

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 20 February 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

78th MOTION FOR FINDING OF
DISCLOSURE VIOLATION AND
FOR SUSPENSION OF THE TRIAL

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for a finding that the prosecution has once again violated Rule 66(A)(ii) and Rule 68 by failing to timely disclose a statement of one of its witnesses, which is exculpatory. Because this serious violation demonstrates that the prosecution's disclosure practices are unreliable and unsafe, Dr. Karadzic also requests that his trial be suspended for one month so that his defence team can conduct their own searches through the prosecution's database.

The Violation

2. On 18 February 2013, the prosecution disclosed for the first time information provided by General Aleksandar Vasiljevic on 8 April 2009.¹

3. Because General Vasiljevic was a prosecution witness, pursuant to Rule 66(A)(ii), the prosecution was required to disclose this statement by 7 May 2009. It did not do so. The Trial Chamber is respectfully requested to make an express finding that the prosecution has once again violated its disclosure obligation pursuant to Rule 66(A)(ii).

4. The statement also contains exculpatory information and should also have been disclosed pursuant to Rule 68. The exculpatory nature of the statement was patently obvious to the prosecution as General Vasiljevic explicitly told them that his information on the events that occurred in Bosnia could be more beneficial to Karadzic's defence than to the prosecution.²

5. General Vasiljevic went on to describe how he became aware of the existence of Bosnian Muslim paramilitary groups and arming of Muslims in 1991, how he had brought these matters to the attention of President Izetbegovic, and how they had committed crimes against the JNA, including murder. He explained that the Bosnian Serbs were not involved in the crimes in Bijeljina in early March 1992 and was not aware of the Serb paramilitary assistance being requested by the Bosnian Serbs.³

6. The Trial Chamber is respectfully requested to make an express finding that the prosecution has once again violated its disclosure obligation pursuant to Rule 68.

7. This violation is particularly egregious. General Vasiljevic was interviewed specifically for the Karadzic case. He expressly told the prosecution his information was

¹ The letter of disclosure is attached as Annex "A". The statement is attached as Annex "B".

² See Annex B at page 1, fourth paragraph

³ See Annex B at page 4, third and fourth paragraphs

favorable to Dr. Karadzic. The Senior Trial Attorney responsible for the Karadzic case was present during the interview with General Vasiljevic. The interview was taken only one month before the deadline for disclosure of all such statements. Yet it was not disclosed.

The Remedy

8. This is the 411th statement which the prosecution failed to disclose under Rule 66(A)(ii). The number of Rule 68 documents which were not disclosed as soon as practicable numbers well into the thousands.

9. In addition to a finding of violation, the Trial Chamber is respectfully requested to provide a remedy which would ensure that these violations do not continue throughout the remainder of the trial, the appeal if there is a conviction, and endless review proceedings.

10. It is clear by now, that despite the Chamber's stern warnings, and the setting of numerous deadlines, the prosecution has not fully complied with its disclosure obligations and that unless a meaningful remedy is imposed, the violations will continue. The Trial Chamber's refusal to impose a certification requirement, sanctions, or a special master has regrettably created an impunity whereby the prosecution has no real incentive to fully comply with its obligations and no enforcement mechanism by which compliance can be assured.

11. While Dr. Karadzic fortuitously selected General Vasiljevic as a defence witness without having knowledge of the exculpatory statement, it is likely that other witnesses who could offer favorable evidence for the defence have not been included on the defence witness list because the prosecution has not disclosed exculpatory information from them.

12. Dr. Karadzic believes that at this stage, the only solution would be for the Trial Chamber to order the prosecution to make its database available to his defence team in full so that the defence team can locate the exculpatory information and undisclosed prior statements for itself.

13. Dr. Karadzic proposes that the trial be suspended for one month, and that four members of his defence team be permitted to search the database on the premises of the Office of the Prosecution, and under its supervision, during the hours of 9 am to 3 pm,

four days per week, for four weeks. This would ensure, once and for all, that the prosecution was not hiding or negligently failing to disclose, material which it has been required to disclose for some four years now.

