redacted], "U" did not remember to have stated before the Investigating Judge that it had lasted four hours.
To the best of his knowledge and making use of his notes "U" could remember that the interrogation took approximately 40 minutes.
"U" recognized the photos of the school and, among the picture of persons, the photo no. 8 (that of S[redacted] K[redacted]) as that of a person he knew, adding not being in condition to say his name because he was afraid to reveal his identity.
Only after some insistence of the Court "U" indicated some other photos of persons he knew (no. 16 who is B[redacted] Z[redacted], 27 who is I[redacted] G[redacted] and 32 who is I[redacted] G[redacted]) whose names he did not want to pronounce.
To the question of the Presiding Judge, why before the Investigating Judge he had not recognized photo no. 8 (that of S[redacted] K[redacted]), which on the contrary he recognized at the main trial "U" answered that even at that time he had recognized that person, but he was afraid to tell his name, he was afraid for his life and that of his family.
For the same reason he did not want to repeat the names made before the Investigating Judge even though those persons were not related to the facts investigated.

At the **following hearing** (10 May 2006) "U" stated to know A[redacted] K[redacted] as a military policeman, to know his father, S[redacted], and his family and his nickname as "N[redacted]".
"U" had seen A[redacted] K[redacted] in Drenovc 4 or 5 times and had learned his name by a soldier who late died in the war.
The witness saw A[redacted] K[redacted] also two weeks after his release.
"U" was interrogated by S[redacted] K[redacted] about a problem he had with a KLA soldier approximately a week before the day of the interrogation.
Before that day he had never met S[redacted] K[redacted], after that day "U" saw the defendant on the balcony of the office two or three times, without having any more problems with him.
Asked by the defense counsel to explain how he knew the defendant, if through some soldiers who told him that this person was the head of the office and who greeted him

with the name of S[redacted] K[redacted] or through a friend who told him who the latter was, the witness confirmed both: at that time he did not know the defendant, heard that he was the head of the office, then a friend told him also his name.

At a hearing of 8 June 2006 was heard, as a witness introduced by the defense, H[redacted] Z[redacted] who confirmed to have bought a real estate from a co-villager at the end of 1997 for approximately 30.000 DM.
He said to have completed the payment in three installments within about a year.
The last payment happened after the war.
Present to payments were some witnesses, but no written contracts or receipt were done.
His relations with the seller were defined as not bad.
The witnesses stated that four brothers of his are abroad, he and another brother live in Kosovo.
Answering to questions of the Prosecutor, the witness confirmed to have paid in three installments: the first one was 2.000 DM, the second 12.000 DM, the third one 10,000 DM (that is 24.000 DM).
Asked if he paid the difference of 6.000 DM the witness replied not to be certain about the whole price, emphasizing not to owe anything.
He narrated that the seller was in hurry and wanted immediately the whole amount, but the witness had not all the money, thus paid in installments.
The seller complained to somebody not to be paid.
Neither he nor his brothers were members of KLA.

This Court deems this point of the appeal as ungrounded.
The narration of "U" is coherent, without decisive discrepancy, repeated.
As to the time of the interrogation made to him by S[redacted] K[redacted] "U" has indicated in a convincing way the date of 16 June 1998.
During his three statements this witness showed not to have a particular good memory for the dates, since he was unable to situate correctly a big event, like the burning down of Drenovc and of his house by the Serbs, stating only that it had happened two or three months before December.
Also about the date of his interrogation he mentioned both July and June.
But the date of 16 June was confirmed by him after the confrontation with his previous statements and was precise thanks the notes he had taken.
The panel checked those notes, but the witness preferred not to produce them for fear to reveal his identity.
On the question why he had not used before these notes he answered in a convincing way that before the Investigating Judge he had not these notes because he had just been released from the prison.
The length of the interrogation made by S[redacted] K[redacted] appears to be convincingly stated at the main trial (40 minutes) just on the base of the same notes of the witness.
Also the statement of "U" about his credit against the family Z[redacted] for the sale of a real estate is credible.
H[redacted] Z[redacted] actually admitted that during 1998 (that is the time when "U" claimed his credit) he had not paid yet the whole amount, which he could pay only after the war.

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Secondly, H[redacted] Z[redacted] admitted that the seller wanted to be paid immediately and complained about this.
"U" affirms to have needed the money because of some debts and in fact some time later during 2004 he was detained because of some debts.
Thirdly the price as admitted by H[redacted] Z[redacted] (30.000 DM) does not match with the amount of money he affirms to have paid (24.000 DM), lacking 6.000 DM.
Fourth, H[redacted] Z[redacted] shows to have an interest in denying his debt, even though the installments he paid don't match with the whole price he admits.
Fifth, "U" does not imply S[redacted] K[redacted] in his credit and no reasons appear why he should blackmail this or other defendant for this.
The explanation of "U" as to how he learned the identity of S[redacted] K[redacted] appears to be credible because in the military headquarters it is well possible that the soldiers greeted the defendant with his name, that some soldiers could tell the witness the important role plaid by this K[redacted] and finally that a friend of the witness could reveal to him the names of the persons met by "U".
It can not be forgotten that "U" lived in Drenovc where he could see S[redacted] K[redacted] also after the event of 16 June 1998.
It can not be forgotten that also other witnesses indicated S[redacted] K[redacted] as the deputy chief and later on as the chief of the Military Police of KLA.
"U" appears to have fear, his statements are full of worry to be recognized and about his life.
His anonymity in the proceedings could not represent a sufficient defense for him, since in a small centre it can not be difficult to learn to whom a real estate now belongs (to the family of H[redacted] Z[redacted] and to whom it belonged till 1997 (to the family of the witness).
Nevertheless "U" took out from the photo line up just one picture: that of S[redacted] K[redacted]
As seen before, this testimony represents only one of many pieces of evidence against the defendant, about his role in the management of the detention centre and about the inhumane treatment he adopted with the prisoners.

17.1 A last issue must be examined here, related to the nature of the conduct charged to the defendant and to the existence of the required link between this conduct and the armed conflict.

It must be noticed that the existence of the link between the conduct of the accused and the armed conflict in cases underlined by personal motives is confirmed by the jurisprudence of ICTY.
In its decision of 12 June 2002 in the case of the Prosecutor v. D. KUNARAC et al. the Appeals Chamber of ICTY[18] has stated:

[18] ICTY Appeals Chamber 12 June 2002, Prosecutor v. Dragoljub KUNARAC, Radomir KOVAC and Zoran VUKOVIC, see http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf.

"58. What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict. The Trial Chamber's finding on that point is unimpeachable".

This Court deems that, although the reasons which moved the defendant in this case and in that of M[redacted] R[redacted] (see above point **II.13**) appear to be previous private disputes (a credit in this case, a previous dispute about the transit on a private real estate in the other case) it exists the required link between the acts of the accused and the armed conflict.
The conduct of the defendant, as reconstructed through the statement of "U", can be defined as illegal arrest, inhumane treatment and violation of bodily integrity for the beating up and the threats suffered by him.
The reason of this conduct was related to KLA because "U" had this problem ("bad relation") to somebody of KLA.
On the whole and also on this specific point "U" appears to be more credible than H[redacted] Z[redacted] whose statements appear to be put in doubt because of his interest not to pay the whole amount.
The conduct of S[redacted] K[redacted] and of other KLA members towards "U" appears to be committed within a context of the perpetrator's official duties as part of KLA structure as convincingly reconstructed by the challenged verdict on pages 53-56.
In other words they had the power to arrest, to question and to beat "U", to threaten to inflict him a worse damage only because of the existence of the internal armed conflict.
Under those particular circumstances they as KLA members controlled the area, exercised the powers of the Police, had concrete powers also on civilians.
And the material conduct against "U" (as well as the conduct against M[redacted] R[redacted]) was not different from that used against other victims: illegal arrest, taking the victim to the detention centre or to the headquarters, beating up, threats.
As in the KUNARAC case also in this case, and despite of any possible private reasons beneath, the existence of an armed conflict played a substantial role in the illegal actions because the perpetrators were able to commit them only because of the conflict and of the control of that area by a part in the conflict, that is KLA.

18. Anonymous witness "W".
The appeal challenges the date given by this witness for the episode between him and S[redacted] K[redacted] and about the nature of war crime against civilian population of a modest fact ("hit of one slap" followed by the apology for the incident).
The date (28 July 1998) was ten days after the Serbian offensive and no KLA members were in Drenovc any more.

Moreover the defendant was in that period of time in Albania.
The defense counsel remarks that "W" could not identify S[redacted] K[redacted] in the photos he saw during the investigative stage, he identified him at the main trial when his picture had already been published by the media.

The First Instance Court made use of the statement of "W" to demonstrate that S[redacted] K[redacted] had questioned first his son and then the witness himself, accusing him to be a traitor for having provided food to Serbian, finally the defendant would have heavily slapped him.

