

**Bosnia and Herzegovina**



**The Court of Bosnia and Herzegovina**

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**Case no: S1 1 K 003372 10 Krl (reference: X-KR-10/893-1)**

**Date of: Pronounced on: 15 June 2012**  
**Written copy issued on: 17 September 2012**

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**Before the Trial Panel: Judge Mira Smajlović, presiding**  
**Judge Zoran Božić, panel member**  
**Judge Mitja Kozamernik, panel member**

**THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**

**Versus the Accused**  
**FRANC KOS**  
**STANKO KOJIĆ**  
**VLASTIMIR GOLIJAN**  
**ZORAN GORONJA**

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**VERDICT**

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**Prosecutor of the Prosecutor's Office of BiH: Dubravko Čampara**

**Defense for the Accused Franc Kos: Attorneys Dušan Tomić and Predrag Drinić**

**Defense for the Accused Stanko Kojić: Attorneys Milan Romanić and Slobodan Perić**

**Defense for the Accused Vlastimir Golijan: Attorneys Rade Golić and Radivoje Lazarević**

**Defense for the Accused Zoran Goronja: Attorneys Slavko Aščerić and Petko Pavlović**

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## IN THE NAME OF BOSNIA AND HERZEGOVINA !

The Court of Bosnia and Herzegovina, in the Panel composed of Judge Mira Smajlović as the Presiding Judge, and Judges Zoran Božić and Mitja Kozamernik as the Panel members, with the participation of the legal adviser – assistant Lejla Kurtanović as the minutes-taker, in the criminal case against the Accused Franc Kos, Stanko Kojić, Vlastimir Golijan and Zoran Goronja for the criminal offense of Genocide in violation of Article 171(a) and (b) of the Criminal Code of BiH (CC of BiH), in conjunction with Article 29 and 180(1) of the CC BiH, based on the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. T20 0 KTRZ 0000538 10 of 10 August 2010, confirmed on 12 August 2010, having held a public main trial that was occasionally closed for the public, which was attended by the Accused Franc Kos and his defense team, Attorneys Dušan Tomić and Predrag Drinić, the Accused Stanko Kojić and his defense team, Attorneys Milan Romanić and Slobodan Perić, the Accused Vlastimir Golijan and his defense team, Attorneys Rade Golić and Radivoje Lazarević, the Accused Zoran Goronja and his defense team, Attorneys Slavko Aščerić and Petko Pavlović, and Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Dubravko Čampara, on 14 June 2012 rendered, and on 15 June 2012 publicly announced the following:

### VERDICT

#### THE ACCUSED:

**(1) FRANC KOS**, a.k.a. “Slovenac”, “Žuti” and “Branimir Manojlović”, son of Otmar and Marija, maiden name Olivo, born on 16 July 1966 in Celje, the Republic of Slovenia, national of ..., maintaining permanent residence at ..., temporarily residing at ... .. municipality, National Identification Number ..., completed elementary education, tinsmith by profession, literate, served the JNA in 1986 in Niš, holds the rank of a lance corporal from the JNA and the rank of 2<sup>nd</sup> lieutenant from the VRS, indigent, convicted as a juvenile, no other criminal proceedings pending against him, deprived of liberty in the Republic of Croatia on 20 April 2010 on the basis of an international arrest warrant dated 14 April 2010, extradited by Croatia to BiH on 10<sup>th</sup> June 2010, currently in custody pursuant to the Decision of the Court of BiH no. X-KRN-10/893 of 11 June 2010,

**(2) STANKO KOJIĆ<sup>1</sup>**, a.k.a. Geza, son of Tomislav and Zorka, maiden name Marić, born on 23 January 1968 in Turbe, Travnik municipality, resides at ..., National Identification Number ..., ... by ethnicity, national of ... and ..., divorced, father of one underage child, literate, secondary catering school graduate, season laborer, indigent, no decorations awarded, convicted for attempted murder by the court in Bijeljina, no other pending criminal proceedings against him, currently in custody pursuant to the Decision of the Court of BiH no. X-KRN-10/893 of 26 February 2010,

**(3) VLASTIMIR GOLIJAN**, son of Miloš and Jelena, maiden name Todorović, born on 25 October 1974 in Žeravice, Han Pijesak municipality, maintaining permanent residence at ..., temporarily residing at ..., National Identification Number ..., ... by ethnicity, national of ..., married, father of two underage children, literate, completed elementary education, employed at ..., indigent, served the VRS between 1992 and 1994, no decorations awarded, no prior convictions, no other criminal proceedings pending against him, currently in custody pursuant to the Decision of the Court of BiH no. X-KRN-10/893 of 26 February 2010,

**(4) ZORAN GORONJA**, a.k.a. Zoka, son of Gojko and Ilinka, maiden name Grab, born on 7 September 1971 in Jošava, Bosanski Novi municipality, resides at ..., National Identification Number ..., ... by ethnicity, national of ..., divorced, literate, secondary wood-processing school graduate, unemployed, indigent, served the JNA in 1991 in Skoplje, no decorations awarded, no prior convictions, no other criminal proceedings pending against him, currently in custody pursuant to the Decision of the Court of BiH no. X-KRN-10/893 of 26 February 2010,

### **ARE GUILTY**

#### **Of the following:**

In June and July 1995, during the armed conflict in the Republic of Bosnia and Herzegovina within which members of the Army of Republika Srpska (VRS) and the Ministry of Interior of Republika Srpska (MUP RS) launched a widespread and systematic attack against the civilian Bosniak population of the UN Safe Area of Srebrenica, during which up to 40,000 Bosniak civilians were transferred from the Srebrenica enclave while more than 7,000 Bosniak men and boys were executed, being aware of the attack and of the fact that their actions represent part of the attack, the accused, as members of the 10<sup>th</sup> Sabotage Detachment of the Main Staff of the Army of Republika Srpska (VRS MS), together with other units of the VRS and the Ministry of Interior of Republika Srpska (MUP RS), they persecuted Bosniak civilian population of the UN Safe Area of Srebrenica on national, ethnic and religious grounds, by depriving the lives of other persons inasmuch as they:

In late June 1995, they launched the initial attack on the UN Safe Area of Srebrenica with the aim of intimidating the Bosniak population to make them leave Srebrenica, and in the early morning hours of 11 July 1995, upon the order of the Commander of the 10<sup>th</sup> Sabotage Detachment of the VRS MS, Milorad Pelemiš, together with other members of the 10<sup>th</sup> Sabotage Detachment and other VRS units, they launched the second attack by taking part in the seizure of the UN Safe Area of Srebrenica, and, having entered the town, one member of the 10<sup>th</sup> Sabotage Detachment slit the throat of a Bosniak civilian male, and following the seizure of Srebrenica by the Bosnian Serb forces and the expelling of the entire Bosniak population from the Safe Area,

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<sup>1</sup> Three years ago, he changed his surname Savanović to Kojić.

On 16<sup>th</sup> July 1995, in the period between 10:00 and 15:00 hours, around eight hundred Bosniak men were brought from the school in the village of Gornja Pilica, Zvornik municipality, where they had been held imprisoned since 14 July 1995 in inhumane conditions and subjected to physical and verbal abuse, to the Branjevo farm, a designated execution site. Franc Kos, Stanko Kojić, Zoran Goronja and Vlastimir Golijan, at the Branjevo farm, in the vicinity of the village of Pilica, together with a couple of other members of the 10<sup>th</sup> Sabotage detachment, by firing automatic rifles, with Stanko Kojić and Zoran Goronja firing a pistol and an M-84 machine gun respectively, with the aim of depriving their lives, summarily executed around eight hundred imprisoned Bosniak men from the Srebrenica enclave aged 18 to 60, some of whom were blindfolded and had ligatures on their hands, after which Franc Kos and Stanko Kojić, together with another member of the 10<sup>th</sup> Sabotage Detachment, «finished off» those executed by shooting them in the head to make sure that no one survived. However, the execution was survived by two men,

**therefore**, within a widespread and systematic attack against the Bosniak civilian population of the Safe Area of Srebrenica, being aware of the attack and acting with the intention of discriminating against the group of Srebrenica Bosniaks, they persecuted captured Bosniak men on national, ethnic and religious grounds, by depriving them of their lives,

**Whereby** they committed the criminal offense of Crimes against Humanity-**Persecution** in violation of Article 172(1)(h) of the CC of BiH, in conjunction with Para. 1(a), all in conjunction with Article 29 of the CC of BiH,

Which is why, in view of the criminal offense committed, pursuant to Article 285 of the CPC of BiH and by applying Articles 39, 42(b) and 48 of the CC of BiH, the Panel of the Court of BiH sentences:

**THE ACCUSED FRANC KOS TO A LONG-TERM IMPRISONMENT  
OF 40 (FORTY) YEARS**

**THE ACCUSED STANKO KOJIĆ TO A LONG-TERM IMPRISONMENT  
OF 43 (FORTY THREE) YEARS**

**THE ACCUSED VLASTIMIR GOLIJEAN TO A TERM OF IMPRISONMENT  
OF 19 (NINETEEN) YEARS**

**THE ACCUSED ZORAN GORONJA TO A LONG-TERM IMPRISONMENT  
OF 40 (FORTY) YEARS**

Pursuant to Article 56(1) of the CC of BiH, time spent in custody, where the Accused Franc Kos has been since 10 June 2010, while the Accused Stanko Kojić, Vlastimir Golijan and Zoran Goronja have been in custody since 25 February 2010, shall be credited towards the sentence.

**II**

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Pursuant to Article 188(4) of the CPC of BiH, the Accused are relieved from the obligation to cover the costs of the proceedings.

### III

Pursuant to Article 198(2) of the CPC of BiH, the aggrieved parties and the relatives of those killed are instructed to take civil action to pursue their claims under property law.

## Reasoning

1. After the Panel, for the purposes of Article 281 of the CPC of BiH, conscientiously and thoroughly evaluated each piece of evidence individually and in correlation with other evidence presented at the main trial, and having previously analyzed the Prosecution and Defense arguments, it is satisfied that it was proved during the present proceedings that the Accused had committed the criminal offenses of which they were found guilty.
2. Evidence presented during the proceedings is listed in Annex 1, whereas Annex 2 contains a list of procedural decisions rendered. Both Annexes represent a constituent part of the Verdict's reasoning.

### I. COURSE OF THE PROCEEDINGS

#### A. INDICTMENT AND THE MAIN TRIAL

3. On 10 August 2010, the Prosecutor's Office of BiH (Prosecution) filed an Indictment no. T20 0 KTRZ 0000538 10, which was confirmed on 12 August 2010, charging the Accused Franc Kos, Stanko Kojić, Vlastimir Golijan, and Zoran Goronja with the criminal offense of Genocide in violation of Article 171(a) and (b) of the Criminal Code of BiH (CC of BiH), in conjunction with Articles 29 and 180(1) of the CC of BiH.
4. At the arraignment held before the preliminary hearing judge on 8 September 2010, the Accused Vlastimir Golijan fully confessed to perpetrating the criminal offense charged under the Indictment, in the presence of his defense counsel. Consequently, pursuant to Article 26 of the CC of BiH, the Court separated the proceedings against this Accused for reasons of purposefulness.
5. Following the separation of proceedings against the Accused Vlastimir Golijan, pursuant to Article 230(1) of the CPC of BiH, on 23 September 2010, the Panel held a guilty plea hearing<sup>2</sup>, during which the Accused reiterated the previous statement, confessing to the act of perpetration in the way presented in the description of facts in

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<sup>2</sup> Statement on Admission of Facts was tendered into evidence as exhibit OIII-1.



the Indictment, however, not fully being aware of the nature of the criminal offense to which he confessed.

6. In view of the fact that the Accused Vlastimir Golijan confesses to the facts but does not understand the legal qualification of the criminal offense he has been charged with, that is, its essential elements, the guilty plea was not accepted.

7. Having in mind that the guilty plea was rejected and the case moved to be scheduled for the main trial, the material reason for which the proceedings against the Accused Vlastimir Golijan were separated ceased to exist, so by its Decision of 13 October 2010 the Panel decided to conduct joint proceedings.

## **1. Closing arguments**

### **(a) The Prosecution**

8. The Prosecution began presenting its closing argument on 11 May 2012. In the closing argument, the Prosecution gave an overview of the evidence presented, assessed the testimony of examined witnesses, and summarized the documentary evidence, which, according to the Prosecutor, suggest beyond a doubt that the Accused participated in the executions at Branjevo on 16 July 1995 with a genocidal intention.