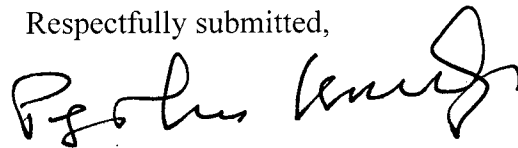
14. Should the defence come across information during these searches that the prosecution claims is privileged from disclosure, the information could be immediately sealed and presented to the Trial Chamber for determination as to its disclosure. The defence team member viewing that item would be under order not to disclose such information to any other person unless and until it is approved for disclosure.

15. Once the defence has been given full access to the prosecution's database, it will have no grounds to complain of any disclosure violations and these motions will finally stop. Dr. Karadzic will seek leave to add any witnesses discovered through this process to his witness list and this will ensure that any disclosure violations can be cured before the trial concludes.

16. This "open file" disclosure is a modest remedy for serial violations of disclosure that have reached epic proportions and shows no sign of coming to an end. The Trial Chamber owes an obligation to the accused, to the Appeals Chamber, and to the system of international justice to put a stop to these violations once and for all.

Word count: 1045

Respectfully submitted,



Radovan Karadzic

ANNEX "A"



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

Office of the
Prosecutor

Bureau du
Procureur

Case No. IT-95-5/18

18 February 2013

Disclosure Batch 1239: Disclosure pursuant to Rule 66(B) for Defence witnesses Aleksander VASILJEVIĆ and Petar KAURINOVIĆ

Please find enclosed the items detailed below for delivery to the accused Mr. Radovan Karadžić. You are advised that the particular item for Aleksander VASILJEVIĆ may have been disclosed to you in the past under a different ERN or without an ERN. The item for Petar KAURINOVIĆ was recently received.

We would appreciate acknowledgement of receipt of the material by signature and returning the signed receipt to our office.

The Prosecution also wishes to remind you of the terms of non-disclosure detailed in the Trial Chamber "Decision on Prosecution Motion for Non-Disclosure" dated 02 September 2008 and the "Decision on Protective Measures for Witnesses" dated 30 October 2008.

Yours sincerely,

Hildegard Uertz-Retzlaff
Senior Trial Attorney

1 CD entitled "Disclosure Batch 1239 – Rule 66(B)" containing the materials listed below:

Document Title	ERN	Relevant Pages	Comment
VASILJEVIC Aleksander			
ICTY Information Report of interview with Aleksander VASILJEVIC, dated 08-Apr-09	0685-0800-0685-0806		
KAURINOVIC Petar			
Transcript of interview of Petar KAURINOVIĆ dated 12-Feb-02 in Brčko.	Eng Transcript T000-4877- T000-4882		

Please acknowledge disclosure of the above mentioned material by signing this receipt below.

Signature: _____

Date: _____

ANNEX “B”

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INTERNATIONAL CRIMINAL TRIBUNAL FOR THE PROSECUTION
OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS
OF INTERNATIONAL LAW COMMITTED IN THE TERRITORY
OF THE FORMER YUGOSLAVIA SINCE 1991

INFORMATION REPORT

SUBMITTER : Roel VERSONNEN, OTP Investigator

DATE : 08 April 2009

SUBJECT : Notes on meeting with (General) Aleksandar Vasiljević
(AV) and the OTP (Mrs. Hildegard UERTZ-RETZLAFF and Roel
VERSONNEN) dd. 03 April 2009 at 09:00 am. at the Belgrade Field
Office.

SOURCE : Aleksandar VAŠILJEVIĆ
DOB: – POB:
Address + contact details: known to the OTP – to be contacted via
Vojkana KATIĆ, Belgrade Field Office Language Assistant.

(Name, address, telephone number and date of birth should be included if known)

General matters related to testimony

When informed about the OTP's intention to call AV as a witness in the trial against Radovan KARADŽIĆ, AV replied that he is reluctant to do so since this would be his 4th testimony as a prosecution witness before the ICTY.

He added that he can only give a statement re. events that took place when he was an active JNA officer, meaning until his retirement in early May 1992.