This Court deems correct the assessment made by the first judge.
During the investigative stage "W" was interrogated by the Police (23/4/2002) and by the Investigating Judge (11/3/2004) and narrated that his son and his wife had gone to Xerxe to buy something for the tractor, had been abducted by the Serbian police, the son had been beaten up, then they had been released.
Once arrived at home the son of "W" had been picked up by KLA Military Policemen, among whom was N[redacted] B[redacted] who had brought him to the school of Drenovc in the basement, where he had been interrogated and beaten by Commander C[redacted] that is S[redacted] K[redacted]
The latter wanted to know what kind of information the young man had given to the Serbs.
Then the son of "W" was released and returned home, he told his father that KLA wanted to speak to him and that "W" had to go there the following morning.
"W" went to Drenovc and was introduced in the office of C[redacted], on the ground floor of the school.
C[redacted] welcome him with the words "come, come traitor".
"W" was interrogated by S[redacted] K[redacted] about H[redacted] K[redacted] and another one.
He was beaten by the defendant so hard that he fell, the beating up was on his nose which after that was bleeding.
To the Police "W" mentioned three to four slaps, to the Investigating Judge only one.
He was accused to have provided the Serbs with live and dead meat, C[redacted] showed him a letter from the co-villagers of the victim who accused him to be a traitor and told him "I have not bring you here; it is your own people".
"W" could not read the letter because of the blood on his face.
He was released.
"W" stated not to be angry at S[redacted] K[redacted] but at the villagers who sent that letter.
At the main trial "W" repeated the same details precisely.
S[redacted] K[redacted] was angry because somebody had told him that "W" "gave to the Serbs both dead and alive meat" meaning "that you served your wife to them and give them to eat something".
"W" pointed out to have been beaten only once by C[redacted], then the other officer, I[redacted] who later on was killed, stopped the defendant saying that "W" was not the man he was thinking of.
After the beating up C[redacted] apologized to "W" and asked him not to tell anybody what had happened.

The Court deems the narration of "W" consistent, precise, constant, therefore fully credible.
As to the contradictions proposed by the appeal it is noticed as follows.
The date of the episode.
"W" indicated the Police the date of 19 August 1998 as the day when somebody (who later on was indicated as his son and his wife) went to Xerxe and were abducted by the Serbs and stayed in Orahovac over the night.
The following day the relatives returned home, then came UCK Military Policemen and brought the son to Drenovc.
When this returned, he told his father that he had to go to Drenovc the following day.
Before the Investigating Judge (in March 2004) "W" answered to a question of the defense saying to have forgotten the date of the fact, but it was August.
Asked by the defense to refer the date of his statements to the Police (which is dated 23 April 2002), "W" answered not to be able to locate precisely the date of this statement, adding that it was maybe two or three months before, then spoke about August or September 2003.
At the main trial he referred firstly to the 6th or 7th month of 1998, later on to the Prosecutor mentioned the date of 28 July 1998.
"W" describes himself as an old man, after that episode he was no more called by KLA.
It is comprehensible that he makes some mistakes as the date because of the age.
Anyway he recognizes the defendant, whom he did no meet in other occasions.
The identification of the defendant.
"W" did not know that man before, some soldiers called that man with the name of C[redacted] the same day "W" asked his name to some soldiers who confirmed him that C[redacted] was S[redacted] K[redacted].
"W" describes this man as 171 centimeters tall, thin.
"W" recognized the picture of S[redacted] K[redacted] in the photo line up (Exhibit A, photo no. 23) both before the Police and the Investigating Judge.
"W" recognized S[redacted] K[redacted] C[redacted] also at the main trial (photo line up Exhibit C, photo no. 8).
Thus it is not correct to state, as the appeal does, that the witness did not recognize the defendant in the photos during the investigating stage.
It can added that before the Investigating Judge the defense counsel pointed out that "W" had just recognized photo no. 23 but not photo no. 2 (of Exhibit A), which depicts the same defendant.
On this point it must be noticed that the two photos are of different quality: no. 23 is clear, no. 2 is not so clear, seems to be the enlargement of a photo which on this way becomes indefinite.
In every occasion "W" recognized in the photo the man who had beaten him.
Here must be added that this episode, although limited in the time, confirms that the defendant was directly involved in the questioning of the persons, made some investigations (about "W" and about other people as H[redacted] K[redacted], used also violence, that is inhumane treatment both against the son of "W" and against "W".
"W" is reliable, has nothing against the defendant nor KLA, he has forgiven.

19. The appeal finally examines and emphasizes the defense of S[redacted] K[redacted] and the testimonies about his alibi, consisting in his permanence in Albania during a part of the critical period.

The single points of this defense and the alibi were examined above and compared with the statements of the witnesses and the other evidence.
The result is that the defense of the defendant is not reliable because it is denied by many pieces of evidence which confirm the role and the involvement of S[redacted] K[redacted] in the criminal offences charged to him.
Here do not come in evidence the mistakes the defendant may eventually have done because of the lapse of time, the difficulties of his activity during the war, the stress or trauma as the appeal points out, difficulty, stress and trauma which are common to all the participants to those events.
Here comes in evidence that the statements of the defendant were contradicted by other, more reliable evidence; that B[redacted] Z[redacted] before the Police stated that the defendant was working at the HQ in Drenovc and that he had heard of the existence of the detention centre in that town; that the statement of S[redacted] K[redacted] not to know anything about this prison appears not convincing and finally that he admitted to have been informed about factual elements which represent the constitutional elements of a detention centre (see above point **II.5**).
As to the alibi of this defendant it was already seen (point **II.3**) that it is not consistent and does not demonstrate that he spent in Albania a long and continuative period of time as he pretends.
The statements of the witnesses deny this.
Finally the criterion of the interest: the defendant has an interest to defend himself and for this purpose he is no obliged by the law to tell the truth.
The witnesses of the defense were comrades, friends or companions of the defendant, they may have made mistakes or even told lies in order to help him in this situation: this is a form of interest.
The witnesses of the prosecutor don't seem to have any interest against S[redacted] K[redacted]
On the contrary some of them were members of KLA, other stated to have forgiven the defendant.
S[redacted] K[redacted] accused those witnesses to participate in a sort of plot against him and KLA, but he was not able to bring "any particular evidence" (22 June 2006 page 5) of this.
Those witnesses made some mistakes, sometimes fell in contradiction and all these points were remarked in the appeal, examined and solved as seen above.
The credibility of those persons was assessed every time and at the end confirmed.
A mistake in the memory of a witness, when it is clarified as it was in this proceedings, confirm the authenticity of his statement.
Finally, other witnesses made changes in their statements particularly due to fear or similar reasons but also these cases were investigated and assessed as seen above.

AD3 Violation of the criminal law

20. The verdict is challenged because the first judgment erroneously deemed present the constitutive elements of the criminal offence of war crimes, whereas in the facts as they were proven there is a lack of a central organization and of a commanding structure of the KLA in the critical region: there at that time and till October 1998 were present only rebellious groups.
This point was already examined above together with the similar arguments of other defendants (see point **I.2**)

AD4 The decision on the conviction

21. The sentence is deemed too heavy if compared to the jurisprudence of the Den Haag Tribunal.
The Court should take in consideration the circumstances of the liberation war and the age, family status, absence of other convictions and economic situation of the defendant, as well as his behavior during the detention.

In deciding the appropriate penalty the First Instance Court considered, according to the law, both factors connected to the elements of the crime (the degree of criminal responsibility, the motives of the committed criminal offence, the degree of injury or of danger to the protected object) and factors concerning circumstances of the fact and of the offender otherwise relevant for the purposes of the punishment.
The first judge took as a guide the ICTY case law as well as that of the Supreme Court of Kosovo which allows this kind of references to punishment decided by International Courts as far as "general factors governing punishment" identified by those Courts don't differ from those defined in the law applicable in Kosovo (art. 41 CL FRY[19]).
Starting from these considerations the first judge grounded the sentencing for each defendant on the number of the victims (several), on the conditions in which they were abducted and detained (defined as inhumane treatment), on the manner of the conduct of the defendants (defined as humiliating and disregarding the fundamental rights of the victims, considering also the beating and the injuries they suffered).
No mitigating circumstances were found in favor of defendants, whose attitude to the Court was defined as "defiant".
Nevertheless the punishment was decided near the minimum provided by the law (from five to fifteen years[20]).

This Court shares in general the considerations of the first judge, because the injuries and the humiliations inflicted to the victims by the conducts of this and the other defendants were very greave, as well as the conditions under which they were abducted and detained. However it seems to be appropriate to evaluate these elements together with some mitigating circumstances as the particular circumstances of the time when the crimes were committed and the personal conditions of the defendants (for S[redacted] K[redacted] the

[19] V[redacted] B[redacted] case, Supreme Court of Kosovo 7 September 2004, no. AP-KZ 80/2004.
[20] The death penalty foreseen in the article 142 CL FRY was substituted with the imprisonment for 15 years, see Supreme Court of Kosovo 21 July 2005 in the case of Prosecutor v. L[redacted] G[redacted]

familiar and economic ones, as well as his immunity from previous convictions), as well as the limits imposed by article 65 PCCK for the participation in the criminal association.
To these elements must be added the necessity to recognize to each defendant a sort of compensation for the unreasonable delay in the time of the proceedings, as seen above (point **I.4**).
All this put under consideration the Court of Second Instance deems correct and adherent to the legal criteria about sentencing to reduce the punishment for S[redacted] K[redacted] to six years imprisonment.

III

The appeal of [redacted] from Prizren as defense counsel of defendant B[redacted] Z[redacted] was filed on 21 March 2008.
The judgment of first instance is challenged due to:

- essential violations of the provisions of the criminal proceedings,
- the wrong verification of the factual situation,
- violation of the criminal law and
- the ruling for the criminal sanctioning.

The defense counsel proposes:

- to change the verdict and to free the accused from the indictment.

The grounds of the appeal are as follows.