9. The Prosecution pointed out that the Court had been presented with a considerable body of relevant documentary evidence, including entries, orders, reports and other VRS and RS MUP documents from that time, which describe the military operations taking place at the time, and which represent evidence of the joint criminal purpose, plan and participation of the Accused in those events. Those documents, such as the intercepted conversations, according to the Prosecution, reveal the activities and the knowledge of those who planned, coordinated and executed the plan. The Prosecution further argues that such documents, along with the witness testimony, directly suggest the knowledge on the part of the Accused.

10. In the closing argument, the Prosecution evaluated the credibility of the witnesses, particularly witness Z-1, who entered into an agreement with the Prosecution, in which he confessed to participating in the attack on Srebrenica and killing of civilians at the Branjevo farming cooperative as a member of the 10<sup>th</sup> Sabotage Detachment. In that respect, the Prosecution quoted the Constitutional Court jurisprudence, which sets out that when assessing the testimony of a witness who concluded an agreement or was granted immunity, identical criteria apply as when assessing the testimony of other witnesses.

11. Further on, the Prosecution also commented on the testimony of the Accused Franc Kos and Stanko Kojić, and the guilty plea of the Accused Vlastimir Golijan.

12. Finally, the Prosecution presented its view of the evidence on the number of persons killed at the Branjevo Farming Cooperative, as well as on the elements of the criminal offense of Genocide in violation of Article 171 of the CC of BiH, which it finds to

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have been met in the present case, and in view of all the circumstances surrounding the Accused, the Prosecution moved for long-term prison sentences to be imposed on all the Accused save Vlastimir Golijan, who was a young adult at the time of the offense.

(b) Defense of the Accused Franc Kos

13. In their closing argument, the defense team, Attorneys Dušan Tomić and Predrag Drinić, challenged the fact that genocide was committed in Srebrenica in July 1995, and that the Accused Franc Kos participated in its commission. Along those lines, the Defense outlined that element of the offense, that is, that a particular genocidal intention does not exist with respect to the Accused, further highlighting the fact that the Accused is a national of ..., and during the war was a member of all the three parties to the conflict, that is, the Croat Defense Council (HVO), the Army of Bosnia and Herzegovina and finally, the Army of Republika Srpska (VRS). The Defense also referred to the jurisprudence of the present Court in other cases, and to the verdict based on the Plea Agreement concluded by witness Z-1, handed down for his participation in the executions at Branjevo. This witness was also not found guilty of genocide, nor was Dražen Erdemović, tried before the International Criminal Tribunal for the former Yugoslavia (ICTY). Further on, when challenging the number of persons killed and the elements of the criminal offense of Genocide, the Defense believes that the number of persons killed in Srebrenica does not represent a „relevant part of a group“ in the context of Article 171 of the CC of BiH.

14. The Defense further claimed that the evidence presented at the trial showed that the Accused had not been not a voluntary member of the 10<sup>th</sup> Sabotage Detachment, and that he had not voluntarily participated in the executions at Branjevo. According to him, the executions were supervised by Vujadin Popović and the military police, hence the Defense maintains that under such circumstances the Accused could not refuse to carry out an order, as refusal would be punishable by death. The Defense is of the opinion that the Accused acted out of humanity when shooting dead those who survived the execution, because they sustained severe injuries caused by a submachine gun shooting at them, and maintains that there was no other way to help those people.

15. Towards the end of the closing argument, Counsel Predrag Drinić appealed to the Court to apply the CC of SFRY, which is more lenient to the perpetrator and prescribes a more lenient punishment for the offense at hand. For ethical reasons, Counsel pointed out that there were no mitigating circumstances on the part of Franc Kos, but is adamant that the sentence must be affected by the fact that the Accused (1) refused on the spot to further kill those people along with others, (2) „finished off“ the wounded only in two or three cases, when people could not be helped, (3) refused to kill 500 people in the Cultural Centre in Pilica, (4) testified in his case and in two other cases before the Court, and during his testimony did not conceal the fact that he was in front of the Kravica warehouse at the time of killing, which was concealed by the protected witness Z-1 in his testimony.

(i) The Accused Franc Kos

16. In his closing argument, the Accused Franc Kos supported the arguments of his

defense team, and added his conclusions about the evidence presented, primarily challenging the credibility of the protected witness Z-1, who, just like him, was present at Branjevo at the time of executions. The Accused highlights the fact that the mentioned witness, in addition to Branjevo, was present at several mass execution sites for Bosniaks around Srebrenica, but was nevertheless not convicted of genocide. In the end, he expressed his remorse over all the people in whose execution he participated.

(c) Defense of the Accused Stanko Kojić

17. Counsel for the Accused Stanko Kojić, Attorney Milan Romanić, in his closing argument outlined the general context of the events preceding the events in Srebrenica in July 1995, being of the opinion that the attack on the enclave had been preceded by a string of incursions by members of the 28<sup>th</sup> Division into the Serb villages around Srebrenica, resulting in major Serb civilian and military casualties, which, according to the Counsel, serves to prove that members of the Division in the enclave never honored the decision on the demilitarization of Srebrenica. In the closing argument, Counsel also pointed out that the VRS's initial plan did not incorporate taking the enclaves, just neutralizing the actions of the members of the 28<sup>th</sup> Division, and he therefore believes that the final occupation of Srebrenica was a tactical surprise even for the VRS, as was the fact that they met no resistance.

18. Counsel further believes that the Prosecution failed to prove during the proceedings the existence of the genocidal plan to kill Bosniaks, particularly that the Accused had the genocidal intention required to partially exterminate a group of Bosniaks as such. According to the Counsel, the Accused were foot soldiers, who were not given the option to refuse the order to execute prisoners at Branjevo, because such refusal was punishable by death in the 10<sup>th</sup> Sabotage Detachment. In that same context, Counsel presented the theory of responsibility for offenses committed under duress, being of the view that the Accused at Branjevo had no other choice but to participate in the executions.

19. The number of killed men was also challenged, as was their status at the moment of execution, so Counsel moved the Court, if it establishes the responsibility of the Accused, to change the qualification of the offense into Crimes against Civilians or Prisoners of War. Counsel particularly challenged the credibility of witness Z-1, as he believes that in case of the Accused Kojić, he is a hostile witness, while the truthfulness of his testimony is further questionable because of the fact that he entered a plea agreement with the Prosecution for the same offense. He also challenged the testimony of the survivor witnesses Z-2 and Z-3, finding them to be unconvincing, imprecise and lacking credibility, adding that any person can retell the events in Srebrenica, because they received extensive media coverage.

20. Finally, Counsel spoke in detail about the Accused person's mental state. According to the defense expert witness, he suffers from ..., and was at the time of the offense unable to grasp the importance of his actions or control them, although, according to his evidence, he only fired above the prisoners' heads. Counsel reiterated that according to the expert witnesses' findings, at the time of the offense, the Accused

was in the state of significantly diminished responsibility, and in addition to other presented arguments, this represented a ground for reduced sentence.

(i) The Accused Stanko Kojić

21. The Accused Stanko Kojić supported the arguments of his Counsel, outlining his difficult childhood and growing up in a family of mental patients. The Accused further added that he did not understand the Indictment or the legal qualification of the offense charged against him, whereas he did not know the rules for dealing with prisoners in war, because he had never served the army. The Accused proceeded to present his view of the events preceding the events at Branjevo. In the end, he highlighted that his role in the Detachment had been a minor one, and that he had always been a laughingstock. In his opinion, the best solution would have been if commander Pelemiš on that occasion had ordered food and water to be distributed to the people, but their execution had been ordered instead and none of the Detachment members had dared to refuse. The Accused demonstrated his disagreement with the killings by, as he claims, moving away from the execution site and firing above the victims' heads. Finally, he said he was sorry for all those killed at the Branjevo Farming Cooperative, and expressed his condolences and apologized to their families.

(d) Defense of the Accused Vlastimir Golijan

22. Counsel for the Accused Vlastimir Golijan, Attorney Rade Golić, in his closing argument expressed condolences to the families of all those killed on 16<sup>th</sup> July at the Branjevo Military Farm, and said he was sorry for all the innocent victims in the past war.

23. In his further presentation, Counsel challenged the retroactive application of the Criminal Code of Bosnia and Herzegovina, invoking the relevant provisions of the CC of SFRY, which was in force at the time of the offense, referring to the relevant jurisprudence of the Appellate Panel of the Court of BiH in numerous cases.

24. As for the punishability, Counsel highlighted that at the time of the offense the Accused had been a young adult, therefore, provisions on punishment pursuant to Article 42b(1) of the CC of BiH, prohibiting the imposition of long-term imprisonment on such persons, apply to him.

25. This Counsel's closing argument consisted of several topics: (1) „Krivaja 95“ operation, character, course, outcome, (2) Transfer of civilians from Potočari (3) Separation of able-bodied men in Potočari, (4) The role of the 10<sup>th</sup> Sabotage Detachment in the events in the Srebrenica region, (5) Order by a superior – particularly mitigating circumstance and (6) Personality of the Accused Vlastimir Golijan and family situation.

26. At the end of the closing argument, Counsel commented on the testimony and evidence presented, which, according to the Defense, lead to a clear conclusion that the Accused did not share the genocidal intent, nor was he at the time of the offense aware of the genocidal intent shared by the chief participants in the JCE to commit genocide, which in itself contests the genocide qualification in the Indictment. In that context, he also challenged the arguments presented in the Indictment that the number of men killed

at Branjevo represents a “significant part of the group“.

27. As for the mitigating circumstances, Counsel pointed to the existence of the “order by a superior“, and to the personality of the Accused Vlastimir Golijan, who grew up in harsh conditions, without parental care and appropriate education.

(i) The Accused Vlastimir Golijan

28. In his closing argument he supported the arguments of his Counsel, adding that he was sorry for all the people he shot at, as well as their families, and expressed his remorse because of all the things that happened.

(e) Defense of the Accused Zoran Goronja

29. Defense team of the Accused Zoran Goronja, Attorneys Slavko Aščerić and Petko Pavlović, in their closing arguments pointed out that the subject of the present criminal proceedings was the decision on guilt of the Accused, but that during the majority of the Prosecution case, and also during a part of the Defense case, that fact was pushed back, because the main role during the proceedings was given to the political discussion about what happened in and around Srebrenica in July 1995.

30. The Defense points out that very few pieces of evidence and witnesses examined during the case have the true potential to assist the Court in reaching a decision on the guilt and legal qualification in case of their client. Defense analyzed all the evidence tendered by the Prosecution and each of the defense teams, particularly focusing on the testimony of the protected witness Z-1. The Defense points out that witness Z-1 cannot be viewed as a witness in the proper sense of the word, having in mind the fact that he entered a Plea Agreement with the Prosecutor's Office of BiH, and that prior to entering the Agreement he was informed of the contents of all the evidence in the case.

31. As for the legal qualification of the offense, the Defense outlines that genocide is a unique criminal offense where particular emphasis is placed on special intention and that their client cannot be convicted even as an accessory to the criminal offense of Genocide, as the volition was not proved by the Prosecution, and that the incident can be legally qualified as a War Crime (against Civilians and/or POWs), or as Crimes against Humanity.

32. In the end, Zoran Goronja's Defense moves the Court of BiH to accept its arguments referring to the particularly mitigating circumstances concerning their client, and to impose on him the punishment prescribed by the law in effect at the time of the offense, and a punishment that will contribute to the reconciliation and normalization of the inter-ethnic relations in BiH.

(i) The Accused Zoran Goronja

33. In his closing argument he supports the arguments of his Defense Team, expressing sincere regret for the victims, and apologizing to their families.

## **B. GENERAL ASSESSMENT OF EVIDENCE IN THE PROCEEDINGS**

34. Article 3(1) of the CPC of BiH prescribes that a person will be considered innocent of a crime until his/her guilt has been proved by a final verdict.<sup>3</sup> The Prosecutor therefore bears the burden of proving the Accused person's guilt, and pursuant to Article 3(2) of the CPC of BiH, the Prosecution has to do so beyond a reasonable doubt.<sup>4</sup> The fact that the Defense did not contest certain facts contained in the Indictment does not mean that the Panel accepted those facts as proved. The burden of proof remains with the Prosecutor in case of each charge throughout the trial. Consequently, when determining whether the Prosecutor proved the case beyond any reasonable doubt, the Panel carefully considered whether there is any other reasonable interpretation of the evidence tendered, other than the one accepted by the Panel, when, in accordance with the *In dubio pro reo* principle<sup>5</sup>, it decided that the perpetration of the criminal offense charged against the Accused was not proved.