After 1992 the majority of Serb JNA Generals moved to the VJ or VRS and the info he has about events that took place after his retirement he basically learned from his former JNA/VJ colleagues, General Aleksandar DIMITRIJEVIĆ and Colonel Branko GAJIĆ.

AV is of the opinion that his information on the events that occurred in Bosnia (while he was still an active JNA officer) could be more beneficial to Karadžić' defense than to the OTP.

Furthermore, AV referred to the fact that he was not in good health (angina pectoris) and thus would prefer not to be called. In case he would be called he would not ask for protective measures although his family was threatened while he testified in the S. Milošević case. However, he stated that would not appear in front of the court voluntarily. He would only appear to testify when subpoenaed by the Court.

Events in BiH prior to the conflict

In September 1991, AV - being the Head of the Security Administration – received intelligence about the formation of the Patriotic League in BiH and the formation of

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the HOS in Western Herzegovina. Similar intelligence was already received in 1990 and in spring 1991.

At that time Serbs in BiH had not yet formed their own paramilitary formations and were still responding to the JNA mobilisation call-ups while the Croats and Muslims refused to do.

The first victim of the paramilitary formation(s) was a Slovenian JNA soldier, Vojko ČEH (??), who was killed near Mostar in August 1991.

AV informed Alija IZETBEGOVIĆ about the existence of these paramilitary formations on 05/02/1992, who replied that even in Tito's time, Western Herzegovina was never part of Yugoslavia.

On 06/04/1991 in SAVNA (??) between Tuzla and Zvornik, a Military Police officer was killed on the day BiH declared its independence.

On 27/04/91 in Tuzla, a Military Police Lieutenant and three soldiers were killed by the Patriotic League. Former JNA Commander Vahid KARAVELIĆ was in charge of the execution of eight JNA soldiers by the Patriotic Front.

On 15/10/91 and 24/12/91 meetings were held between the Presidency and the JNA in which the situation in BiH was discussed.

Negotiations between JNA and BH government

AV had two meetings with Alija IZETBEGOVIĆ: the first on 05/02/1992 in which the paramilitary organisations in BiH were discussed; the second one before 24/04/92 when the arrangements for the meeting between IZETBEGOVIĆ and Branko KOSTIĆ and General ADŽIĆ in SKOPJE were discussed.

At the meeting in SKOPJE the details of the pull out of the JNA from BiH were agreed, but not the distribution of the TO weapons. The TO weapons were to remain in BiH, while the JNA would take their weapons with them during the pull out. The JNA weapons were stored by the JNA due to decisions taken by the JNA command in 1989 and 1990.

When shown the minutes of the meeting (exhibit 65 ter 11020) page 8 relating to the figures of paramilitaries on all sides, the witness stated that as far as Muslims and Croats are confirmed, the figures were provided from his office. However, regarding the figures on Serb armed forces he would not be able to confirm those. For his office there was no need to collect figures on armed Bosnian Serbs because the armed Serbs were no threat to the JNA but rather supported the JNA mission.

With respect to the 35000 paramilitary armed Serbs AV stated that this figure is referring to the number of Serbs that are part of TO and would remain in BiH after the pull-out of the JNA from BiH.

In relation to the discussion in Skopje on the formation of a BH army, the JNA took the position that JNA members of BiH origin should be incorporated into the new army. The JNA officers who were not incorporated into the BiH forces would have to leave BiH after 19/05/92. The division of the military equipment of the JNA was not yet agreed.

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In mid May 1992 the JNA Command and the BiH Presidency were to meet again to arrange the distribution of the TO weapons and the JNA pull out from BiH. At that time, the witness had been retired. The negotiations were led by Gen. Bošković.

On 06/04/1992: BiH became independent and formed its own armed forces. This move was planned well ahead by establishing a TO staff and structures that then became the ABiH. Already in May 1991 the Muslim SDA decided to organise and arm themselves. At a meeting they divided Bosnia in nine regions and established a TO Staff in Sarajevo under the command of Ejub GANIĆ.