<u>**AD1** Substantial violation of the provisions of criminal procedure:</u>

1. According to the appeal the enacting clause is unclear and contradictory, missing to specify on one side the relevant **facts** about the key aspects charged to the defendant, as the identity of the other persons who allegedly acted together with him, the time of the unlawful arrests and the identity of the arrested persons, the concrete conducts charged to him and on the other side the ground of the **subjective element** on the co-perpetration.

This point of the appeal is ungrounded.
The enacting clause is clear enough about the conducts of this defendant, the fact that he acted in complicity with other persons and within a joint criminal enterprise, the time of the facts and the identity of the arrested and detained persons.
It must be noticed firstly that the enacting clause must be read entirely and not only in the part regarding each defendant.
From the enacting clause it becomes clear that two of the persons held as having acted in complicity with B[redacted] Z[redacted] are the co-defendants S[redacted] K[redacted] and A[redacted] K[redacted].
This does not exclude the participation in the crime of other persons, whose identity is until now unknown.

The declaration of responsibility of a defendant in complicity with unknown persons is prohibited neither by the law nor by the logic.
As to the time it can be noticed that some of the criminal offences charged and particularly the unlawful detention are of a "permanent" nature, this means that they must last a certain time in order to exist.
In this case, during the unlawful detention happened the other episodes which form the object of the charge.
In the enacting clause it is clearly stated the period of time during which the unlawful conducts happened from 1 May to 31 August.
Although as to B[redacted] Z[redacted] the indication of the month of May is a mistake as it will be seen further (see point **III.4**), the indication of the time of the facts for the remaining period is clear: during these months (from begin of June to end of August) the victims were unlawfully arrested, detained, maltreated.
Also the names of the victims are clearly stated in each single charge of the enacting clause, that means for each defendant.
The appeal claims the insufficient indication both in the enacting clause and in the reasoning of each unlawful conduct of the defendant in relation to any single victim: "which person was arrested by the accused"? which was detained, which was beaten up by him?
Theoretically the answer is in article 26 of the CC SFRY: who takes part in a joint criminal enterprise "is criminally responsible for all criminal acts resulting from the criminal design of this association and shall be punished as if he himself committed them, irrespective of whether and in what manner he himself directly participated in the commission of any of those acts".
This means that, if the victims indicated in the enacting clause were unlawfully arrested, detained, inhumanely treated by this joint criminal enterprise and if B[redacted] Z[redacted] is a member of this enterprise then he is responsible for all its criminal acts even though he did not participate directly in some of these offences.
Practically for this case: it is not the enacting clause of a verdict the place where the defendant must look for the answer to the questions about the existence of this joint criminal enterprise and about his own participation to it.
The enacting clause contains only the result of the judicial assessment of the evidence: the joint criminal enterprise exists, B[redacted] Z[redacted] took part in it and thus he is responsible for the acts of it.
It is the reasoning part of the verdict which has the task to answer to these questions and as to B[redacted] Z[redacted] it contains every needed answer in the pages 89-91.
In those pages it is to read that this defendant was a clearly well known individual, he is mentioned by almost all the witnesses and had a key role to play in all the incidents which are averred in the indictment. He is defined as a fully fledged participant in the joint criminal enterprise. Moreover some evidence shows that he personally or jointly participated or was involved in the arrests, detention and inhumane treatment of M[redacted] R[redacted] H[redacted] P[redacted] and witness "E".
What is said in the reasoning part of the challenged verdict about the **facts** charged to this defendant is valid also for the **subjective element** of these conducts, which is clearly the **intention** to take part in the joint criminal enterprise in order to commit these criminal offences.

Each of these points will be examined in details further on (see point **III.5**), here it must be noticed that the enacting clause does not contain the violation of the procedural law claimed by the appeal.

2. A second point of the appeal regards the alleged violation of the provision of article 26 CC SFRY because of lack of any explanation about the participants and the aims of the group and about its exploitation.

This point was generally addressed above (see point **I.3**) and some details will be examined further on about the determination of the factual situation.
Here must be added that there is no doubt that B[redacted]Z[redacted]was a member of KLA in Drenovc during the critical period: before the Police he stated to have joined KLA in March 1998.
It was admitted by S[redacted]K[redacted] that towards the Albanians who were suspected as collaborators of the Serbs the intention and the "policy" of KLA was to "correct" them, to put them in the right way, to give them the chance to collaborate for their own people and no more with the enemy".
The interrogation of these persons was a "vital" component of the fight of KLA.
Here are not under discussion the general goals of KLA within the armed conflict, but the concrete conducts and modalities through which <u>some</u> KLA members pursued those goals.
In this case the conducts of the defendants within the management of the Detention Centre of Drenovc had criminal modalities, which amounted to the charged offences.
Their conducts were made possible through the control of the region, through the organization and the power exercised during the armed conflict by KLA, whose "vital" aims the defendants wanted to reach.
On this way those persons made use of an existing organization "for the purpose of committing criminal acts".
This is the meaning of the use of article 26 CC SFRY in this case.

3. The defense represents the opinion that the judgment was given in violation of the law by a judge (the presiding judge Vinod Boolell) who according to article 40.2 no.1 PCPCK could not be part of the trial panel having been the President of the panel which during the pre-trial phase decided on the extension of detention on remand against B[redacted]Z[redacted]and which had approved the request of the Public prosecutor for extending the period to submit an indictment (violation foreseen by art. 403.1 no. 2).

This point was discussed and found as ungrounded in the general part of this judgment (see above point **I.1**).

4. According to the appeal, the verdict does not respect the charge taken in the indictment because convicts the defendant B[redacted]Z[redacted]for facts happened between the 1 may and the 31 August 1998, whereas the charge against him (differently from those against

S[redacted] K[redacted] as stated in the amended indictment are referred to the shorter period from 2nd June[21] to 31 August 1998.

This point of the appeal is grounded.
From the amended indictment filed by the Prosecutor on 27 July 2006 results that B[redacted] Z[redacted] (Count 2) was charged with the criminal offence of war crime against the civilian population in the form of inhumane treatment and immense suffering or violation of the bodily health and application of measures of intimidation and terror against the civilian detainees of the Detention Centre in Drenovc on a date **between 2 June and 31 August 1998**, in violation of article 142 of the CC SFRY as read with articles 22, 24, 26 and 30 of the CC SFRY.
The verdict of first instance finds B[redacted] Z[redacted] guilty of the charged criminal offences on a date between 1 May and 31 August 1998.
On this point the enacting clause contains a mistake, which is as more evident as the reasoning of the first judgment (page 12) clarifies that according to the indictment "all four defendants took part during the period between **2 June 1998 and 31 August 1998** (except that in the case of defendant S[redacted] K[redacted] the starting date is 1 May 1998) in a joint criminal enterprise" (emphasizing added).
In no other parts of the verdict is mentioned a possible participation of B[redacted] Z[redacted] in the criminal offences for a period before 2 June 1998.
It is obviously a material mistake of the author of the enacting clause of first instance.
However through this mistake the verdict exceeds the charge taken by the amended indictment and violates article 386 paragraph 1 and article 403 paragraph 1 no. 10 PCPCK.
In this case, according to article 426 paragraph 1 of PCPCK the Court of Second Instance shall modify the challenged judgment.
In this case the modification of the judgment is limited to the time of the criminal offences committed, which is reduced to the period between 2 June and 31 August 1998.
Effect of this reduction will be considered as to the punishment.

AD2 Erroneous and incomplete determination of the factual situation

5. According to the appeal the Court of First Instance did not provide any piece of evidence about the illegal conducts charged to the defendant, but convicted him on the base of gossip of individuals.

This Court deems this point as ungrounded.
The evidence regarding B[redacted] Z[redacted] can not be defined as gossip or supposition.
M[redacted] S[redacted] and S[redacted] S[redacted] witnessed about the disappearance of S[redacted] S[redacted], whose details they learned by H[redacted] M[redacted].
According to these witnesses, M[redacted] told the components of the family that in Drenovc they could contact some persons in order to know something about the fate of S[redacted], among those names was also that of B[redacted] Z[redacted]

[21] In the Albanian version of the appeal it is quoted correctly the month of June, whereas in the English version it is erroneously written July.

R[redacted] S[redacted] confirms this and narrates that he went twice to the headquarters of Drenovc looking for B[redacted] Z[redacted]
From H[redacted] M[redacted] R[redacted] S[redacted] had known that Z[redacted] was the political commissar in Drenovc, but the latter did not want to meet him.
During his first visit to Drenovc, R[redacted] S[redacted] was accompanied by H[redacted] M[redacted].
This indicates that the involvement of B[redacted] Z[redacted] in the detention centre was actually one of the objects of the narration of H[redacted] M[redacted] to the components of S[redacted] family so that the father of S[redacted] S[redacted], R[redacted], went almost immediately together with H[redacted] M[redacted] to Drenovc looking exactly for the political commissar B[redacted] Z[redacted].
H[redacted] M[redacted]'s denial at the main trial is not credible, because he first denies to have made any names, then after the confrontation with his previous statements admits to have made some nicknames. He admits also to have accompanied S[redacted] family's members to Drenovc.
If R[redacted] S[redacted] together with M[redacted] went to Drenovc looking exactly for B[redacted] Z[redacted] it is because somebody (that is M[redacted] himself) had mentioned him this name before.
R[redacted] S[redacted] did not know Z[redacted] before that moment.
"A" spoke also about B[redacted] Z[redacted] recognizing his photo and saying that the defendant was informed about everything the witness had narrated to the Investigating Judge (testimony of 26 February – 3 March page 10).