35. Pursuant to Article 15 of the CPC of BiH, the Panel has the right to freely assess evidence.<sup>6</sup> Accordingly, charges against the Accused were carefully considered, including all the evidence tendered. When considering the evidence presented during the main trial, the Panel paid due attention, among other things, to the individual circumstances of witnesses, as well as their potential participation in the events and the risk of self-incrimination, and their relationship with the Accused. The Panel also considered the consistency of each witness's evidence during the examination in chief and cross-examination, and compared it to the statements they gave during the investigation.

36. Sometimes *viva voce* evidence was different from the statements witnesses gave during the investigation. However, one should bear in mind that eighteen years passed since the events described in the Indictment happened, so it is reasonable to expect that the passage of time affected the accuracy and credibility of witnesses' memory. Also, the fact is that due to the nature of the criminal proceedings, a witness at the main trial may be asked different questions than those asked during earlier interviews, and after specifying some questions, it is reasonable to expect a witness to recall additional details. Naturally, the Panel carefully considered such situations when determining the weight to be given to such evidence.

37. Consideration of *viva voce* evidence before the Panel, some discrepancies and inconsistencies between the previous statements and *viva voce* evidence, or between different witnesses, represent a relevant factor in determining the weight, and do not

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<sup>3</sup> Article 3(1) of the CPC BiH reads that "A person shall be considered innocent of a crime until his/her guilt has been established by a final verdict." This provision is in line with all the principle postulates of human rights. See the European Convention on Human Rights, Article 6(2); International Covenant on Civil and Political Rights, Article 14(2).

<sup>4</sup> Article 3(2) of the CPC of BiH reads that "A doubt with respect to the existence of facts constituting elements of a criminal offense or on which the application of certain provisions of criminal legislation depends shall be decided by the Court verdict in the manner more favorable for the accused."

<sup>5</sup> Article 3(2) of the CPC of BiH.

<sup>6</sup> Article 15 of the CPC of BiH reads that "...the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules."

necessarily discredit an entire testimony. If a witness told the essence of the events at hand in detail, peripheral inconsistencies did not necessarily put into question the truthfulness of such testimony.

38. The Panel carefully considered the testimony of all prosecution and defense witnesses in view of the charges in the Indictment. As for the witness statements the Panel considered them in order to establish whether they confirm beyond a reasonable doubt the facts outlined in the Indictment, being at all times aware that it was extremely difficult for those witnesses who are aggrieved parties to testify in this case, because earlier they also had to testify about the events from July 1995. The fact that they had to testify often (in this and other proceedings), represents a situation beyond anyone's control, just as it is indisputable that there are only several survivors who are able to testify about these crimes.

39. When considering the evidence given by witnesses, the Panel took into account the fact that some witnesses talked about relevant events, presenting facts they heard from others. Such pieces of evidence were treated as circumstantial evidence and were not given the same value as direct evidence.

40. As for some of the witnesses, the Panel maintains that parts of their evidence were not sincere, be it for the personal interest, or for the friendship with and loyalty to the Accused or because they wanted to influence the outcome of the proceedings. When rendering the decision, the Panel had in mind the manner of testifying and the witnesses' conduct, and compared the internal content of the evidence before the Panel with their previous statements.

41. During the proceedings, the Defense particularly challenged the credibility of defense witness in Franc Kos's case, Jugoslav Petrušić, whose testimony particularly went against the defense of the second-Accused. In the present case, the Panel notes that this witness openly talks about his role during the conflict in BiH, and his status as a counter-intelligence agent who worked for the French secret services, as well as the State Security Service of the Republic of Serbia, and on photographs from that time identified the Accused Stanko Kojić and described his role. The Panel however had in mind that certain pieces of information the witness provided were irrelevant to the case. This witness obtained the information through Zoran Mišković, another agent in the Serbian State Security Service, to whom some members of the State Security Services, including Stanko Kojić, gave statements; however, since Zoran Mišković was not examined as a witness, such information was seen as not useful in the present proceedings.

42. The Panel also notes that witness Petrušić presented a lot of facts about the Accused and their activities after the war, while one minor part relates to the Branjevo events, and in view of the fact that criminal proceedings are pending against this witness before the Court of Belgrade for the criminal offenses of extortion and espionage for the Republic of France, during the time he spent in Kosovo, the Panel found his testimony to be relevant and impartial only in the part where he talks about his contacts with the

Accused Stanko Kojić during the time he spent in Kosovo, when he openly told him about his participation in the executions at Branjevo, because the Accused Stanko Kojić, in his testimony<sup>7</sup> confirmed that he had met Petrušić in Kosovo in 1999, where he was a volunteer.

43. On the basis of Yugoslav Petrušić's testimony, the Defense tendered into the case file a fairly large body of physical evidence, the majority of which are reports by an employee of the State Security Service of the Republic of Serbia, Zoran Mišković.<sup>8</sup> This tendered body of evidence was accepted as relevant only in the part in which it is corroborated by other tendered evidence. Information that had not been signed, confirmed or appropriately authorized was not used as corroborating evidence in rendering the final decision.

44. The Panel established that even those witnesses who were not reliable and did not tell the truth in parts of their evidence, were reliable and told the truth about other facts they gave evidence about, so the Panel thus did not fully reject their testimony, as it would not have been in the interest of justice or in accordance with the duty to freely assess the evidence. Accordingly, the Panel considered the reliability and sincerity of each witness, and in relation to that, assessed the reliability and accuracy of each fact the witnesses gave evidence about. The Panel will present the assessment of credibility of each testimony in the part of the verdict in which it explains the Accused persons' guilt.

45. The Panel also adduced into evidence the transcripts of intercepted communication, which can be considered to be a special type of documentary evidence, and whose authenticity was confirmed by the signalman who described how they transcribed the communication in the relevant period and checked it against the recorded material. Some of that communication represents reliable evidence of the locations of key staff, activities on organizing the executions and covering up of the bodies, which was corroborated by other witnesses and documentary evidence.

46. The Panel also observes that in the present case, physical evidence was ample and of particular importance, and the Panel particularly examined each document challenged by the Defense in order to establish its credibility and probative value.

47. The Trial Panel analyzed in detail the findings of expert witnesses presented by the Defense and the Prosecution, in relation to the events described in the Indictment. When assessing the probative value of the experts' findings, the Panel also took into account the expertise of the specific expert witness, the methodology applied, and matching between their findings and other evidence adduced by the Panel.

48. In the course of the proceedings, as a matter of principle the Defense challenged the applicability of the report prepared by the expert witness Richard Butler (military analyst), in view of the fact that neither the Prosecutor's Office nor the Court issued the

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<sup>7</sup> The Accused Stanko Kojić testified for the second time at the hearing of 17 April 2012.

<sup>8</sup> OI-39 through OI-45.



order to expert witnesses to draft their findings and opinion, nor are claims from their reports directly connected with the facts and circumstances of this case. The Panel explained the reasons for accepting this expert's report in the procedural decisions.

49. Challenging the claims by the expert witnesses, with respect to the establishment of the 10<sup>th</sup> Sabotage Detachment and activities of its members, the Defense hired the defense expert witness in military matters, retired General Slobodan Kosovac<sup>9</sup>. The Panel notes that, in addition to the facts that were subject of the expert analysis, in his findings and opinion, the expert witness<sup>10</sup> made an assessment of the nature of the attack on Srebrenica, 28<sup>th</sup> Division's capacity, legal scope of the Directives issued by the VRS Main Staff, which can eventually be given only by this Trial Panel after a thorough assessment of all the evidence presented, and his findings and opinion were therefore considered relevant only in the part related to the functioning, activities, and establishment of the 10<sup>th</sup> sabotage Detachment, based on the documentary evidence he examined, while his assessment of the evidence given by witnesses in this case was not accepted by the Panel.

50. During the proceedings, the Defense also challenged the report made by Saliha Đuderija<sup>11</sup>, who worked on the drafting of the Law on missing persons and establishment of the institute, and who worked professionally with women victims of war and the representatives of the Association of Missing Persons. This witness spoke as a professional about the consequences of displacement and killing of people of Srebrenica. The Defense objected to her testimony because she does not have the status of an expert witness or a professional witness, in view of the fact that the foregoing topic falls into category of psychology or other fields of science, whereas the witness is a lawyer by vocation.

51. The Defense further claimed that only the Trial Panel can give an assessment of the existence of a "protected group" or an element of the criminal offense of Genocide reflected in the destruction of a "considerable" part of the group, which is why any interpretations of that matter offered by this witness are impermissible. The Defense also objected because the witness, when presenting data, made conclusions only with respect to Srebrenica, and was unable to provide statistics for any other municipality in BiH.

52. The Panel is satisfied that Saliha Đuderija was examined in the capacity of a witness with respect to her work with women-victims of war, but is at the same time satisfied that the witness essentially presented general conclusions, based on the patriarchal cultural heritage of Bosnia and Herzegovina, which, in the opinion of the Panel, may to a great extent apply to several municipalities, not only to the population of

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<sup>9</sup> Expert witness Slobodan Kosovac was examined at the hearing of 21 February 2012, and his expert report was tendered as Defense exhibit no. OII-19.

<sup>10</sup> O2-19 Expert report by Slobodan Kosovac "10<sup>th</sup> Sabotage Detachment of the VRS", 23 January 2012; brochure entitled "Sabotage activities", Petar Drapšin Armored Units Training Centre, 1972.

<sup>11</sup> Witness Saliha Đuderija was examined at the hearing held on 19 April 2011.

Srebrenica. Therefore, the Panel did not make its conclusion on the elements of the offense on the testimony of this witness, and will provide the assessment of evidence that served as a basis for such a conclusion below.

(a) The Accused Stanko Kojić's Medical Status

53. Defense also challenged the findings and opinion of the expert witnesses in medicine, who examined the Accused Stanko Kojić.

54. To wit, the Accused Stanko Kojić's health was analyzed several times during the proceedings.

55. On 22 April 2010, the Court issued an order asking a team of expert witnesses to specify what is the Accused person's ability to participate in the present criminal proceedings. Following the expert analysis, conducted by a team of neuro-psychiatrists, including Doctor Zorica Lazarević, Chief Physician, and Doctor Alma Bravo Mehmedbašić, Ph.D, Assistant Professor, it was established that the Accused does not suffer from any form of a temporary or permanent mental illness, but malingers. The expert witnesses thus concluded that he was capable of participating in the criminal proceedings against him.

56. After that, the Accused several times left the main trial, using headaches that allegedly make it impossible for him to follow the trial as an excuse. Consequently, the Accused Stanko Kojić's Counsel, Attorney Milan Romanić, filed a motion to postpone the trial during the psychiatric evaluation of the Accused, again in reference to his capability to attend trial. The Court decided on the motion and on 13 January 2011 issued an order instructing Doctor Alma Bravo Mehmedbašić, Ph.D, Assistant Professor, who specialized in psychiatry, to examine the Accused persons' medical file in possession of the Court, and to visit the Accused in detention in the Penal and Correctional Facility Kula, in order to examine him, so that his mental fitness to participate in the present criminal proceedings may be determined.

57. Following this Court order, on 14 January 2011, the expert witness went to visit the Accused in the Penal and Correctional Facility Kula, where she had the right to examine the medical file, but was informed by the Commander Radmilo Kovač that the Accused Stanko Kojić did not want to talk to her without his Counsel present.

58. In view of the fact that a complete psychiatric expert evaluation was not possible without an interview with the Accused, the Panel deemed it necessary to issue a new order of 18 January 2011, instructing a team of expert witnesses composed of: Doctor Alma Bravo Mehmedbašić, Ph.D, Assistant Professor, who specialized in psychiatry, and Senadin Fadilpašić, M.A. clinical psychologist, to examine the Accused Stanko Kojić's medical file and visit him in detention in the Penal and Correctional Facility Kula in order to speak with him in the presence of his Counsel.