The SDS did not have such a meeting on forming paramilitary units. They considered the JNA to be their army and in fact the JNA indeed became more and more a Serbian army as the Croats and Muslims did not respond to mobilisation and their officers left.

Already on 14/04/1992, Colonel Hasan LNU, Commander of BiH TO had issued the order for a general attack on all JNA facilities to prevent the JNA from removing its military equipment. This order was issued BEFORE the SKOPJE meeting and with the approval of Alija IZETBEGOVIĆ.

The execution of eight JNA soldiers in Sarajevo and Tuzla were direct consequences of his order which was executed by Captain KARAVELIĆ who was on 28/04/92 arrested for desertion and for executing the order issued by the above TO Commander.

On 28/02/92: In Sarajevo a certain GORDAŠEVIĆ was killed by a member of the Green Berets. This was the first time Serbs came into conflict with the Croats and the Muslims in Sarajevo. Subsequently 15 checkpoints were mounted of which 9 were manned by Serbs.

On 03/05/1992 the JNA Barracks in Sarajevo were attacked under the pretext that the JNA wanted to mount a coup d'etat in BiH.

Before the outbreak of the conflict in BiH, JNA plan was to disarm all paramilitary formations in BiH and in this respect a meeting took place in January 1992 at the BiH MUP attended by Branko Kwešić (sic) (Chief of MUP), Alija MUSTAFIĆ (Minister of MUP) and others.

It was agreed that the leaders of all three political parties would call upon the people to surrender their arms. Without this agreement the JNA would be in a hopeless position. All three leaders agreed. Biljana PLAVŠIĆ and KOLJIĆ represented the Bosnian Serb side. KARADŽIĆ was not present. AV stated he never spoke with KARADŽIĆ at all.

Before the outbreak of the conflict, there was an agreement between the JNA and MUSTAFIĆ on joint MUP/VJ patrols to calm down the situation. However, the MUP split after the BiH referendum on independence. First the MUP split on the local level and subsequently also on the Republic level.

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AV made a presentation at the Federal Parliament of Yugoslavia about the paramilitary formations and their activities in BiH stating that all three nationalities were involved. He specified that one nation (Muslims) was perfectly organised but badly armed and that another nation (Serbs) was poorly organised but very well armed while a third nation (Croats) was well organised and properly armed.

SITUATION IN ZVORNIK/BIJELINA:

AV referred to the situation in Zvornik. On 08/04/92 Muslim paramilitaries, under the command of KARAVELIĆ, were organised in Zvornik and armed by Croatia while the Serbs in Zvornik were not military organised in paramilitary units but rather were mobilised into JNA units.

On 01/03/92 in Bijeljina and in April 1992 in Zvornik Muslims and Serb paramilitary (from Serbia) clashed. Bosnian Serb TO were not involved in those clashes.

On 01/03/92 Arkan's men and the Yellow Wasps (supported by MUP and DB Serbia) were sent from Serbia to Bosnia. AV said that this happened on the order or approval of MILOŠEVIĆ. He was not aware whether this assistance was requested by the Bosnian Serbs.

AV, being the Chief of the Security Administration, had no detailed information about paramilitary structures established by civilian authorities in Serbia. The Military (JNA) was not aware of any meetings between Belgrade (MILOŠEVIĆ) and Bosnian Serb politicians regarding the deployment of paramilitary from Serbia in Bosnia.

Once AV received from one of his subordinates information that, on 07/04/92, at a Muslim checkpoint in Zvornik, LEGIJA, the two brothers VUKČEVIĆ an SRS volunteer from Ruma were stopped and arrested. They were driving a yellow Mercedes with equipment and had a letter from JNA Colonel Nedeljko BOŠKOVIĆ to Zoran ZUVIĆ (Head of DB in Zvornik), with the request "*to take care of these four persons after they finished the job in Zvornik*".

When AV forwarded this information to Generals ADŽIĆ and AVRAMOVIĆ he received a telephone call from Colonel BOŠKOVIĆ who threatened AV by saying: "You won't be the one arresting me but I will be arresting you !".