As to B[redacted] B[redacted] it is worth noticing that anonymous witness "B" went more than 30 times to Drenovc looking for that person.
In Drenovc some persons near the headquarters told "B" that the people who could solve his problems were B[redacted] Z[redacted] and S[redacted] K[redacted]
Before the Investigating Judge, "B" stated to have been told by people in Drenovc that B[redacted] Z[redacted] was in charge of the prison.
"B" succeeded in meeting B[redacted] Z[redacted] on 16 July, while never met personally K[redacted]
B[redacted] Z[redacted] told "B" that in three or four days KLA will come to Brestovc (the village of B[redacted] B[redacted]) and "we will see what we can do there".
Thus "B" addressed B[redacted] Z[redacted] thinking that he could help in obtaining the release of B[redacted] B[redacted].
Z[redacted] did not deny his role, promising that KLA in a few days would be helpful on this matter.
"B" recognized the picture of B[redacted] Z[redacted] both before the Investigating Judge and at the main trial.

As to H[redacted] K[redacted] both witnesses "TT" and "N" stated to have been addressed among other people just to B[redacted] Z[redacted] the "political commissar" who addressed them to S[redacted] K[redacted].
The two witnesses wanted to visit H[redacted] and S[redacted] K[redacted] told them that the man who had competence on this issue was Z[redacted] as "political commissar".
"TT" remembers to have spoken more than once to Z[redacted] and to S[redacted] K[redacted] and to be invited by the two of them not to return any more.

Z[redacted] threatened even to arrest "TT".
Both "N" and "TT" recognized B[redacted] Z[redacted] in the photos.
"TT" was a soldier in Drenovc, thus he must have known very well KLA members and their role also as to the Detention Centre.

When he went to Drenovc in order to find H[redacted] P[redacted] witness "Z" received from Z[redacted] B[redacted] the advice to go to the headquarters and to ask for B[redacted] Z[redacted]
"Z" met actually Z[redacted] who was dressed in military clothes and armed.
Z[redacted] addressed "Z" to G[redacted] P[redacted] and the military police.
Some days later was paid a visit to H[redacted] in the prison, even though B[redacted] Z[redacted] was reluctant to allow it ("they can see H[redacted] but H[redacted] can not see them").
"Z" recognized the picture of B[redacted] Z[redacted].
"D" remembered that during the detention of H[redacted] P[redacted] was found a corpse which was deemed that of H[redacted].
This corpse was taken to H[redacted]'s house, but later on it was clear that H[redacted] was still alive.
At that moment B[redacted] Z[redacted], who was wearing a uniform, invited "D" in his office and took his statements about the circumstances related to the corpse.
Then Z[redacted] issued an order that the body should be taken to Drenovc and then to the Police Station of Rahovec, where some investigations were undertaken.
"D" recognized B[redacted] Z[redacted] in the photos.
Thus, as noticed in the first instance verdict, B[redacted] Z[redacted] not only held a position of authority so that people asked him about the detainees, but was also in condition to conduct examinations of witnesses and give orders concerning an investigation.

Witnesses N[redacted] and H[redacted] R[redacted] went to Drenovc looking for their relative M[redacted] they met and spoke to B[redacted] Z[redacted].
The defendant explained firstly that "every single person fifty years and above is to be held responsible" (H[redacted] R[redacted]); then Z[redacted] admitted to be responsible of the abduction of M[redacted] R[redacted] ("I am the one who took your father away"), adding that the abduction was related to a personal dispute between M[redacted] and his family and that "my time has come. I can do whatever I want".
The witnesses went several times to Drenovc and were in condition to realize that B[redacted] Z[redacted] was "the one to decide there"(N[redacted] R[redacted]), was the "political commissar" (H[redacted] R[redacted].
E[redacted] R[redacted] narrated about a "group of B[redacted] Z[redacted]", that is a group whose main guy was the defendant, to whom everybody obeyed "in the village and in the surroundings": Z[redacted] was a commander of KLA not a soldier.
E[redacted] and the brother of M[redacted] were beaten up by the components of this group.
E[redacted] stated that M[redacted] had been taken upon B[redacted] Z[redacted]'s order.
N[redacted] R[redacted] stated to have heard the prisoners screaming.
Witness "X" narrated that he himself, M[redacted] R[redacted] and H[redacted] T[redacted] were detained and beaten up in Drenovc.
Witness "O" recognized the photo of M[redacted] R[redacted] adding that the detainees he met in Malishevo said that M[redacted] had died due to the beatings.

Thus: B[redacted] Z[redacted] admitted to the witnesses to be the responsible of the abduction of M[redacted] R[redacted] who according to other witnesses was beaten up and treated inhumanely in Drenovc.
Z[redacted] acted on revenge for a personal dispute but made this within a context of his official duties as a part of KLA structure.
It was already seen (above point **II.17.1**) that both in the cases of M[redacted] R[redacted] and of witness "U" the perpetrators could arrest civilians, beat and threat them to inflict a worse damage only because as KLA members they controlled the area (the free zone), exercised the powers of the Police, had concrete powers also on civilians.
And the concrete conduct was not different from that used against other victims.
Despite of the possible private reasons beneath, the illegal actions were possible only through the existence of the conflict and thanks the control of that area by a part in the conflict, which is KLA.
Through these illegal actions B[redacted] Z[redacted] and the other defendants exploited for criminal purposes an existing organization, as KLA.

Also M[redacted] B[redacted], who was looking for his father A[redacted] confirms to have spoken with B[redacted] Z[redacted], who was known as the "political commissar" that is a "high official" in Drenovc.

6. A specific point of the appeal is dedicated to the testimony of witness "E" which is deemed as contradictory and unreliable.

This point of the appeal appears to be ungrounded.
As better described above (see point **II.16**) "E" appears to be credible among other points when he states to have been detained in Drenovc, where he was beaten[22] and to have been examined by B[redacted] Z[redacted] who accused him of being a spy of the Serbs against KLA.
"E" remained detained in a storage room for coal fort three days and three nights, sleeping on the ground, without blankets, without eating or drinking anything, without the possibility to wash his blood or to go to a toilet outside his cell.
At the end B[redacted] Z[redacted] released him.
"E" gives a physical description of Z[redacted] which matches with the shape of the defendant; "E" describes the cloths of Z[redacted] (plain cloths) in the same way of other witnesses; "E" recognizes the pictures of Z[redacted] adding that the defendant was a KLA member and also this detail is confirmed by other witnesses and admitted by the defendant himself as seen in other part of this judgment.
There are no traces of false testimony or of slander against the defendant and the contradictions, included that regarding who threatened this witness with a weapon: B[redacted] Z[redacted] (as stated before the Police and the Investigating Judge) or I[redacted] C[redacted] (as stated at the main trial) seem to be explainable with the difficulties faced by "E" listed above.
"E" was interrogated by B[redacted] Z[redacted] as it was the case of witness "D" and at the end was released by Z[redacted] because this could do whatever he wanted, as he had stated to N[redacted] and H[redacted] R[redacted]

[22] See the photos of his scares.

7. Another point of the appeal regards the alleged misinterpretation of the testimony of other witnesses, who actually did not state about inhumane treatment committed by the defendant.

All the above mentioned facts as stated by the witnesses contradict the thesis of the defense: as it was the case for S[redacted] K[redacted], B[redacted] Z[redacted] was part in the organization and the managing of the Detention Centre and of the inhumane treatment which was reserved to the detainees.
This is confirmed by the fact that he could "take" persons (as M[redacted] R[redacted]), interview witnesses or suspects ("D", and "E"), had the possibility to interfere with the visits to the detainees (H[redacted] P[redacted], he was the person looked for by the witnesses when these wanted to reach the detainees, he was influent as "political commissar".
Z[redacted] is responsible for having "taken" and interviewed persons, thus participating directly to the management of the detention centre.
His responsibility is however grounded also on the principle of article 26 as seen before: as a conscious part of a joint criminal enterprise he made use of the existing organization "for the purpose of committing criminal acts".
The defendant is responsible of the crimes committed by this organization, "as if he himself committed them, irrespective of weather and in what manner he himself directly participated in the commission of any of those acts".
The conditions of the detention of "E", the beating up suffered by many victims are sufficient evidence of the inhumanity of the treatment in Drenovc.

AD3 Violation of the criminal law
8. Violation of the provisions related to the existence of a criminal group, to the co-perpetration and to the assistance given to the perpetrators.

This subject was examined and dismissed above (see points **III.1** and **III.2**).

9. Violation of the law on war crimes, in terms of lack of the basic elements of a war crime because nobody of the supposed victims belonged to the opposite party, being all Kosovo Albanians.

This subject was examined and dismissed above (see point **I.2**).
Here must only be added that the fact that both the defendants and the victims were Kosovo Albanians does not exclude in itself the existence of a war crime because this was an internal armed conflict, that is a conflict among people who lived in the same State and sometimes belonged to the same nationality.
In fact, the victims were suspected by KLA to be collaborators of the Serbs, which means traitors of their people in favor of the enemy.

AD4 Decision on the criminal sanctions

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10. The appeal deems the imposed punishment as excessively severe and claims the alleged lack of reasoning about the punishment imposed to the defendant, especially did not take account of his economic and social situation.