59. The Accused Stanko Kojić agreed to speak with them pursuant to the foregoing order in the Penal and Correctional Facility Kula. His Counsel was present and, following the interview, on 22 January 2011, the expert witnesses submitted to the Court complete

findings and opinion in which they noted, having examined the medical file and interviewed the Accused, that he did not suffer from any temporary or permanent mental illness, nor was a mentally challenged person. The expert witnesses stood by their earlier conclusion that the Accused consciously feigns a mental illness, according to his own perception, with the aim of avoiding participation in criminal proceedings pending against him at this Court. Therefore, expert witnesses' final conclusion is that the Accused is fit to participate in the present criminal proceedings.

60. The expert witnesses also note in their report that the Accused demonstrates signs of ... (code ...), characterized by ... The Accused demonstrates marked proneness to blame others and to offer plausible rationalizations for the behavior that has brought him into conflict with society and is persistently irritable.

61. In view of the above, the Panel finds it useful to note that facts from the Accused person's personal life, on which he testified, to a major extent match the diagnosis and symptoms of ..., which, according to the medical file, his father had too, and almost identical diagnosis was made by the Center for Mental Health in the Health Care Center in Gradiška on 8 September 2008. According to the findings made in the Centre, psychological exploration showed that the Accused shows indications of border-line organization of personality, which resulted in psychotic decompensation in a stressful situation, and on that occasion, he was diagnosed with ... (...), which corresponds approximately to the diagnose set by the expert witnesses.

62. As the Panel observes, the Accused showed some of the symptoms while in the 10<sup>th</sup> Sabotage Detachment (low tolerance to frustration, low threshold for discharge of aggression), including the lack of guilt (he bragged about the number of people he killed at Branjevo). Therefore, the panel accepts the conclusion by the expert witnesses that the Accused suffers from the above disorder, because it is satisfied that their findings and opinion was made in accordance with the rules of profession, and that the set of symptoms clearly corresponds to the actions of the Accused. This is further supported by the fact that the Accused person's father was diagnosed with the same disorder.

63. After it was established that the Accused Stanko Kojić is mentally and physically capable of participating in the present criminal proceedings, his Counsel, Attorney Milan Romanić, on 16 November 2011 moved for another expert evaluation by expert witnesses (specialized in neuro-psychiatry and psychology), in order to obtain more complete findings on the Accused person's ability to understand the implications of his actions at the time of the offense and to control his actions, or if his ability to understand the implications of his actions and control them was substantially reduced due to a temporary or permanent mental illness or developmental disability.

64. The Court refused the Counsel's motion in the part moving for the establishment of the Accused person's present ability to participate in the proceedings, since that was already subject of expert analysis, once during the investigation and twice during the main trial, and the Panel finds that quite sufficient to reach a conclusion on the Accused person's mental fitness.

65. Pursuant to the order, the expert analysis was done by Professor Ratko Kovačević, Ph.D., Doctor Bogdan Stojaković, neuro-psychiatry specialist, and Professor Doctor Spasenija Čeranić, psychologist. In their findings and opinion,<sup>12</sup> they noted that the Accused suffers from ..., and whose responsibility at the time of the offense was substantially diminished, and in order to eliminate dangerous conduct in the future, the Accused needs to be referred for mandatory psychiatric treatment.

66. In view of the fact that this resulted in two contradictory reports about the Accused Stanko Kojić's health, or rather, his responsibility, on 27 February 2012, the Court issued an order for super-expertise, which was conducted at the Jagomir Clinic by a team of certified expert witnesses: Doctor Omer Čemalović, Chief Physician, neuro-psychiatry specialist, Doctor Senadin Ljubović, Chief Physician, neuro-psychiatry specialist, Doctor Mirjana Musić, psychologist, and Doctor Marija Kaučić-Komšić, neuro-psychiatry specialist.

67. The expert witnesses were supposed to answer the following questions: (1) what was the Accused person's ability to grasp the implications of his actions (judgment skill)<sup>13</sup> and control his actions, (2) is it possible to establish whether at the time of the offense or at present, the Accused had (i) a permanent or temporary mental illness; (ii) temporary mental derangement, or (iii) developmental mental disability and whether due to the above, the Accused needs to be hospitalized, as well as (3) what is the Accused person's current ability to actively participate in the pending criminal proceedings.

68. These expert witnesses were provided with all the previous findings and opinions made by expert witnesses in this case, as well as with all the supporting medical files in the Court's possession, which Defense tendered into evidence. Records from main trials at which the previous expert witnesses explained the findings and opinions they made were also provided, as was the record of the main trial at which the Accused Stanko Kojić was examined in the capacity of a witness.

69. At the hearing of 28 February 2012, Counsel for the Accused contested the Court's order, being of the position that hiring four expert witnesses violated the Accused person's right to a defense, as he was allowed to hire only three expert witnesses. After that, the Panel announced that the particular matter involved super-expertise, and that the expert witnesses' task was to examine comprehensive medical files, clinically observe the Accused Stanko Kojić, and comment on the findings and opinion of other expert witnesses, which is why it was necessary for the super expertise team to be composed of more persons.

70. Following the expert evaluation, two representatives of the expert team, Doctor Omer Čemalović and Doctor Mirjana Musić, explained their findings and opinion<sup>14</sup> at the

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<sup>12</sup> OII-17, findings and opinion of the expert witnesses dated 23 January 2012.

<sup>13</sup> This means the accountability at the time of the offense.

<sup>14</sup> S-3 Findings and opinion by a team of expert witnesses dated 18 March 2012, tendered as Court evidence.

main trial of 27 March 2012. The foregoing expert witnesses, to whom the Panel fully trusts, made their report on the basis of medical files, anamnestic data and clinical impression and testing. When conducting their analysis, the expert witnesses kept in mind the findings and opinion of other expert witnesses. During their presentation, they were clear, consistent and comprehensible when presenting their conclusions. Therefore, the Panel maintains that their findings and opinion were made in accordance with the rules of profession, and accepts their conclusions in full.

71. The expert witnesses' conclusion reached after the evaluation is that the Accused Stanko Kojić does not show authentic psychotic symptoms, nor is he a developmentally disabled person – his intellectual capacity falls into the category of average – his IQ is 82.

72. The expert witnesses are highly confident in their conclusion that the Accused has a number of permanently deformed personality traits in the emotional and behavioral aspects. Basic pathological characteristics of his personality are: emotional immaturity and instability, impulsiveness, suggestibility, lack of compassion, incorrigibility of his unacceptable behavior patterns, inability to learn from his mistakes.

73. The Panel also accepts the conclusion made by the expert witnesses that the Accused consciously feigns a mental illness, but lacks sufficient capacity to do it in a “convincing and less caricature-like way”, and also accepts the expert witnesses' claims that the medical records do not contain a single document from the war that would undoubtedly suggest that the Accused behaved as a mentally unstable person at that time. Thus, it stems clearly from the final verdict No. ..., which the Accused person's Defense submitted to the Court, that the Accused Stanko Kojić was tried as accountable, and that his accountability at the time of the offense was never questioned during those proceedings.

74. According to the testimony of Jugoslav Petrović, the Accused for a while worked in the State Security Service of the Republic of Serbia, therefore, during the war and after the war, nobody noticed that the Accused Kojić is mentally ill, as he claims now, or that he is incapable of carrying out highly risky and demanding assignments. The Accused Stanko Kojić was not incapable of appearing in the capacity of a witness in the proceedings conducted in Belgrade against Jugoslav Petrušić, who was charged with the criminal offense of Espionage, when, according to witness Petrušić, the Accused Stanko Kojić testified about the information he obtained while working in the State Security Service of the Republic of Serbia.

75. While analyzing the Accused person's behavior, the expert witnesses were assured that he, according to his own perception, feigns a mental illness, showing symptoms that do not fit medical ones, that is, his malingering is rather clumsy, which, in the opinion of the expert witnesses, is a result of his limited intellectual capacity. Thus, Doctor Musić says that according to the results of the MMPI Personality Test, this particular case represents a “textbook example of malingering”.

76. In the course of the present proceedings, contrary to the dominant behavior through which he attempted to present himself as a mentally ill person, the Accused often behaved in an utterly reasonable and sober manner, as was the case with parts of his testimony, or when during witness examination he publicly approved of the testimonies to his favor. The Panel therefore believes that the foregoing serves to support the conclusion by the expert witnesses that the Accused simply feigns mental illness, and that he is actually fully aware of the relevance of the proceedings and the gravity of charges against him, and that he is fully capable of active participation in the proceedings.

77. The expert witnesses particularly highlight the fact that for a total of 14 years there had been no information that a psychiatric specialist was consulted in any way. Such a specialist was consulted no sooner than in 2009, when the Accused received a brief treatment at the Psychiatric Clinic in Banja Luka, and after spending 26 days in the Clinic was diagnosed with ..., for which the expert witnesses could not find any grounds in the available medical files, and therefore took the view that the diagnosis is contrary to the rules of psychiatry and forensic practice, primarily because the evaluation period was too short to diagnose such a serious condition. Expert witness Doctor Omer Ćemalović also expressed his doubts about the foregoing diagnosis because of the reasons for which it was made, because the Accused went for examination in order to obtain documents for disability retirement, and it is possible that the doctors were trying to “accommodate him”.

78. If the above is linked with the fact that at the time the Accused ended his engagement in the State Security Service of the Republic of Serbia, changed his identity after getting married, and decided to continue living in Bosanska Gradiška, where he would retire, the foregoing conclusion by the expert witness makes even more sense.

79. This way, in the view of the Panel, the expert witnesses managed to challenge the evidence<sup>15</sup> presented by the Defense attempting to prove that the Accused was diagnosed with a mental illness long before the period covered by the Indictment.

80. The Court refused the motion made by Counsel Romanić to conduct another expert evaluation in one of the medical institutions, as it was satisfied that the super expertise was done in accordance with the rules of profession, objectively and impartially, and that it provided answers to all the outstanding questions and comments about the findings made by other expert witnesses; so it deemed another expert evaluation to be unnecessary.

(b) The Accused person’s behavior before the relevant period

81. Numerous witnesses were examined with respect to the Accused person’s behavior during the incriminated period. Thus, witness Dragan Todorović<sup>16</sup>, who knew

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<sup>15</sup> List and classification of illnesses, Certificate issued by the Federal Ministry of Veterans of the Defensive-Liberation War, stating that the Accused was found to be unfit to serve the army.

members of the Detachment well, remembers the Accused Stanko Kojić being always mentally unstable and unpredictable, and he heard that he had had conflicts with other members of the Detachment, that is, *“that they shot each other in Bijeljina. That’s when Erdemović got shot and ended up hospitalized in the VMA”* /Translator’s note: Military-Medical Academy in Belgrade/. Witness Zijad Žigić claims that the Accused Stanko Kojić was *“fit, but acted strangely, and the major reason behind such behavior was his brother’s killing. People who knew him before that could not recognize Savanović after that. I noticed on a couple of occasions that he took medicines, he would stand in front of a mirror, draw his pistol close and watch himself, he used to use a pet name for himself, he was not all there.”*

82. To the member of the Detachment, defense witness Dalibor Đukić, the Accused Kojić at the time appeared *“foolish... more like not taking things seriously”*, but he simultaneously claims that physical fitness was the most important thing in the unit, and the Accused Kojić, according to other witnesses, clearly was fit. This was corroborated by defense witness Srđan Brezo<sup>17</sup>, another member of the Detachment, who said: *“He was extremely fit”*. This witness, just like other members of the Detachment, is clearly making an effort to present the Accused as a professional and a responsible person, who is at the same time *“very strange”*, which is why other members of the unit avoided him.

83. The Panel finds that the foregoing witnesses, as former fellow soldiers and colleagues of the Accused, testified in such a manner so as to support the defense’s theory that at the time of the offense, Stanko Kojić was mentally ill, and could not understand the implications of his actions, or their consequences. However, the Panel could not give them credence in that part, particularly if those witnesses themselves are prone to *“adapting”* the testimonies to the benefit of the Accused. It was thus assessed that witness Zijad Žigić is a person clearly prone to adapting his behavior to new situations, and changing his affiliation to one of the *“parties in the conflict”*, and illicit activities – transferring people for money (which is why he was detained by the military police together with Kos), which to a great extent illustrates a person’s character, and thus his credibility as a witness.