The JNA always tried to prevent an outbreak of fighting. The 17th Corps consisted of Serb mobilised reservists.

After his arrival ARKAN settled in BADOVINCI, on the left bank of the Drina. When a local teacher got shot in a local bar, Arkan's men crossed the Drina, entered Bosnia and the conflict started.

Before the outbreak of the hostilities the MUP in Bijeljina and the 17th Corps had agreed that they would intervene in any clashes together to stop the fighting. However, when the conflict between Arkan and the Muslims started, the MUP Bijeljina did not react at all therefore the JNA also refrained from acting on its own. The JNA Barracks were being blocked by Arkan's men who killed a Croatian JNA officer who was leaving the Barracks. 50 people got killed during this event.

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Biljana PLAVŠIĆ and the Commander of the Tuzla Corps came to Bijeljina to after this got known. They met with Arkan. Arkan addressed the JNA reservists, telling them that proper Serb soldiers should join him but most of the reservists went home. Some of them joined the SDS and only a small number remained with the JNA.

Cooperation between JNA and SDS

AV stated such a cooperation was not the general policy of the JNA as the JNA was a ethnically mixed army. However, AV was aware that certain JNA officers would cooperate with the SDS. AV had knowledge that SDS activists would in particular establish contacts with those in the JNA who had access to weapons.

AV received information that the Serb Nationalist Movement in Bosnia wanted to remain in Yugoslavia. In those days about 90% of the Bosnian Serbs wanted to join Yugoslavia and only a few wanted to remain within BiH.

AV was investigating and disciplining "extremists" within the JNA. Four Colonels from the Sarajevo Corps were disciplined for extreme nationalist behaviour: Colonel KOVAČEVIĆ, Colonel Slavko PUTČAREVIĆ AND Major Božidar ANDREJIĆ and Colonel GAGOVIĆ. Although they were verbally extreme nationalist, they did not join the VRS. They would nevertheless stay in the VJ and would leave BiH when the conflict started. The majority of the senior Serb JNA officers, originating from Bosnia, supported the SDS in order to have their own republic.

AV know about only one JNA officer, Captain 1st Class Dragomir KRSTOVIĆ (4th Sarajevo Corps), who had left the JNA to join Radovan KARADŽIĆ and later became the commander of the 4th Sarajevo Corps.

He also referred to the commanders of the Baja Luka Corps who supported the SDS.

RAM Plan:

AV believes that the dispatch from April 1992 of the Tuzlar Corps, in which KUKANJAC is asking ADŽIĆ to activate the RAM-Plan, is forged, although the signature and the stamp are original. According to AV, in April 1992, KUKANJAC had already the rank of Colonel-General and Commander of the 2nd Military District and NOT the Corps.

AV was shown an interview of Gen. BOŠKOVIĆ of 6 Sept. 1996 to Monitor (00509052- 00509077 in which Bošković refers to the RAM plan. AV was aware of the interview. In AV's opinion BOŠKOVIĆ is not telling the truth in this interview. o.

The meeting on the distribution of the TO weapons, scheduled for 28/04/1992, did not take place as the Muslims were blocking the JNA Barracks in Sarajevo. According to the "Double Key" Principle re. accessing weapons, both TO and JNA kept the key to the military warehouses in which the weapons were stored. However, a decision needed to be taken about the weapons after the withdrawal of the JNA. Muslim Green Berets attacked JNA barracks in Sarajevo to remove the weapons. Serbs did not attack

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the barracks but knew they would gain access to the JNA Barracks to get weapons if needed through those cooperating with them.

On 21 May 1992 BOŠKOVIĆ went to Sarajevo to meet with Alija IZETBEGOVIĆ to reach an agreement on de-blocking the two JNA Barracks and secure the withdrawal of the JNA from those Barracks. Ratko MLADIĆ was at that time already in command of the Bosnian Serb Forces.

BOŠKOVIĆ was accompanied by Alija IZETBEGOVIĆ his brother, the brother of Jerko DOKO and KARAVELIĆ.