It was already noticed in the part of this judgment related to the assessment of the sentencing decided by the first judge against S[redacted] K[redacted] (see above point **II.21**) that the District Court of Prizren considered factors connected to the elements of the crime (the degree of criminal responsibility, the motives of the committed criminal offence, the degree of injury or of danger to the protected object) and factors concerning circumstances of the fact and of the offender otherwise relevant for the purposes of the punishment, as well as the case law of ICTY.
The first judge grounded the sentencing for each defendant on the number of the victims (several), on the conditions in which they were abducted and detained (defined as inhumane treatment), on the manner of the conduct of the defendants (defined as humiliating and disregarding the fundamental rights of the victims, considering also the beating and the injuries they suffered), without finding any mitigating circumstance, however deciding the punishment near the minimum provided by the law (from five to fifteen years[23]).

This Court shares in general the considerations of the first judge, because the injuries and the humiliations inflicted to the victims by the conducts of this and the other defendants were very greave, as well as the conditions under which they were abducted and detained. However it seems to be appropriate to evaluate these elements together with some mitigating circumstances as the particular circumstances of the time when the crimes were committed and the personal conditions of the defendants (for B[redacted] Z[redacted] his economic and social situation), as well as the limits imposed by article 65 PCCK for the participation in the criminal association.
Moreover the judgment of first instance has been partially modified in favor of B[redacted] Z[redacted] through the reduction of the period of time of the criminal offences which now does not include any more the period from 1 May to 1 June 1998.
To these elements must be added the necessity to recognize to each defendant a sort of compensation for the unreasonable delay in the time of the proceedings, as seen above (point **I.4**).
All this put under consideration the Court of Second Instance deems correct and adherent to the legal criteria about sentencing to reduce the punishment for B[redacted] Z[redacted] to six years imprisonment.

IV

The appeal of [redacted] from Prishtine as defense counsel of defendant A[redacted] K[redacted] was filed on 20 March 2008.
The judgment of first instance is challenged due to:

[23] The death penalty foreseen in the article 142 CL FRY was substituted with the imprisonment for 15 years, see Supreme Court of Kosovo 21 July 2005 in the case of Prosecutor v. L[redacted] G[redacted] et al.

- essential breaches of the criminal procedure Article 403 par. 1, item 10, 12 and par. 2 item 1 and 2 of the PCPCK,
- violation of the criminal law,
- erroneous and incomplete establishment of the state of facts and
- Verdict on the Punishment.

The defense counsel proposes:
- to change the verdict acquitting the defendant from the charges, or
- to dismiss and send the case back to the First Instance Court for a re-trial, ordering at the same time the termination of detention.

The grounds of the appeal are as follows.

AD1 Substantial violation of the provisions of criminal procedure

1. The appeal claims the alleged inconsistency of the enacting clause and contradictions between the enacting clause and the reasoning part.
Particularly, according to the appeal A[redacted] K[redacted] results both convicted and acquitted for the charge related to witness "X".

This point is ungrounded.
By reading the enacting clause and also the reasoning of the verdict of first instance (pages 9, 11 and 14) it is clear that this defendant was acquitted from the charge related to witness "X" because this witness was never cross examined by him and the statements of "X" could not be used against this defendant.
"X" was examined at the main trial on 30 November 2005, whereas A[redacted] K[redacted] was extradited from Switzerland on 9 December of the same year, the indictment against him was confirmed on 28 February 2006 and later on his proceeding was consolidated with the proceedings against the other defendants.
Thus there is no conviction of A[redacted] K[redacted] related to "X" and the enacting clause can not be defined as contradictory.

2. The appeal deems the enacting clause as unclear and contradictory, missing to specify on one side the **identity** of the other persons who allegedly acted together with the defendant and on the other side considering different periods of **time** for the commission of the same criminal offences by different accused.

This point is ungrounded.
As it was already noticed in relation to analogues claims in the appeal for B[redacted] Z[redacted] (see above point **III.1**), the three defendants S[redacted] K[redacted] B[redacted] Z[redacted] and A[redacted] K[redacted] were convicted because they acted in complicity among themselves and with other till now unknown persons.
This is logically and legally allowed and it is, above all, what is proven in the case file.
The declaration of responsibility of a defendant in complicity with unknown persons is not prohibited by the law nor by the logic.
Also the time of the facts is clearly stated: from 1 May to 31 August.

This temporal specification is not completely correct in relation to the conduct of A[redacted] K[redacted], who was charged only for the period from 2 June to 31 August: on this point this Court will return further (see further **IV.4.b**).
Nevertheless the time frame ascertained by the first judge is correct: the facts lasted around four months, during this time frame each defendant joined the criminal enterprise for a specific period and was convicted only for this.

3. According to the appeal the verdict is contradictory as to the concurrence of articles 22 and 26 of CC SFRY, which are in fact incompatible to each other.

Also this point is ungrounded as it was already noticed above (see point **I.3**).
Here can be added that from the case file results the direct participation of A[redacted] K[redacted] in some illegal arrests and maltreatments of the victims: this means in some specific case his complicity in the perpetration of the crimes against civilians.
In other cases this defendant is responsible according to the principles of article 26 CC SFRY for having taken part in a joint criminal enterprise which performed the crimes deriving from the common criminal plan.
The contemporary application of two different legal provisions (articles 22 and 26 CC SFRY) to the facts is not prohibited because of the complexity, the duration of the charged crime and the different conducts and level of participation of each defendant to each segment of the crime.
Where as "segment of the crime" is to be intended the conduct of each defendant related to each victim.

4. The appeal claims that the challenged verdict exceeds the indictment for two different reasons: a) it takes the conviction of the defendant for conducts related to victims for whom the indictment had not been confirmed and b) the conviction is related to a period of time (from 1 May to 31 August 1998) different from the time indicated in the indictment (from 2 June to 31 August).

This Court deems the first point not grounded, whereas the point related to the time of the conducts is grounded, as already seen about the appeal of B[redacted] Z[redacted].
a) Article 376.1 PCPCK provides the Public Prosecutor with the possibility to amend the indictment according to the factual situation as proven by the evidence presented during the main trial.
This means the regularity of the amendments introduced by the Prosecutor against A[redacted] K[redacted] on 27 July 2006 both as to the identity of the victims and as to the applicable law (article 26 CC SFRY).
In this case it is not grounded the claim of having exceeded the indictment, since the First Instance Court decided according to the charge taken by the amended indictment

b) From the amended indictment filed by the Prosecutor on 27 July 2006 results that A[redacted] K[redacted] (Count 4) was charged with the criminal offence of war crime against the civilian population in the form of inhumane treatment and immense suffering or violation of the bodily health and application of measures of intimidation and terror against the civilian detainees of the Detention Centre in Drenovc on a date **between 2**

June and 31 August 1998, in violation of article 142 of the CC SFRY as read with articles 22, 24, 26 and 30 of the CC SFRY.
The verdict of first instance finds A[redacted] K[redacted] guilty of the charged criminal offences on a date between 1 May and 31 August 1998.
On this point the enacting clause contains a mistake, which is as more evident as the reasoning of the first judgment (page 12) clarifies that according to the indictment "all four defendants took part during the period between **2 June 1998 and 31 August 1998** (except that in the case of defendant S[redacted] K[redacted] the starting date is 1 May 1998) in a joint criminal enterprise" (emphasizing added).
In no other parts of the verdict is mentioned a possible participation of A[redacted] K[redacted] in the criminal offences for a period before 2 June 1998.
It is obviously a material mistake of the author of the enacting clause of first instance.
However through this mistake the verdict exceeds the charge taken by the amended indictment and violates article 386 paragraph 1 and article 403 paragraph 1 no. 10 PCCK.
In this case, according to article 426 paragraph 1 of PCCK the Court of Second Instance shall modify the challenged judgment.
In this case the modification of the judgment is limited to the time of the criminal offences committed, which is reduced to the period between 2 June and 31 August 1998.
Effect of this reduction will be considered as to the punishment.

5. According to the appeal in the investigative stage came true a violation of the right of the defendant to be represented by a defense counsel, because the defendant was not represented during the first part of the investigation started on 15.04.2004.

This point of the appeal is ungrounded.
Article 73.1 PCPCK provides the case of mandatory defense, among them come here in evidence: point no. 2) "at hearings on detention on remand and throughout the time when he or she is in detention on remand; 3) from the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least eight years".
Article 70 of Law on Criminal Proceedings of SFRY (LCP) provided in the pertinent part the case of mandatory defense only "3) when the indictment has been brought because of a criminal act for which an imprisonment sentence of 10 years or a more severe penalty may be pronounced under the law".
In this case against A[redacted] K[redacted] the International Investigating Judge of Prizren District Court issued a decision, dated 20 February 2004, to conduct an investigation and the same day issued an arrest warrant.
On 15 April 2004 the International Investigating judge issued an amended decision to conduct investigation and impose detention against A[redacted] K[redacted].
On the basis of this amended decision the International Investigating Judge issued a second arrest warrant and requested issuance of an international arrest warrant as the suspect was believed to live in Switzerland.
Upon the request of the Swiss Authorities of a formal extradition request the International Presiding Judge requested on 8 January 2005 legal assistance from Department of Justice and on the same day closed the investigation against A[redacted] K[redacted] sending the file.

to the International Public Prosecutor pursuant to article 174 paragraphs 1 and 2 of the LCP.
A[redacted] K[redacted] was extradited from Switzerland on 9 December 2005 and at 16:00 hours of the same day was arrested on the basis of the arrest warrant dated 15 April 2004.
Defense Counsel [redacted] was appointed in the interest of A[redacted] K[redacted] by his brother S[redacted] S[redacted] K[redacted] on 9 December 2005 (document 2 of binder 1 related to this defendant).
The International Public Prosecutor filed a proposal to impose detention on remand and on 11 December 2005 at 15:00 hours the defendant was presented to the hearing on detention on remand.
A[redacted] K[redacted] was assisted by his defense counsel [redacted]
Since then A[redacted] K[redacted] was always assisted by the same defense counsel.
The indictment against this defendant was filed on 28 February 2006 and confirmed through a ruling dated 30 July 2006.
The Confirmation Judge addressed and rejected the claim of the defense against all the evidence gathered during the investigation in absence of his client or of a lawyer representing him.
Main point of his reasoning is that neither the LCP (article 168) nor PCPCK (article 237) requires the presence of the defendant and/or his lawyer at the questioning of witnesses during the investigation stage.