84. Even such a witness, who made an effort to present the Accused as being unable to cope, said: *“When he stays on duty in the barracks, when you put him to stand there, not even general Mladić could enter the premises. He carried each order as none of us did. He was never disciplined. He dressed strictly according to the rules, sometimes he shaved twice, he was like Tito’s soldier.”* Although this seems overstated and unusual, it cannot be deemed as a negative trait in a soldier, nor is witness Žigić attempting to present it in that way, because later on he says: *“There was some training, ‘Geza’ did not listen to that... he wasn’t interested.”* When asked by the Defense if he was capable of understanding the importance of such lectures, the witness confirmed.

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<sup>16</sup> Witness Dragan Todorović testified at the trial of 14 June 2011.

<sup>17</sup> Defense witness Srđan Brezo testified at the trial held on 16 December 2011. Record of a statement he gave in the office of Attorney Milan Romanić was tendered into evidence as defense exhibit OII-4.

85. Eagerness in carrying our orders, more specifically when the Accused Kojić stood guard, was confirmed by witness Brezo, who said: *“I felt safe when Stanko stood guard, no one without a pass could pass through. He was like... all proper.”* He also confirmed that witness Žigić attempted to train the Accused Stanko Kojić to work with explosives, but failed.

86. Witness Sara Manojlović, who worked as a cook in the Detachment, claims that she rarely saw Stanko but generally, *“he wasn’t a bad man, there was nothing strange about his conduct.”*

87. The Accused was in the same way perceived by the Detachment member, witness Velimir Popović, who claims: *“He was a model soldier, he loved jogging, he could bear physical conditioning, he was good. He was serious, those he loved he really loved, he was kind of... he kept to himself.”*

88. In any case, the expert witnesses had in mind all those things that were considered to be “weird” in the Accused person’s conduct at the time when rendering their final opinion on his medical status.

89. In view of the expert witnesses’ findings and opinion, and the fact that the Accused Stanko Kojić underwent training and ultimately became a member of the “elite sabotage unit”, as referred to by witnesses Petar Salapura and Dalibor Đukić, the Panel inferred that at the time of the offense and the time of proceedings before this Court, he was fully fit.

90. In view of the numerous expert analyses conducted in these proceedings, we need to highlight that none of those was unconditionally binding for the Panel in reaching its final decision, nor was the opinion of the expert witnesses accepted if it proved to be utterly opposite to the facts established during the evidentiary proceedings.

91. Finally, in these criminal proceedings, the Accused Franc Kos and Stanko Kojić were examined in the capacity of witnesses, and the Panel considered their testimony in the context of other evidence presented, as well as the statement of admission of guilt by Vlastimir Golijan.

92. The Accused Zoran Goronja used his right to remain silent, which he exercises pursuant to Article 6(3) of the CPC of BiH<sup>18</sup> and Article 6 of the European Convention on Human Rights<sup>19</sup> pursuant to which none of the accused are under obligation to testify

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<sup>18</sup> Article 6(3) of the CPC of BiH reads that “accused shall not be bound to present his defense or to answer questions posed to him.”

<sup>19</sup> Although not specifically mentioned in Article 6 of the European Convention on Human Rights, the European Court of Human Rights is of the view that the right to remain silent and the right to not self-incriminate represent generally recognized international standards which are the key to the principle of fair trial pursuant to Article 6(1) of the Convention. These rights are closely linked with the principle based on Article 6(2), that a person accused of a crime is innocent unless proved guilty under the law. See *Saunders v. United Kingdom* (Application 19187/91), Judgment of 17 December 1996 (1997); *R. v Director of the Serious Frauds Office, ex parte Smith*, 3 *WLR* 66 (1992).



against themselves. The Panel finds it necessary to emphasize that no negative conclusions were drawn from that fact.

### C. INDIRECT EVIDENCE

93. Bosnia and Herzegovina legislation has adopted the principle of free assessment of evidence, which prescribes that the assessment of evidence is not limited by rules defined in advance. The Panel has the duty to conscientiously assess each piece of evidence individually and in relation to other evidence, and on the basis of that reach a conclusion whether a fact was proved or not. The Panel's task is to truthfully and completely establish both the inculpatory and the exculpatory facts. In other words, the standard that applies when establishing the facts, is to determine if an objective court deciding on facts would reach that conclusion beyond a reasonable doubt.

94. In accordance with the principle of free assessment of evidence, during the main trial, relevant facts can be established through direct and indirect evidence, that is, circumstantial evidence. Direct evidence is the evidence that directly establishes a disputed fact. Indirect evidence is used to establish the truthfulness of a disputed fact through other facts. The Panel established certain relevant facts from the Indictment on the basis of indirect evidence – circumstantial evidence. In this case, there is ample evidence indicating that certain circumstances, taken together, indicate the existence of specific facts. The conclusion reached on the basis of such evidence must be the only possible reasonable conclusion.

95. In the court jurisprudence, there exists a rule to prove things using circumstantial evidence in such a way that circumstantial evidence must appear as a firm, closed circle that allows only one justified conclusion with respect to the relevant fact, and objectively eliminates the possibility of any other conclusion with respect to the fact at hand. In view of this position, it has been taken that the ground for a convicting verdict may represent only such a string of facts established on the basis of indirect evidence beyond any doubt and mutually logically and firmly connected so that they represent a closed circle and with absolute certainty indicate that only one conclusion is possible – that it is exactly the Accused who committed the criminal offense he has been charged with under the Indictment, and that the evidence tendered eliminate any other possibility.<sup>20</sup>

96. The Constitutional Court of Bosnia and Herzegovina took the position that establishing facts on the basis of circumstantial evidence is not in contravention of the principle of fair trial stipulated by Article 6(1) of the European Convention on Human Rights.<sup>21</sup>

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<sup>20</sup> Commentary on the Criminal Procedure Code of BiH, Council of Ministers and the European Commission, 2005, Article 281, 9. 716.

<sup>21</sup> *Senada Hasića*, AP 5/05 (the Constitutional Court of BiH), 2006, Para. 31.

#### **D. APPLICATION OF SUBSTANTIVE LAW**

97. With respect to the application of substantive law, the Panel finds it useful to explain the reasons for which there is no room to apply the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC of SFRY), which was in force at the time of the relevant events described in the operative part of the Verdict.

98. To wit, Crimes against Humanity is an offense that was not prescribed by the CC of SFRY, which was adopted as the law of the Republic of BiH pursuant to the Decree Law of 22 May 1992, and entered into force on the day of publishing.

99. However, the Criminal Code of Bosnia and Herzegovina (CC of BiH), which entered into force on 1 March 2003, prescribes Crimes against Humanity in Article 172 as a criminal offense carrying a term of imprisonment of at least 10 years or a long-term imprisonment.

100. Considering the time of the offenses (July 1995) and the substantive law that was in force at the time, the Court maintains that it is important to pay attention to the principle of legality (*nullum crimen sine lege* and *nulla poena sine lege*) and the principle of time constraints regarding applicability of a criminal code.

101. Thus, Article 3 of the CC of BiH prescribes the principle of legality, which stipulates that the criminal offenses and criminal sanctions shall be prescribed only by law, and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which a punishment has not been prescribed by law. In addition, Article 4 of the Criminal Code of BiH (Time constraints regarding applicability) prescribes that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense, and if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

102. Pursuant to Article 2.2. of the Constitution of BiH, the European Convention for the Protection of Human Rights supersedes all laws of BiH, whereas Article 7(1) of the European Convention also prescribes the principle of legality. However, the foregoing provision of the European Convention prescribes the general principle forbidding the pronouncement of a sentence more stringent than the one prescribed at the time of the offense, but does not prescribe the application of the most lenient law.

103. Also, this issue was covered by Article 4a of the CC of BiH, which prescribes that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, "was criminal according to the general principles of international law".

104. The same exception is stipulated by Article 7(2) of the European Convention, when it reads that Paragraph 1 of that Article "... shall not prejudice the trial and

punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.”<sup>22</sup>

105. To wit, the foregoing provision is relevant because it gives the possibility to depart from the principles contained in Article 3 and 4 of the CC of BiH (and Article 7(1) of the European Convention), and from the application of the criminal code that was in effect at the time of the offense.

106. The Court points out that the criminal offense of which the Accused were found guilty represents a criminal offense under customary international law and therefore falls under the standard of “general principles of international law” prescribed by Article 4a of the Law on Amendments to the CC of BiH and the “general principles of law recognized by civilized nations” prescribed by Article 7(2) of the European Convention, and therefore, the CC of BiH may apply in the case at hand.

107. These treaties (the European Convention and the International Covenant) are binding on BiH, whereas Article 4a of the CC of BiH codifies this principle.

108. Following the above, it has to be noted that at the time when the criminal offenses were committed, Bosnia and Herzegovina, as a successor of the state of SFRY, was a signatory to all relevant international conventions on human rights and international humanitarian law.

109. Under the universal jurisdiction principle, customary international humanitarian law is binding on every country in the world, no matter if it ratified the relevant international legal instruments or not, so that every state is obliged to prosecute or extradite (*aut dedere aut judicare*) all persons suspected of violations of customary international humanitarian law. Any limitations imposed by a state in relation to the extradition of a person charged with violations of customary international humanitarian law, constitutes the violation of international obligations of the state in question.

110. Therefore, no matter if they are observed from the aspect of customary international law, international treaty law or the “principle of international law”, it is indisputable that war crimes, including crimes against humanity, represented a criminal offense during the relevant period, that is, the principle of legality was satisfied.

111. Hence, the Court maintains that application of Article 172 of the CC of BiH does not constitute the violation of the right to ban retroactive application of the criminal code.

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<sup>22</sup> See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights, ratified by the state of Bosnia and Herzegovina; it contains similar provisions.

112. In the above context, it needs to be noted that on 10 April 2012, the Chamber of the European Court of Human Rights in Strasbourg decided on the Application of the convicted *Boban Šimšić*, rejecting it as ungrounded.

113. The foregoing decision reads:

*The Court observes that the present applicant was convicted in 2007 of persecution as a crime against humanity with regard to acts which had taken place in 1992. While the impugned acts had not constituted a crime against humanity under domestic law until the entry into force of the 2003 Criminal Code, it is evident from the documents cited in paragraph 8-13 above that the impugned acts constituted, at the time when they were committed, a crime against humanity under international law. In that regard, it is noted that all the constituent elements of a crime against humanity were satisfied in this case: the impugned acts were committed within the context of a widespread and systematic attack targeting a civilian population and the applicant was aware of that attack (contrast *Korbely*, cited above, §§ 83-85).*

*1. The applicant argued that he could not have foreseen that his acts could have constituted a crime against humanity under international law. It is noted, however, that the applicant committed those acts as a police officer. The Court has held that persons carrying on a professional activity must proceed with a high degree of caution when pursuing their occupation and can be expected to take special care in assessing the risks that such activity entails (see *Kononov*, cited above, § 235). Furthermore, having in mind the flagrantly unlawful nature of his acts, which included murders and torture of Bosniacs within the context of a widespread and systematic attack against the Bosniac civilian population of the Višegrad Municipality, even the most cursory reflection by the applicant would have indicated that they risked constituting a crime against humanity for which he could be held criminally accountable.*

*2. The Court concludes that the applicant's acts, at the time when they were committed, constituted an offense defined with sufficient accessibility and foreseeability by international law.*

*This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.*

114. In view of the fact that the Accused were found guilty of the criminal offense of Crimes against Humanity in violation of Article 172 of the CC of BiH, in the next part of the Verdict, the Panel will explain the evidence on the basis of which it found that actions of the Accused satisfied the elements of the criminal offense of which they were found guilty.

## **II. CRIMES AGAINST HUMANITY**

Following the evidentiary proceedings, the Court found the Accused responsible for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with Subparagraph (a), all in conjunction with Article 29 of the CC of BiH.

115. The relevant part of the foregoing legal provision reads:

Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

**a) Depriving another person of his life (murder);**

**h) Persecutions** against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offense listed in this paragraph of this Code, any offense listed in this Code or any offense falling under the competence of the Court of Bosnia and Herzegovina;

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

116. In its further presentation, the Panel will explain its conclusion concerning the presence of chapeau elements that need to be satisfied so that the criminal offense of Crimes against Humanity in violation of Article 172 of the CC of BiH would exist. Their presence was established by a thorough analysis of the evidence tendered.