However the Green Berets attacked BOŠKOVIĆ and seized fifty trucks with military equipment (logistics).

It was agreed that the weapons, belonging to the TO, should remain in Bosnia. BOŠKOVIĆ agreed. MLADIĆ however did not agree and was furious that he had not been invited for this meeting and ordered Major TOMČIĆ to kill BOŠKOVIĆ if he would return to Bosnia.

On 15/05/1992 a similar problem occurred in TUZLA when the Muslims attacked the JNA to prevent the TO weapons from being removed from the JNA Barracks. The issue was that the arms belonging to the TO should remain in Bosnia.

TO establishment in BiH

In April 1991 the Bosnian Serbs decided to establish their own TO. At that time the Muslims had already established their TO structures.

Already in September 1991 the Muslims recruited TO members into their TO structures based on the existing TO lists from the Republic. Already in January 92 around 700 Muslims were organised in TO structure in Tuzla but they only 200 pieces of weaponry.

In April 1992 the former Communist Party in North-Eastern Bosnia made similar lists with names of Serbs but also Croats and Muslims who preferred to remain Yugoslavs.

Ratko MLADIĆ:

After his appointment KARADŽIĆ controlled MLADIĆ. It was KARADŽIĆ who opted for MLADIĆ to become the VRS Commander, although this needed to be approved by Milošević. MLADIĆ had gained a reputation from his service in KNIN. As to Mladić's cooperation with VJ officers, AV stated that of course Mladić would respect other JNA Generals but he would not get orders from them.

Up to 1957-1958 JNA officers would usually graduate from secondary school and continued their career with the Military Academy. MLADIĆ's class however was the only class that joined the Military Academy without finishing secondary school. Although MLADIĆ is originating from a poor farmer family he is quite clever and

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always maintained a good relationship with subordinates. AV opined that given his lesser education MLADIĆ continuously felt a need to prove himself.

Blagoje ADŽIĆ put him in command of the KNIN Corps. When MLADIĆ was Deputy Commander of the KNIN Corps he was always among his soldiers in the field and was keen on attracting media attention. He came for instance by helicopter to take MARTIĆ back to KNIN after his arrest in Bosnia although he had no involvement in the negotiations. He had a celebration organised in the football stadium. When MLADIĆ became Commander he was acting as if he had become "God".

Regarding the presence of ARKAN in Bosnia in 1995, AV remembered that General MIOVANOVIĆ told him that . KARADŽIĆ had brought Arkan to Bosnia and subsequently had a dispute with Mladić who wanted him to be removed.

Paramilitaries/Volunteers

Arkan was not part of the JNA. However in Eastern Slavonia, Baranja and Western Srem (SAO SBWS) Arkan and his men were integrated into the Serb TO and thus participated into joint actions with the JNA. Some generals (including BJORČEVIĆ) praise him and treated him as a hero although Arkan was never part of the Novi Sad Corps.

ŠEŠELJ's men were composed of volunteers mobilised by Šešelj's Party. In Eastern Slavonia these volunteers became part of the TO. As such they participated for instance in Vukovar. AV remembered having seen documents referring the the Leva Supoderica detachment led by a certain Lančučanin, who appears to have gotten orders from Gen. Mrkšić.

AV stated that Šešelj's claim that his men were part of the JNA was not correct. On a Vukovar picture depicting Šešelj one can see Šešelj wearing his pistol belt like MUP officers and not army officers.

In Autumn 1991 the JNA was facing recruitment/mobilisation problems when replenishing its units. Muslims, Croats and Macedonians ignored JNA mobilisation orders. DOMAŽETOVIĆ (JNA Officer in charge of mobilisation) sent 12000 requests to MUP Serbia for investigation of such refusals. Instead of going after the draft dodgers, MILOŠEVIĆ ignored this problem. .

AV believes ŠEŠELJ contacted DOMAŽETOVIĆ and ŠEŠELJ formed his own units of party members and received weapons from DOMAŽETOVIĆ, thus considering ŠEŠELJ's men as regular JNA reservists.