This Court shares the considerations of the Confirmation Judge.
The presence of the defense counsel was not mandatory according to LCP and to PCPCK during the investigation stage if not during the hearing on detention on remand and at the moment of the filing an indictment.
A[redacted] K[redacted] was assisted and represented in the proceedings since the hearing on his detention on remand on 11 December 2005.
No amended indictment with the name of this defendant dated 27 July 2005 were found, but an amended indictment, related also to A[redacted] K[redacted] dated 27 July 2006, when he was duly represented.

A different problem can be related to the admissibility of evidence, as the statement of witnesses collected not in presence of the defendant or of his defense counsel.
This problem is addressed and solved by article 156 paragraph 2 PCPCK which recognizes the admissibility of such a statement "when the defendant or defense counsel has been given the opportunity to challenge it by questioning that witness during some stage of the criminal proceedings".
This possibility was given both to the defendant and to his defense counsel at the main trial.
The statements of witness who were not cross examined by A[redacted] K[redacted] (as seen before at point **IV.1** anonymous witness "X", then also H[redacted] M[redacted], F[redacted] H[redacted] and R[redacted] B[redacted]) were not used in the verdict against him.

6. The appellant claims that the reasoning (not the enacting clause) of the judgment mentions the unlawful arrest, detention, beating and torture of both Kosovo Serbian and

Kosovo Albanian citizens whereas in the case file there is no trace of this conduct against Kosovo Serbians.

This point is ungrounded and irrelevant.
The enacting clause states clearly that each defendant is convicted because of his participation in the illegal arrest and detention, inhumane treatment, immense suffering or violation of the bodily health of **Kosovo Albanian civilians suspected of collaboration with Serbs**.
There is no judgment about conducts related to Kosovo Serbian civilian victims.
Thus there is nothing to appeal on this point.
What is written on pages 7 and 8 of the reasoning about the policy of KLA related to **Kosovo Serbian** citizens could be interpreted as a general remark about what may have happened in Kosovo during the war or related to the KLA communiqués where are stated both attacks against Serbian Forces and the liquidation of collaborators in January/February 1998 (see page 50 of the verdict of first instance).
Anyway it is irrelevant since no cases of Kosovo Serbian civilian victims are reported in the case file.

7. According to the appeal the statements given by witnesses to the Police should be ruled out as inadmissible, instead being used in the verdict.

This point is ungrounded.
As observed before (see point **IV.5**), article 156 paragraph 2 KCCP recognizes the admissibility of a statement given by a witness to the Police "when the defendant or defense counsel has been given the opportunity to challenge it by questioning that witness during some stage of the criminal proceedings".
With the exclusion of few witnesses ("X", H[redacted] M[redacted] F[redacted] H[redacted] and R[redacted] B[redacted] who were not cross examined by A[redacted] K[redacted] or by his defense counsel and whose statements were not used against this defendant, all other witnesses were cross examined by him.
Thus according to the procedural law also the statements given to the Police are admissible evidence.

AD2 Violation of the criminal law (art. 404 item 1, 4 and 6 PCPCK)

8. The appeal challenges the verdict as to the hypothesis of the existence of a war crime.
The appellant affirms:
- the non existence of an internal armed conflict in the critical time in the part of Kosovo interested by the criminal offences charged to the defendant;
- the non existence of a central organization and of a commanding structure of the KLA in the region of the facts,
- that the charged joint criminal plan is supposed but not proved;
- the erroneous application of provisions of International Humanitarian Law, as to Protocol II to the four Geneva Conventions;

- the fact that a war crime against the civilian population can not result in conducts which are individual, not systematic and widely spread and are not based on discrimination
- in the verdict no evidence was presented about the violation of article 5.1 of Protocol II to the four Geneva Conventions: that means about the lack of food, drinkable water, safeguard of health and hygiene for the detainees, no comparison was made between the conditions of the latter and that of the civilian population of that territory.

The points regarding the existence of an internal armed conflict and as to the organization of KLA as well as the point related to the charged joint criminal enterprise have been already addressed in the first part of this judgment (see above points **I.2** and **I.3**).
As to the other points it must be observed what follows.

8.1 The defense challenges the part of the enacting clause where it is stated that the accused "detained in inhumane conditions without access to due process" the victims.
The right to a "due process" is foreseen by article 6 of the Protocol II to the four Geneva Conventions of 1949.
However article 2.2 of the same protocol sets forth that "at the end of the armed conflict, all the persons who have been deprived of their liberty ... for reasons related to such conflict ... shall enjoy the protection of articles 5 and 6 until the end of such deprivation or restriction of liberty".
This should mean that the protection of articles 5 and 6 does not find application during the conflict, but only at its end.
Thus according to the defense, in the verdict any reference to the "due process" is wrong.

This point is ungrounded in fact.
The First Instance Judgment both in the enacting clause and in the reasoning is clearly referred only to the war crime of inhumane treatment and immense suffering or violation of the bodily health of the civilian detainees, constituting an application of measures of intimidation and terror in violation both of national (articles 142, 22, 26 and 30 CC SFRY) and international laws (article 3 common to the Geneva Conventions, CA3, and Additional Protocol II to the Geneva Conventions, APII).
Any reference to the due process is made only in order to clarify the material situation under which suffered the detainees, but has no influence on the legal provisions applied.
In other words the defendants were not convicted for not having respected the rights of the detainees to a due process of law but for having beaten, humiliated, cut them completely off from their families and kept them in degrading conditions also with regard to their health and hygiene.
The challenged verdict (page 62) recognizes that in case of an internal armed conflict the right to arrest and to confine civilians can be "implied from the language" used by CA3 and by Additional Protocol II. Nevertheless, the right to be treated humanely is expressly guaranteed.
Thus, there is no conviction for violation of the guarantees foreseen by article 6 of Additional Protocol II and there is no ground for this point of the appeal.

It can be added the observation that the Protocol II has the purpose to develop and to supplement article 3 common to the Geneva Conventions (CA3) and not to amend it, as wrongly deemed by the appeal in favor of A[redacted]K[redacted]
Thus Protocol II does not modify or partially abrogate but simply integrates and increases the more general provisions of CA 3.
This is particularly the case of the "fundamental guarantees" (art. 4 APII) that is on one side the obligation to treat humanely in all circumstances all persons who do not take a direct part in hostilities and on the other side the prohibition of any a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment... e) outrages upon personal dignity, in particular humiliating and degrading treatment... h) threats to commit any of the foregoing acts.
All these provisions are already contained in CA3, even though in a less detailed form.
In CA3 it is also contained the prohibition of "d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regular constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples".
This is the core of the due process of law and application of CA3 is not limited to the time "at the end of the armed conflict".
Therefore any reference to the due process of law in the verdict of first instance can not be seen as inappropriate.

Any other consideration on this point could appear superfluous to the object of this judgment.
Nevertheless it could be doubt that the correct interpretation of the article 2.2 of APII is that given by the defense counsel and before him by the Supreme Court of Kosovo in the case I[redacted]G[redacted]et al (AP-KZ 139/2004) according to which article 6 of APII does not apply until the end of the armed conflict.
The doubts are of two kinds: logical and literal.
Logically it can be doubt that an international convention, dedicated to protect unarmed individuals from the dangers of an internal armed conflict can in some parts not find application during the conflict but only after it, when the dangers and the reasons for the protection are or should be ceased or at least be minor.
Literally, the last paragraph of article 6 contains a provision (about amnesty to persons who have participated in the armed conflict) which must find application expressly "at the end of hostilities".
This means that, according to the text of article 6, the other provisions should find application also during the conflict.
Preferable seems to be an interpretation of APII article 2.2 which does not limit but extends the protection of individuals.
Since IHL, as the Geneva Conventions and their Additional Protocols are referred to the time of war or of internal armed conflict[24] it is clear that, without a specific provision, it could not be applied to the time after the conflict.

[24] Article 2 of Geneva Convention IV: "in addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict", Article 1 of ADPII: "this protocol... shall apply to all armed conflicts".