117. The following chapeau elements of the criminal offense of Crimes against Humanity in violation of Article 172 (1) of the CC of BiH follow from the legal definition of the criminal offense at hand in relation to the acts of perpetration outlined in the operative part of the verdict, of which the accused were found guilty:

- existence of a widespread or systematic attack,
- that the attack was directed against any civilian population,
- that the Accused knew of such attack, and
- that the act of the Accused represented part of such attack,

#### **A. CIRCUMSTANCES PRECEDING THE ATTACK**

118. In this part, the Panel provides a brief overview of the period preceding the attack on the Srebrenica Safe Area, since the key events in the case at hand took place between March and November 1995.

119. As stated in the facts accepted by this Panel, President of Republika Srpska (RS), Radovan Karadžić, as early as March, reacting to the pressure from the international community to end the war and the ongoing efforts to negotiate a peace agreement,

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issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as "Directive No. 7"<sup>23</sup>, specified that the VRS was to complete the physical separation of Srebrenica from Žepa, preventing even communication between individuals in the two enclaves. By daily planned and well-thought out combat operations, an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica was to be created.

120. Just as stipulated by the Directive, by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic, while the VRS Main Staff subsequently, on 31 March 1995, issued the Directive No. 7.1, signed by General Mladić. The Directive 7.1.<sup>24</sup>, issued "on the basis of Directive No. 7", instructed the Drina Corps to, among other things, conduct "active combat operations...around the enclaves".

121. Miroslav Deronjić<sup>25</sup>, Radovan Karadžić's Commissioner for Srebrenica, stated that in the spring of 1995 (probably in May), he had met Karadžić in Zvornik. Karadžić told him: "*Miroslav, military operations will soon begin in Srebrenica. I can't tell you any details and please don't tell anyone about this, but take the necessary steps when you return, that is, activities you deem necessary in Bratunac.*" Witness Deronjić then made the preparations in Bratunac, which also included attempts to obtain fuel reserves, as well as food reserves, particularly dry rations, and he also said that in the latter half of June 1995, he had observed *more intense activities* in Bratunac.

122. Acting on the Directive, Bosnian Serb forces took the Echo observation post in the southeast corner of the enclave on 31 May 1995. In response to this act of aggression, a group of Bosniaks suddenly attacked the nearby Serb village of Višnjica in the early morning of 26 June 1995. After that, the then Drina Corps Commander, General-Major Milenko Živanović, on 2 July 1995 signed two commands outlining the plan of attack on the enclave and ordering various units in the Drina Corps to enter into a state of combat readiness. The operation was given code name "Krivaja 95"<sup>26</sup>. The VRS offensive on Srebrenica officially began on 6 July 1995.<sup>27</sup>

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<sup>23</sup> Established fact No. 1 in the Panel's Decision of 12 January 2011.

<sup>24</sup> Established facts No. 2 and 3 in the Panel's Decision of 12 January 2011.

<sup>25</sup> T- 76 Transcripts of Miroslav Deronjić's evidence in the Momir Nikolić case of 28 October 2003..

<sup>26</sup> Established fact No. 5 in the Panel's Decision of 12 January 2011.

<sup>27</sup> Established fact No. 1 in the Panel's Decision of 12 January 2011.

## B. ATTACK ON SREBRENICA

123. As the following explanation will show, and as concluded by numerous ICTY Chambers, as well as the Trial Panel in the Milorad Trbić case at this Court, in 1995, Srebrenica was geostrategically very important to both conflicting parties. Srebrenica (and the surrounding Central Podrinje area) was of huge strategic importance for the Bosnian Serb leadership. Without Srebrenica, the ethnically cleansed Serb state of Republika Srpska that they wanted to create would remain divided in two separate parts, its connection with the Serbian territory would be broken.

124. Taking and ethnically cleansing Srebrenica would therefore seriously endanger the military efforts of the Army of BiH to ensure the viability of the state, as well as the survival of the Bosnian Muslims.<sup>28</sup>

125. It was a well publicized fact that the Bosnian-Serb leadership envisioned an ethnically pure Serb state of its own. On 25 February 1992, Radovan Karadžić addressed the Bosnian Serb Assembly:

“The aspirations of the Serbian people are very strong and the Serbian People will not rest until they have attained what they had during the time of the Nemanjićs: their own state.”<sup>29</sup>

126. Thus, the territory envisioned for the new Serb state included villages and towns where the majority of the population was not ethnically Serb. A few months later, the President of the RS National Assembly issued the Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina, in which the first stated goal of the RS was to “*establish State borders separating the Serbian people from the other two ethnic communities.*”<sup>30</sup>

127. The VRS intentions were known as early as in 1992. Directive No. 4 of 19 November 1992<sup>31</sup>, specifies the Drina Corps’s task: to unblock the Milići-Konjević Polje-Zvornik road and put it into function and be ready for intensive fighting against paramilitary and other infiltrated groups, force the Muslim population to leave the area of

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<sup>28</sup> Paragraph 786 of the first-instance verdict in the Milorad Trbić case, ref.no. X-KR-07/386 of 16 October 2009 reads: “Strategically, the Muslim population of Srebrenica was an obstacle to the establishment of a contiguous, ethnically pure Bosnian Serb state with protected lines of communication and movement. Conversely, for the larger Muslim population, control of Srebrenica and the safety of the Muslim population there was absolutely imperative to prevent the political fragmentation of Bosnia and Herzegovina as a central state within its internationally recognized borders, which in turn was crucial for the protection of the Muslim population.”

<sup>29</sup> Exhibit T-22 8<sup>th</sup> Session of the Assembly of Bosnian Serbs, p. 17. Such concept was reiterated at all sessions of the Assembly of Bosnian Serbs and RS. See also Krajišnik’s words on page 64: “*We have the opportunity to preserve the Serbian people in a single state, to preserve the entire Serbian people in Bosnia and Herzegovina and have it become part of the Serbian Empire.*”

<sup>30</sup> Official Gazette of RS, volume II, No. 22, Article 386, Decision on the Strategic Objectives of the Serbian People in Bosnia and Herzegovina, 12 May 1992.

<sup>31</sup> T-24.

Birač, Žepa, and Goražde, order to destroy able-bodied and armed men if they do not agree to disarmament.

128. In early 1995, the political and military leadership of Republika Srpska became aware that the RS must either end the conflict using military, or prepare the terrain for an agreed solution, because there were indications that the Army of BiH and the HVO were preparing an offensive operation against the RS. Butler's report describes how by January 1995, the RS government had already made the decision to put pressure on the Safe Areas, which included imposing limitations on the movement of UN forces in Eastern Bosnia, particularly convoys that transported supplies to the three Safe Areas. Restrictions in the amount of fuel, ammunition and food that could be sent to the UN forces seriously impaired their ability to efficiently monitor activities in the Safe Areas.

129. Srebrenica was in the area of the VRS Drina Corps, which was under the command of General Milenko Živanović until 13 July 1995, and under the command of General Radislav Krstić as of 13 July 1995. The Zvornik and Bratunac Brigades were part of the Drina Corps. The United Nations were constantly present in the enclave, their mission being the maintenance of peace (UNPROFOR), and were located in their base in Potočari, where Dutch soldiers were stationed (the Dutch Battalion). They also had several observation posts in other locations in the enclave. There were also military observers (UN Military Observers), who were stationed in the enclave and operated through their separate chain of command.<sup>32</sup> The UN Military Observers' chain of command implied sending reports to the headquarters in Zagreb. The UN Military Observers were part of UNPROFOR, but had different assignments. Colonel Joseph Kingori was stationed in the UN Military Observers Headquarters in Srebrenica between early April 1995 and 11 July 1995, as one of (only) three officers, UN military observers, whose task was to oversee the observing of ceasefire, as well as to monitor and evaluate the capabilities of the warring parties. They held weekly meetings with representatives of the VRS and the Army of BiH.

130. As established in the ICTY judgments and the final verdict of this Court in the Milorad Trbić case, the VRS attack on Srebrenica was launched on 6 July 1995. Butler's report also states that the attack on Srebrenica began in the early morning that day, by fire being opened on the positions of the 28<sup>th</sup> Division at 4:30 AM.

131. Witness Joseph Kingori in his evidence confirmed that he had been woken by shells early in the morning that day, and that by 18:00 hrs, around 250 shells had landed in and around Srebrenica. There were killed and wounded people in the town, who were taken to the hospital. Many prosecution witnesses who were in Srebrenica at the time described in their evidence that the shells had been coming in from all sides, that is, that the shelling lasted until 11 July 1995.

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<sup>32</sup> T -75 Witness Joseph Kingori's evidence in the Krstić case dated 31 March and 3 April 2000.



132. Witness Van Duijn<sup>33</sup> said:

"We saw the shelling of the town of Srebrenica and like I said, there was a change every 30 to 45 minutes. There would be silence of five to ten minutes, and then the shelling of our-our own location would start. And then there would be shelling lasting for that same time, and then there would be a change and they would shell the town. I could see that from my location, the shelling, the houses being hit, and houses being blown up, that is – after that, the detonations and smoke from the houses as a result of the detonations and the shelling."

133. In the days that followed, five UNPROFOR observation posts fell during the conflict with the VRS that was advancing towards the town. Butler's report also covers the fall of the UNPROFOR observation posts. The Army of the Republic of BiH's defense forces were at the same time pushed towards the town, whereas the UN military observers got the impression, on the basis of the targets hit, that the VRS attack was aimed at causing maximum civilian casualties.<sup>34</sup>

134. The VRS activities continued through to 9 July 1995. That day, President Karadžić issued a new order, giving green light for the seizure of Srebrenica.<sup>35</sup> The situation soon became critical for the civilian and military leadership of Srebrenica. By evening that day, the VRS Drina Corps had pressed four kilometers deep into the enclave, halting just one kilometer short of Srebrenica town.<sup>36</sup>

135. In the early morning hours of 10 July, the VRS forces continued advancing towards Srebrenica, which also included advancing towards the UNPROFOR positions, more specifically, the Bravo Company, which was the only significant unit between Srebrenica and the VRS forces. Colonel Karremans sent urgent requests for NATO air support to defend the town, but no help arrived by the afternoon of 11 July.

136. Butler's report also mentions the VRS forces pushing the Dutch Battalion forces back towards the town. It outlines that the 10<sup>th</sup> Sabotage Detachment arrived at the southern access to Srebrenica, and after the southern defense line started failing, around 4000 individuals – Bosnian Muslims who lived in the nearby Swedish Refugee Complex, fled to the town of Srebrenica.<sup>37</sup>

137. It follows from the evidence by numerous witnesses, as well as the documentary evidence, that the tactical shelling in and around Srebrenica forced the population to move towards the town of Srebrenica out of fear of uncertainty, knowing that they would seek refuge in the UNPROFOR quarters in the PTT building.<sup>38</sup>

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<sup>33</sup> T-79

<sup>34</sup> Witness Joseph Kingori (evidence adduced by the Decision of the Panel of 26 August 2010).

<sup>35</sup> Established fact No. 6 in the Panel's Decision of 12 January 2011.

<sup>36</sup> Established fact No. 7 in the Panel's Decision of 12 January 2011.

<sup>37</sup> Established fact No. 11 in the Panel's Decision of 12 January 2011.

<sup>38</sup> Witness Joseph Kingori (evidence adduced by the Decision of the Panel of 26 August 2010).

138. Facts accepted in the ICTY proceedings and the final verdict in the Trbić case established that this attack affected 40 000 people living in the Srebrenica enclave at the time.

139. There were approximately 40,000 Bosnian Muslims in Srebrenica prior to its seizure by the VRS forces in 1995. This number did not only include the Muslim population of the Srebrenica Municipality, but also many Muslim refugees from the encircled area. Due to the fact that majority Muslim population in the region sought refuge in the Srebrenica enclave by 1995, the elimination of the enclave would have achieved the goal of cleansing the entire area of its Muslim population.

140. The initiated attack continued on 11 July, that is, that same day around 14:30. At that time, NATO was bombarding the VRS tanks advancing towards the town, however, further activities in that respect ceased because the VRS threatened to kill the Dutch troops that were in captivity and shell the UN base in Potočari, where there were over twenty thousand civilians.<sup>39</sup>

141. As the situation in Srebrenica was progressively worsening, the population of the Srebrenica enclave, fearing its further destiny, set out towards the Dutch Battalion base in Potočari, seeking protection<sup>40</sup>, and by the evening of that same day, around twenty to twenty five thousand refugees gathered in Potočari.<sup>41</sup>

142. At the same time, as early as the night of 10 July, men started gathering in the territory of the villages of Šušnjari and Jagličići with parts of the 28<sup>th</sup> Division. Between 10,000 and 15,000 men, civilians and soldiers, formed a column in order to reach the territory controlled by the Army of the Republic of BiH. Around midnight of 11 July, the column set out along the Konjević Polje-Bratunac route. Around one third of the column was composed of the soldiers of the 28<sup>th</sup> Division, while approximately two thirds were composed of civilian men, Bosnian Muslims from Srebrenica.<sup>42</sup>

143. On 11 July 1995, the VRS forces entered the town of Srebrenica, which was deserted at that moment.<sup>43</sup> Late in the afternoon of 11 July, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town.<sup>44</sup>

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<sup>39</sup> Established fact No. 17 in the Panel's Decision of 1 July 2010.

<sup>40</sup> Established fact No. 25 in the Panel's Decision of 1 July 2010.

<sup>41</sup> Established fact No. 26 in the Panel's Decision of 1 July 2010, T-1 (Srebrenica trial video).

<sup>42</sup> T-81 (Butler's report), T-1 (Srebrenica trial video), Established facts No. 18, 20 and 21 in the Panel's Decision of 1 July 2010.

<sup>43</sup> T-1 (Srebrenica trial video).

<sup>44</sup> Established fact No. 9 in the Panel's Decision of 12 January 2011.

## **1. Nature of the attack**

144. When considering the nature of the attack on Srebrenica by the VRS armed forces, the Panel concluded that it was widespread and systematic, and was directed against the civilian Bosniak population.

145. A widespread attack is defined in the sense that a crime can be widespread or committed on a large scale “by the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”<sup>45</sup> A systematic attack is defined in the sense that it represents “patterns of crimes – that is, the non-accidental repetition of similar criminal conduct on a regular basis”<sup>46</sup>

## **2. Events between 12 and 14 July 1995 and participation of the Accused in the widespread and systematic attack on Srebrenica**

146. In view of the fact that members of the Detachment did not participate in the forcible transfer of civilians and separation of men in Potočari, or in their capturing during the 28<sup>th</sup> Division’s march towards Tuzla, the Panel dealt with those issues only in the context of their knowledge of those events, because that knowledge is in close connection with their mens rea at the time of executions at the Branjevo farm.

### **(a) First attack by members of the 10<sup>th</sup> Sabotage Detachment on Srebrenica town**

147. According to the evidence presented, members of the Detachment first entered Srebrenica on 23 June 1995<sup>47</sup>. In the course of the proceedings, the attack was presented as one of the “classic” sabotage operations, however, the following facts contest such explanation by the Defense, and simultaneously lead to a conclusion that the goal of the initial attack on Srebrenica was to intimidate the civilians, which also implied the possibility of causing casualties among civilians, which is what the Accused Franc Kos himself confirmed during the cross examination at the main trial.

148. The Accused Franc Kos, when giving evidence in the capacity of a witness, confirmed that he had participated in that operation, and that they had entered Srebrenica through the Sase Mine during the night.<sup>48</sup> They had fired several projectiles from a Zolja hand-held rocket launcher, fired from automatic rifles and retreated<sup>49</sup>. They had fired towards the town.<sup>50</sup> They hadn’t known what they were shooting at because it

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<sup>45</sup> Prosecutor vs. Kordić and Čerkez, No. IT-95-14/2-T, Judgment of 26 February 2001 (*Kordić and Čerkez* trial judgment) Para. 179.

<sup>46</sup> Prosecutor vs. Kunarac et al, No. IT-96-23/1-A, Judgment of 12 June 2002, Para. 94 (*Kunarac et al* appeals judgment).

<sup>47</sup> Witness Petar Salapura, who actually issued the order, confirmed that the attack was carried out on 23 June 1995, evidence given at the main trial held on 13 May 2011.

<sup>48</sup> This was also confirmed by the expert witness Slobodan Kosovac at the main trial held on 21 February 2012.

<sup>49</sup> Witness Z-1; defense witness Srđan Brezo, main trial held on 16 December 2011; Franc Kos.

<sup>50</sup> Witness Z-1, evidence given at the main trial held on 16 August 2011.

was night time, around 4 AM, and it was very foggy<sup>51</sup>. Protection of civilians was not an imperative, which follows from Salapura's order, which in one part reads "*avoid causing casualties among women and children*", while at the same time, UNPROFOR members were "*not to be endangered*".

149. The Accused Stanko Kojić said that at the time he fired his entire combat set into the air.

150. Witness Z-1, in the part of his testimony to which the Court gives credence, explains that the aim of the operation was to intimidate the population of Srebrenica, to create chaos so that the attack on the town could be launched. His testimony is corroborated by a document drafted by Commander Pelemiš about the operations of the 10<sup>th</sup> Sabotage Detachment among other things, in which the following text was added in pencil: "*Srebrenica tunnel, surprise attack June 1995 – entering the town and causing panic and chaos: - all members of the Detachment participated: - operation documented in the VRS General Staff*".<sup>52</sup>

151. On 30 June 1995, Command of the 28<sup>th</sup> Division of the Army of BiH sent a weekly report to the 2<sup>nd</sup> Corps of the Army of BiH,<sup>53</sup> which reads that "*in the early morning hours on 24 June, the aggressor infiltrated several groups whose task was to commit a sabotage.*" It is further said that they entered through the Sase Mine around 2:30 AM, divided into two groups. The first group entered the settlement of Vidikovac and fired 9 projectiles from the Zolja hand-held rocket launcher, and opened fire from infantry weapons. The attack lasted for 10 minutes and resulted in the death of one woman, and the wounding of a civilian and a child.

152. The second group came within 300 metres from the hospital and fired a projectile from the Zolja hand-held rocket launcher, which hit the neighboring building. Witness Petar Salapura confirmed that they had received an UNPROFOR report also saying that a woman and an old man were killed.

153. After the attack and opening fire on the town, evidently non-discriminately, without differentiating between military and civilian targets, which the Accused, as commandos, had to bear in mind, the Detachment pulled out of Srebrenica.

(b) Second attack by members of the Detachment on Srebrenica town

154. On 10 July 1995, a written order was issued<sup>54</sup> to the unit to march on the Bijeljina-Vlasenica-Bratunac route. The unit would march by bus, and the vehicle commander was the Second Lieutenant Franc Kos. Members of the Detachment who would participate in the march were identified (a total of 26 of them). The order was issued by Commander Milorad Pelemiš.

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<sup>51</sup> Petar Salapura, page 20 of the transcript.

<sup>52</sup> Exhibit O-I-38.

<sup>53</sup> Exhibit O-I-13, strictly confidential No. 04-113/95

<sup>54</sup> T-36, order by the command of the 10<sup>th</sup> Sabotage Detachment, strictly confidential No. 123-2/93.

155. Members of both platoons of the 10<sup>th</sup> Sabotage Detachment gathered in Dragaševac, where Pelemiš told them that their assignment was to attack Srebrenica on 10 July 1995. Thus, during the night, they arrived at a hill above Srebrenica, where they spent the night, and, at dawn, Pelemiš issued the order to attack.

156. At that time, members of the unit knew that other VRS units were also participating in the attack<sup>55</sup> and that “*there shouldn’t be any major resistance*”. It was just as their commander had told them; they entered Srebrenica from the direction of Zeleni Jadar without meeting any resistance along the way. Those who participated in the operation, among others, were: Franc Kos, Zoran Goronja, Stanko Kojić, Vlastimir Golijan, Z-1, Dražen Erdemović, Dragan Todorović, Zoran Obrenović, Velimir Popović, Brano Gojković, Luka Jokić.

157. Before entering town, Commander Pelemiš lined up the entire unit, divided it into two groups, and told them their assignments. Members of the Detachment set up a checkpoint at the south side of the town. When entering the town, members of the Detachment knew, because Pelemiš was informed about it on his hand-held radio, that Srebrenica was seized, and that the civilian population was heading towards Potočari. One group went to search the houses, and whomever they found they had to instruct to go towards Potočari, where the collection center was.<sup>56</sup> Erdemović testified that members of the Detachment, himself including, called people to come out of their houses, and that around 200 civilians gathered thereafter.

158. In his statement in the capacity of a suspect, Franc Kos<sup>57</sup> said that Milorad Pelemiš, Aleksandar Cvetković, Cico and the group from the other platoon had had trailer-trucks and trucks prepared for the looting of the town, on the basis of which he concluded that that was planned in advance.

159. To wit, members of the 10<sup>th</sup> Sabotage Detachment, at the outset of the operation passed through the abandoned UN checkpoint and drove uphill until they reached a position above the Srebrenica town. This location was better defined by witness Dragan Todorović, who described that the Detachment members lined up at Pribičevac. They arrived there around midnight, while Pelemiš arrived in a Golf car soon thereafter, and informed them that on 11 July, in the morning hours, they would participate in an attack on Srebrenica. There were people from other units there too, specifically, from the Drina Wolves unit, who were attached to the 10<sup>th</sup> Sabotage Detachment under Pelemiš’s command for this operation, but nevertheless maintained contact with their commander “Legenda”. Some of the Detachment members wore black combat uniforms, while some wore camouflage uniforms, and on that particular occasion used passwords and numbers for mutual communication. Witness Erdemović described the details of entering the town:

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<sup>55</sup> Witness Z-1; witness Dragan Todorović, evidence given at the main trial held on 14 June 2011.

<sup>56</sup> Dragan Todorović, evidence given at the main trial held on 14 June 2011.

<sup>57</sup> T-82, p. 16.

„Before the operation, Pelemiš told us that we could expect strong resistance, and emphasized that during the attack we were not allowed to shoot at the civilians, and that if we came across any, to direct them to the football stadium. We were the first unit to enter the town and we met no resistance at all. We reached the first mosque and at that moment, some NATO airplanes bombarded a target south of Srebrenica, and after that news came in that a tank was destroyed, as well as the vehicle of the Drina Wolves commander. Pelemiš told us over the radio to make fires to mark our position, and we did. I set a haystack on fire as I was passing by, while others set on fire houses and other buildings. We advanced from the mosque to the town center, while at the same time, the Drina Wolves advanced towards the town center on our left wing. From the right flank, part of the Šekovići, Vlasenica and Bratunac Brigade were coming in. We were in the town center around 12 o'clock, and that's when the unit was ordered to search a multi-storey building, where we found nothing.

As I came out of the building, I saw around ten VRS members beating a Muslim who was around 28. Pelemiš was present. Thus, I was able to hear clearly when he ordered Zoran, aka Maljić, to slit this man's throat, which he immediately did. After that, I was sent with three other soldiers to the southern entrance to the town, to prepare everything for Mladić's arrival. We spent that night in Srebrenica.“<sup>58</sup>

160. On the other hand, witness Dragan Todorović claims that no houses were set on fire on entering the town, but the Panel gives credence to the testimony of Dražen Erdemović in that part, as he, even though a suspect in relation to the events in and around Srebrenica, did not conceal this fact.

161. Member of the Detachment, protected witness Z-1<sup>59</sup>, claims that the operation of entering Srebrenica was led by Pelemiš, which was confirmed by the defense witness Dalibor Đukić, and, according to the witness, the following persons went to the mission from Dragaševac; Pelemiš, platoon leader Franc Kos and Luka Jokić, while from the Bijeljina platoon, there were witness Z-1, Velimir Popović, Mladenko Filipović, Zoran Goronja, Zoran Kovrt, one Dragan aka „Mali“ who got killed later on, Stanko Savanović, Erdemović, and Šanga Todorović, while witness Đukić claims that the entire platoon participated in the operation.

162. Witness Z-1 further explains that they had mostly black uniforms, while some of them had camouflage uniforms. On that occasion, Pelemiš said there would be no resistance, and that it is indeed how it was, and they met only one man in civilian clothes in the town. Unit member Obrenović had a knife on him, he went towards that man and cut his head off. Most members of the Detachment were present when that happened.

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<sup>58</sup> T-68 Statement by witness Dražen Erdemović given on 24, 25, 26, and 27 June 1997, and 12 August 1998, accepted by this Court's Decision no. I S1 1 K 003372 10 Kri of 7 September 2011.