In this case article 2.2 examines the situation of deprivation of liberty of prisoners for reasons related to the conflict, situation generated by, but not finished during the conflict.
In relation to these persons this provision extends the guarantees of article 5 and 6, which are in force during the conflict, for the period after the conflict and until their detention lasts.
Article 2.2 of APII must not be read in the sense that only at the end of the conflict but in the sense that also at the end of the conflict those guarantees find application.
This interpretation seems to be more consistent with the aims of humanitarianism on which ground both Geneva Conventions and their Additional Protocols.
In this sense it must be remembered the decision of the Appeals Chamber of ICTY in the case Prosecutor v. Dusko TADIC (paragraphs 67-69)[25].

"67. International humanitarian law governs the conduct of both internal and international armed conflicts. Appellant correctly points out that for there to be a violation of this body of law, there must be an armed conflict. The definition of "armed conflict" varies depending on whether the hostilities are international or internal but, contrary to Appellant's contention, the temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities. With respect to the temporal frame of reference of international armed conflicts, each of the four Geneva Conventions contains language intimating that their application may extend beyond the cessation of fighting. For example, both Conventions I and III apply until protected persons who have fallen into the power of the enemy have been released and repatriated...

69. The geographical and temporal frame of reference for internal armed conflicts is similarly broad. This conception is reflected in the fact that beneficiaries of common Article 3 of the Geneva Conventions are those taking no active part (or no longer taking active part) in the hostilities. This indicates that the rules contained in Article 3 also apply outside the narrow geographical context of the actual theatre of combat operations. Similarly, certain language in Protocol II to the Geneva Conventions (a treaty which, as we shall see in paragraphs 88 and 114 below, may be regarded as applicable to some aspects of the conflicts in the former Yugoslavia) also suggests a broad scope. First, like common Article 3, it explicitly protects "[a]ll persons who do not take a direct part or who have ceased to take part in hostilities." (Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 12 December 1977, art. 4, para.1, 1125 U.N.T.S. 609 (hereinafter Protocol II). Article 2, paragraph 1, provides:

> "[t]his Protocol shall be applied [. . .] to all persons *affected* by an armed conflict as defined in Article 1."(Id. at art. 2, para. 1 (Emphasis added).)

The same provision specifies in paragraph 2 that:

[25] Prosecutor v. Dusko TADIC, 2 October 1995 decision on the defence motion for interlocutory [illegible] Jurisdiction.

"[A]t the end of the conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty."(*Id.* at art. 2, para. 2.)

Under this last provision, the temporal scope of the applicable rules clearly reaches beyond the actual hostilities. Moreover, the relatively loose nature of the language "for reasons related to such conflict", suggests a broad geographical scope as well. The nexus required is only a relationship between the conflict and the deprivation of liberty, not that the deprivation occurred in the midst of battle".

8.2 According to the appeal a war crime against the civilian population can not result in conducts which are individual, not systematic and widely spread and are not based on discrimination.

The evidence collected in this case shows that the conducts charged to the defendants were not individual, but systematic and widely spread.
The number and the characteristics of the victims, the lengthy of their detention, the organization of the Detention Centre with the specific premise for it, the number of the perpetrators, the aims of the detention and of the questioning are all elements which deny the assumption of the defense.
Not simply individuals committed the crimes against other individuals, but members of an organization (KLA) against persons suspected to be members or at least collaborators of another organization (Serbian Military).
The managing of the Detention Centre lasted some months and was organized in specific premises, where any actor had specific roles as to the command, to the arrests, to the surveillance, to the questioning and to the beating up of the detainees.
This can be considered as having a systematic and wide spread character.
As to the discrimination can be here recalled what already observed above: the fact that both the defendants and the victims were Kosovo Albanians does not exclude in itself the existence of a war crime because this was an internal armed conflict, that is a conflict among people who lived in the same State and sometimes belonged to the same nationality.
In fact, the victims were suspected by KLA to be collaborators of the Serbs, that means traitors of their people in favor of the enemy.
To be suspected to belong to the enemy is already a form of discrimination.

8.3 Finally as to the conditions of the detainees and the comparison with the condition of the civilian population it can be noticed as follows.
On 13 July 1998 "B" met B[redacted] who was very skinny, held his trousers with a rope, was unshaved and very hungry, asked for food but "B" was not allowed to bring food, cried and asked to see his daughter, this also was not possible.
The shirt and the trousers of B[redacted] were with bloodstains
"B" was no more allowed to visit B[redacted] despite the fact that the witness went to Drenovc more than 30 times.

"N" and "TT" managed once to visit H[redacted] K[redacted] in the Detention Centre of Drenovc.
H[redacted] was in a very grave condition, had lost a lot of weight, was unshaven, had unclipped nails, his cloths were very muddy, since he was sleeping in muddy stables for 5 weeks, and stained with blood: all the shirts had bloodstains on.
The visit happened in presence of three police officers who made it clear that the conversation with the detainee was allowed only about family matters.
"N" added to have known by G[redacted] that "N" and "TT" were the first people in the whole Kosovo to have the privilege to visit a detainee.
I[redacted] told "TT" that the people inside the Detention Centre were being held like cattle and ill treated.
Although H[redacted] had done nothing wrong he was kept and proposed for an exchange with N[redacted], who notoriously was a collaborator of the Serbs.
This condition was communicated to "Z" by R[redacted] and later on confirmed also by S[redacted] K[redacted]
"Z" visited H[redacted] only once and did not notice injuries on him. H[redacted] however did not want to exchange his cloths.
"O" narrated to have met H[redacted], H[redacted] and another detainee in the detention centre of Malishevo in the days after 20 or 21 July 1998, where he spent six days.
The bodies of H[redacted] and of the third one appeared swollen and with bruises, they said to have been detained in the village of Drenovc and that they were beaten up many times.
"A" met B[redacted] and H[redacted] in the Detention Centre: B[redacted] had his right cheek hugely swollen "like he was carrying two kilograms of material there"; H[redacted] was covered in blood.
"A" met two other detainees S[redacted] and H[redacted], both were all in blood.
Of S[redacted] "you could barely see his eyes", he was short but very strong and showed "a very high endurance even though they beat him badly".
Also "A" was beaten up with a baton and kicked all over the body and got personal injuries, the floor was covered with his blood.
In the Detention Centre there was no water to wash himself, "A" and others were brought outside to some holes with water inside.
The toilet, "just for your personal needs", was in the corridor.
No visits were allowed and bread and water were brought to "A" by I[redacted].
The relatives of M[redacted] were not allowed to pay him a visit.
Nevertheless N[redacted] heard someone screaming within the detention centre.
"O" recognized the photo of M[redacted] adding that the detainees he met in Malishevo said that M[redacted] had died due to the beatings.
"E" was detained and beaten up in Drenovc as showed by the photos of his scars.
He was detained for three days and nights during which he was given nothing to eat and to drink.
"E" had to sleep on the floor in a room in which coal was kept without any blanket to cover himself.
He had no toilet facilities and had to relieve himself in the same room where he slept.

"E" was not allowed to wash away his blood.
"U" was arrested, taken to Drenovc and beaten up for the reasons already examined.
After he renounced to his credit "U" was released.
"W" was arrested, taken to Drenovc, questioned and beaten by S[redacted] K[redacted] so hard that he fell, the beating up was on his nose which after that was bleeding.
The previous day also his son had been abducted by KLA, then interrogated and beaten by the defendant.

All the above mentioned elements give an account of the conditions under which were kept the detainees in Drenovc, conditions which it is appropriate to define as "inhumane". Those conditions had nothing to do with those of the civilian population of the same zone, that is Drenovc and the surrounding area.
It is out of doubt that the civilian population suffered under the difficulties and privations deriving from the conflict.
However those civilians were not in detention, were not beaten up or threatened by KLA, were in condition to look for food and other goods, were not separated from their families.
For these reasons the condition of the detainees was incomparably worse than that of the local civilian population.

9. The appeal claims the alleged violation of art. 22 SFRY because of the lack of evidence as to A[redacted] K[redacted] about his material participation to the crime and about his will to participate to it and
- the alleged violation of art. 26 CC SFRY because KLA was not a gang or a criminal grouping and the three defendants did not organize a joint criminal association.

As to the participation of A[redacted] K[redacted] to the charged criminal offences it is to be read in the First Instance Judgment (pages 94 – 98) that this defendant personally abducted H[redacted] K[redacted] (witnesses "N" and "TT") and M[redacted] R[redacted] (witnesses N[redacted] and H[redacted] R[redacted]), abducted and beat "U".
A[redacted] K[redacted] was seen by the witnesses acting as a guard in the premises of the Detention Centre of Drenovc, where he was a member of the Military Police (on this point see the statement of S[redacted] K[redacted] before the Investigating Judge on 18 February 2004 page 9).
A[redacted] K[redacted] was directly involved, as a Military Policeman, in the management of the Detention Centre: to him "TT" asked the permission to hand over cloths to H[redacted] K[redacted] and from him "TT" received back the dirty ones which were stained with blood.
A Police Officer, I[redacted] B[redacted] later on killed during the war, told "TT" that the people inside the Detention Centre were being held like cattle and ill treated.
"TT" was a soldier in Drenovc, thus could observe what happened in the Detention Centre.
As seen before, "Z" went to Drenovc looking for H[redacted] P[redacted].
From I[redacted] B[redacted] he was informed that A[redacted] K[redacted] and R[redacted] were the ones who dealt with the maltreatment and beating up of the prisoners if such had been done (testimony before the Investigating Judge on 8 September 2004 page 6).

In Drenovc "Z" saw H[redacted] with the hands tied or handcuffed, escorted by A[redacted] K[redacted]
"Z" went to Drenovc many times and every time met A[redacted] K[redacted] at the school or premises of the Military Police attending different tasks of surveillance and check of the visitors.
"U" stated to have been arrested by A[redacted] K[redacted] and later on beaten up with a baton by the same.
These elements ground the evidence of the direct and intentional participation, according to article 22 CC SFRY, of the defendants to the charged crimes.

He was a member of the Military Police and served at the Police Station of Drenovc, where the detainees were maltreated as he well knew (confront the episode of the cloths of H[redacted] K[redacted] stained with blood, which were handed over by the defendant, confront what I[redacted] B[redacted] told the witnesses "TT" and "Z" and the episode related to "U).
"Thus A[redacted] K[redacted] was part in the joint criminal enterprise charged according to article 26 CC SFRY to all defendants.
That KLA was not a criminal gang but was exploited by some of its members for criminal purposes was already observed before (see point **I.3** and **III.2**).

AD3 Erroneous and incomplete determination of the factual situation

10. According to the appeal at the critical time defendant A[redacted] K[redacted] was in Pristine, studying at Law Faculty and not in the place of the criminal offences.
Only later on, around 21 or 22 June, he joined the young people guarding his village and went to Albania where he remained approximately three weeks from the end of June to 27 or 28 July in order to find weapons.

The First instance Judgment dealt with this point in the pages 95 – 98, where are examined the statements of the witnesses about the participation of the defendant in the criminal offences, the defense of A[redacted] K[redacted] and the statements of the witness of the defense S[redacted] D[redacted] K[redacted]

This point of the appeal is ungrounded.
The witnesses of the prosecution state dates which are different from those indicated by the defendant: "N" and "TT" speak about the 4th of June as the date of the abduction of H[redacted] K[redacted] by A[redacted] K[redacted] and other soldiers, N[redacted] and H[redacted] R[redacted] locate on the 10th of June the abduction of M[redacted] R[redacted] by the same defendant, "U" indicates the date of the 16th of June for his own abduction by this defendant, "Z" indicates in the 16th of June the first day he met A[redacted] K[redacted] at the Military Police Station in Drenovc.
These witnesses don't show to have any reason to blackmail the defendant, nor A[redacted] K[redacted] was able to indicate this kind of reasons.

The alibi of the defendant as to the days before 20 June 1998 appears to be [redacted]

He attended the studies in Law in Pristine, but the faculty was officially closed by the Serbs since 1990.
Thus he and the other Albanian students had to attend the courses secretly in private houses.
His attendance at the lessons in the critical period could not be proven as correctly observed by the first judge.
His narration of the travel from Pristina to Dejne does not demonstrate the date of this travel.
The defendant asserted to have spent in Albania three weeks, but he could offer as evidence only the testimony of S[redacted] D[redacted] K[redacted] saying that this person returned to Kosovo after two days.
The defendant heard of the arrest of the co-defendants during 2004 and found "more reasonable" to avoid Kosovo for his leave in 2005.

The testimony of S[redacted] K[redacted] is deemed not reliable by the first judge.
This witness showed a contradiction saying to have had a particular interest in the studies of the defendants until he remained abroad, whereas since the end of April 1998, when he was in Kosovo was no more interested in those studies.
The witness can state to have met the defendant on 19 June and to have gone to Albania with him at the end of June, but can not assert where A[redacted] K[redacted] was before 19 June and in the days after the witness returned from Albania at the beginning of July.
As already seen for the alibi of S[redacted] K[redacted] the travel to and from Albania could last days or only few hours and there is no convincing evidence that A[redacted] K[redacted] remained away from Kosovo and from Drenovc all the time he pretends.

11. The appeal claims an erroneous assessment of the testimony of witnesses "Z", "N", "U", "X".

As to "X" it must be noticed that his testimony was not used by the first judge in relation to this defendant.
As to the other witnesses, whose testimonies were examined before (see points **IV.9** and **IV.10**) it can be added as follows.
"Z" does not refer a "rumor" when he narrates what he learned by I[redacted] B[redacted] but a testimony de relato, which is admissible and must be assessed with prudence as far as the person who narrated this facts can not be examined because of his death or other cause.
About I[redacted] B[redacted] and his involvement in the Detention centre of Drenovc speak witnesses "TT", "Z" and M[redacted] B[redacted], what I[redacted] B[redacted] told them also in relation to the defendant appears to be logic and consistent and no evidence exists that he could tell "rumors" to the witnesses.
"N" and "TT" affirm that A[redacted] K[redacted] personally abducted H[redacted] K[redacted]
"U" stated to have been arrested by A[redacted] K[redacted] and later on beaten up with a baton by the same.

12. According to the appeal, erroneously the first judge has considered as a war crime the fact involving as a victim M[redacted] R[redacted] which was the result of an earlier private conflict.

This point was already examined and rejected before (see above point **II.17.1**).
This episode happened within a context of the official duties exercised by the defendants as a part of KLA structure.
In the cases of M[redacted]R[redacted] and of witness "U" the perpetrators could arrest, beat and threat them to inflict a worse damage only because as KLA members they controlled the area, exercised the powers of the Police, had concrete powers also on civilians.
And the concrete conduct was not different from that used against other victims.
Despite of the possible private reasons beneath, the illegal actions were possible only through the existence of the conflict, thanks the control of that area by a part in the conflict, that is KLA and through the misuse of this organization for criminal purposes by the defendants.

AD4 Decision on the criminal sanctions

13. The appeal claims that the verdict is unfair having sentenced three defendants with the same punishment of 7 years no taking into consideration the different conducts, ages and the degree of the criminal responsibility.
According to the appellant the verdict is unfair as to the sentence also in comparison with the judgments of ICTY which are quoted by the first judge: he refers to similar punishment which were pronounced for more serious crimes.

It was already noticed in the part of this judgment related to the assessment of the sentencing decided by the first judge against S[redacted]K[redacted] (see above point **II.21**) that the District Court of Prizren considered factors connected to the elements of the crime (the degree of criminal responsibility, the motives of the committed criminal offence, the degree of injury or of danger to the protected object) and factors concerning circumstances of the fact and of the offender otherwise relevant for the purposes of the punishment, as well as the case law of ICTY.
The first judge grounded the sentencing for each defendant on the number of the victims (several), on the conditions in which they were abducted and detained (defined as inhumane treatment), on the manner of the conduct of the defendants (defined as humiliating and disregarding the fundamental rights of the victims, considering also the beating and the injuries they suffered), without finding any mitigating circumstance, however deciding the punishment near the minimum provided by the law (from five to fifteen years[26]).

This Court shares in general the considerations of the first judge, because the injuries and the humiliations inflicted to the victims by the conducts of this and the other defendants were very greave, as well as the conditions under which they were abducted and detained.
The amount of the punishment can not be deemed disproportionate to the sentencing of other International Tribunals, which according to the Supreme Court of Kosovo can be useful only as a point of references and not as a leading precedent.

[26] The death penalty foreseen in the article 142 CL FRY was substituted with the imprisonment for 15 years, see Supreme Court of Kosovo 21 July 2005 in the case of Prosecutor v. L[redacted]G[redacted]

However for A[redacted] K[redacted] it seems to be appropriate to evaluate these elements together with his concrete role in the criminal offences.
According to the evidence this defendant was a simple agent of the Military Police, who executed unlawful orders to arrest and beat up the victims, within the subdivision of the roles and the participation of each defendant to the joint criminal enterprise above examined.
His role was relevant and important, however he was not the Senior Chief nor the Deputy Chief of the Military Police, nor a political commissar as other defendants.
To the consideration of this subordinate role played by A[redacted] K[redacted] must be added the consideration of some mitigating circumstances as the particular circumstances of the time when the crimes were committed and the personal conditions of the defendants (for him his young age and his familiar status), as well as the consideration of the limits imposed by article 65 PCCK for the participation in the criminal association.
Moreover the judgment of first instance has been partially modified in favor of A[redacted] K[redacted] through the reduction of the period of time of the criminal offences which now does not include any more the period from 1 May to 1 June 1998.
To these elements must be added the necessity to recognize to each defendant a sort of compensation for the unreasonable delay in the time of the proceedings, as seen above (point **I.4**).
All this put under consideration the Court of Second Instance deems correct and adherent to the legal criteria about sentencing to reduce the punishment for A[redacted] K[redacted] to four years and six months imprisonment.

V

The verdict of first instance was partially modified as to the period of time of the criminal offences committed by B[redacted] Z[redacted] and A[redacted] K[redacted] and as to the punishment regarding all three defendants.
The Judgment of the Court of First Instance is affirmed in the remaining parts.

The partial modification of the First Instance Judgment has effect on the costs of the proceedings of Second Instance in the sense that the State Budget will have to bear them.

With a separate ruling it is decided about the detention on remand for each defendant, according to article 426 and 393 PCPCK.

Dated this 10th day of April 2009.
Ap.-Kz No. 371/2008

Prepared in English, an authorized language.

International Presiding Judge
Emilio Gatti

International Recording Officer
Annette Andersen

International Judge
Maria Giuliana Civinini

International Judge
Guy Van Craen

Kosovo National Judge
Miftar Jasiqi

Kosovo National Judge
Nesrin Lushta

Legal Remedy

No appeal is possible against this Judgment (art. 430 KCCP). Only a request for the protection of legality is possible, to be filed with the court which rendered the decision in the first instance, within 3 months of the service of this decision (art. 451 – 460 KCCP).