<sup>59</sup> Protected witness Z-1 testified at the hearing of 16 August, 23 August and 2 September 2011. Record of examination of this witness before the Prosecutor's Office of BiH on 29 April 2010 was tendered as defense exhibit OIII-2 of the defense for the third Accused.

163. The Accused Franc Kos, defense witness Dalibor Đurić, and witness Z-1 described the town as deserted, but the Accused Franc Kos remembers that on that occasion they had met a woman, that is, he remembers hearing words “There’s a woman coming!” over the hand-held radio, and thereafter, Z-1 informed them „*Not any longer*“. He also heard that Zoran Obrenović had slit a person’s throat with a knife, and he had the opportunity to see the man’s body.

164. Witness Z-1 was shown a video on which he recognized the soldier carrying the flag taken off of the mosque, claiming that it was Velimir Popović from the Bijeljina detachment. That person was also examined as a witness, and on that occasion confirmed that he was on the video, and further explained that someone had previously taken the flag off of the mosque and had given it to him. After that, general Mladić came by with his escort and told the witness to turn it upside down and pack it up.

165. Witness Velimir Popović in his further testimony states that no houses were set on fire and no civilians were killed on the occasion, which the Panel does not find plausible, because other tendered evidence implies quite the opposite, whereas the witness himself, in the continuation of his testimony says that, when returning to the base in Dragaševac, he learned that one member “*slit the throat of a man in the town*”.

166. He further says:

“The operation proceeded slowly and we did not have any special assignment. Pelemiš was informed of everything over the hand-held radio, so we learned things either that way or from other people and we were told that Mladić was coming to congratulate us. He arrived in a military Jeep, there were a couple of officers and drivers there, and he congratulated Pelemiš on the successful operation. We then left in a military truck. I don’t remember if we all left, but we went towards Vlasenica. As I was informed, Dragan Koljivrat died in a crash when a white UN APC skidded off the road and into a river on the Vlasenica-Dragaševac route. Mladen Filipović was injured.”

167. On the video, witness Z-1 also recognized the person wearing a hat and he thinks that he was a member of the Vlasenica Detachment.

168. In his further testimony, witness Z-1 provides details of the mission to enter Srebrenica. This is how he describes it:

“The order to go to Srebrenica was given by Pelemiš, I don’t know who ordered him. We came to a hill, we passed an abandoned UN checkpoint. We arrived during the night, around 9:00 or 10:00, we were lined up and divided into groups and were ordered to go down to Srebrenica. I was in the first group, 1<sup>st</sup> Squad, 1<sup>st</sup> Platoon, my commander was Dražen Erdemović. Group leaders carried hand-held radios. I don’t remember in which group Kos was. I don’t know where he was when Mladić and Popović arrived in a Puch vehicle. Later on, civilians came out of the houses, when we arrived there was no one in the streets in Srebrenica.”

169. Participation of the 10<sup>th</sup> Sabotage Detachment in the Srebrenica attack was

confirmed by Petar Salapura himself<sup>60</sup>, who was examined as a Prosecution witness.

170. So, the two groups merged in the town center, and that is where Pelemiš and General Mladić met and when General Mladić congratulated Pelemiš on the successfully conducted operation.<sup>61</sup> Mladić's reaction after entering the town was caught on film. On that occasion, accompanied by the VRS high-ranking officers, Milorad Pelemiš and in the presence of the members of the 10<sup>th</sup> Sabotage Detachment, he said:

"Here we are, on 11 July 1995, in the Serb Srebrenica. On the eve of another Serb holiday, I give this town to the Serbian people. And finally, after the uprising against the Dahi, the time has come to take revenge against the Turks in this area... Let's go, straight on to Bratunac, men! From here, straight on to Potočari!"<sup>62</sup>

171. In the afternoon of 11 July, the Detachment retreated to the positions above Srebrenica, from where, under Pelemiš's order, they were pulled back during the next day, that is, 12 July. Members of the Detachment returned to the base in Dragaševci by truck<sup>63</sup>, while Commander Pelemiš set off in a stolen UN vehicle, which turned upside down on the way to Vlasenica. On that occasion, one member of the Detachment, Dragan Koljivrat, was killed, while Mladen Filipović and Milorad Pelemiš were injured. According to witnesses, Pelemiš sustained only minor injuries.

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<sup>60</sup> Witness Petar Salapura was examined at the trial held on 13 May 2011.

<sup>61</sup> Witness Z-1; witness Dražen Erdemović.

<sup>62</sup> Exhibit T-1, compiled video.

<sup>63</sup> Dragan Todorović and chauffer Željko Vuković arrived at the base in the morning hours, while the rest of the unit arrived later during the day.



### C. THE ATTACK WAS DIRECTED AGAINST CIVILIAN POPULATION

172. Further on, in order to establish the existence of Crimes against Humanity, it needs to be established that the attack was directed against any civilian population. In this context, the population means a certain, sufficient number of individuals.

173. Even though that does not imply the entire population in a region, it needs to be established that the matter does not involve just a limited and randomly selected number of individuals. In the end, the civilian population needs to have been the primary, not a secondary target of the attack.

174. The attack on the Safe Area started by the shelling of both Srebrenica and the surrounding villages, and continued intensively over the course of several days. The military takeover of Srebrenica followed, which is why the Bosniak population in the area started fleeing en masse, with one part of them, between 20 000 and 30 000 of them, going to the UN base in Potočari<sup>64</sup>, while the other part, around 15 000 of them (mostly men), set off through the woods in order to reach free territory.

175. During the proceedings, evidence was presented undoubtedly confirming that the subject of the attack were women, children and the elderly from the Srebrenica enclave, who had to leave their homes because of the attack and who were staying in unbearable conditions in Potočari in order to be forcibly transferred, while men were abused through the shelling of the column in which they were moving, ambushes and executions.

176. The Defense claimed that during the attack on Srebrenica, military, not civilian, targets were shelled, thus challenging the very theory presented in the Indictment that the goal of such an attack were mass murders and transfer of Muslim population from the enclave.

177. However, the evidence presented indicates that the state of facts is different.

178. First and foremost, one cannot accept that the attack was a result of hasty or new developments in the field, if one takes into account numerous preparations preceding the attack, reflected in numerous orders and directives issued by the highest structures of the VRS.

179. Quite some time before the attack, numerous activities that created unbearable conditions for the population's stay in Srebrenica were taken; humanitarian aid was withheld, there was lack of water, electricity, medical care, and witness Kingori himself says<sup>65</sup> „*civilians were told to retreat from the villages, it wasn't UNPROFOR that directed the civilians towards Potočari, they were directed by the Bosnian Serb shooting. They worked on the goal they were trying to achieve, they first attacked targets using heavy*

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<sup>64</sup> Established fact No. 10 in the Panel's Decision of 12 January 2011.

*weapons, in order to make sure that the infantry can get in safely and do whatever it pleases. “*

180. Also, during the proceedings, the Defense was trying to confirm that the goal of the Detachment was never an attack on the civilian population, and according to witness Petar Salapura, the operation in Srebrenica did not fit into the “*standard use of this elite sabotage unit*”, which was further confirmed by expert witness Slobodan Kosovac, who said “*it’s like using a cargo truck to transport a matchbox.*”

181. However, the unit commander Mićo Milanović said that the unit was indeed given assignments related to civilians on a couple of occasions. The Detachment member, Srđan Brezo, confirmed that the civilians were not a primary target, but might have been “*collateral damage*” in executing a mission. Thus, witness Brezo describes that around 60 unit members went to the mission of entering Srebrenica, and after going through the Sase mine, they arrived at a location where their assignment was that they all fire one/two clips or a hand-held rocket launcher towards the town.

182. There is no doubt that civilian targets had to be hit on that occasion. Defense expert witness Slobodan Kosovac clearly defined those targets as “impermissible”.

183. It also needs to be highlighted that unlike the notion of armed conflict, the phrase “attack” as part of the criminal offense of Crimes against Humanity, according to the established jurisprudence of ICTY, is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.<sup>66</sup>

184. As described earlier, when members of the 10<sup>th</sup> Sabotage Detachment entered the town, one man was killed, slaughtered by a unit member, and a woman was executed (communicated via radio).

185. The ill-treatment also took place in Potočari, because during the relevant period, ethnic Muslims, in addition to shelling, were also exposed to various types of verbal, physical and mental terror on a daily basis.

186. In addition, general mobilization was ordered, as well as a high level of combat readiness, whereas the attack was ongoing according to a specific plan, starting with the shelling of the surrounding villages so that the Bosniak population would gather in a small area in the Srebrenica town, thus creating additional panic and fear among them. On the basis of the presented evidence, the Panel found that both VRS and the units of the Ministry of Interior, which were engaged on a mission in the area of Srebrenica from 10 July, participated in the attack.

187. All of the above clearly indicates that there was a clear plan and systematic distribution of assignments among all the participants in the attack, so any implications

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<sup>65</sup> Witness Joseph Kingori gave evidence at the hearing held on 1 November 2011.

<sup>66</sup> Vasiljević case, Trial Chamber judgment of 29 November 2002, Paras. 29 and 30.

that consequences of such a well-organized, widespread and systematic attack were unforeseeable and unplanned cannot be accepted.

188. During the course of the proceedings, evidence was presented confirming beyond a doubt that the subject of the attack were civilians, women, children and elderly who were staying in their homes and fled them because of the shelling, and after that stayed in unbearable conditions in the factories and UN base in Potočari, wherefrom they were forcibly transferred, while men were abused through the shelling of the column in which they were moving, ambushes and executions. Therefore, the subject of the attack were civilians who did not participate in the hostilities and who were subject to protection under common Article 3 of the Geneva Conventions.

189. During the course of the proceedings, the Defense also contested the number of the displaced population and the “forcible” character of the displacement. With respect to this, the Defense of the Accused Vlastimir Golijan tendered into evidence the transcript of the audio recording of the conversation between Jean Rene Ruez and Miroslav Deronjić of 4 February 1998, in which Deronjić claims that his duty was to secure the safety of the civilian population, which was guaranteed by the VRS Command and UNPROFOR, and that the direction for the departure of the population was the “*Muslim-Croat territory, Yugoslavia, or a third country.*” However, he himself says in his testimony: “*I did not expect any particular wishes, because it was impossible to grant wishes to individuals in this crowd.*”

(a) Srebrenica was not fully demilitarized

190. In support of the theory that the Srebrenica Safe Area did not respect the Order on Demilitarization of Srebrenica, during the course of the proceedings the Defense presented a significant body of documentary evidence<sup>67</sup>, including numerous reports of the 28<sup>th</sup> Division of the Army of BiH on the requisition of materiel (MTS)<sup>68</sup> and accomplished missions, orders on forming sabotage groups and daily combat reports to the 2<sup>nd</sup> Corps Command.<sup>69</sup>

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<sup>67</sup> OII-26 through 32, exhibits of the Defense for the second-Accused with reference to the foregoing fact. Defense for the third-Accused presented as evidence OIII-5 – Notice of the Supreme Command Staff of the Armed Forces of the Republic of BiH on the results of negotiations about demilitarization of Srebrenica, sent to the 2<sup>nd</sup> Corps Command and Commander Naser Orić, and OIII-4, Order by the Chief of Staff of the Supreme Command of the Armed Forces of the Republic of BiH, Sefer Halilović, strictly confidential No. 02/398-2 of 16 March 1993, to the 2<sup>nd</sup> Corps Command, recalling the earlier order on abstaining from activities in order to honor the Resolution on Demilitarization, and ordering most intensive offensive activities, the mission being to reach the area of Cerska, Konjević Polje, Kamenica and join with the forces from Srebrenica.

<sup>68</sup> OIII-6 Report on supply of lethal assets and materiel to Žepa and Srebrenica enclaves No. 1-1/7-169 of 28 May 1996.

<sup>69</sup> OII-9 Weekly Command report on the morale in the 28<sup>th</sup> Division, strictly confidential No. 04-84/95 of 2 June 1995 and OII-10 Combat report by the 28<sup>th</sup> Division Command, strictly confidential No. 01-148/95 of 28 June 1995.

191. This was also confirmed by expert witness Butler during the cross-examination,<sup>70</sup> who said that in July 1995 Srebrenica was not fully demilitarized, which means that the Division was able to carry out combat operations even outside the Safe Area.<sup>71</sup>

192. However, in the context of the above, witness Kingori said that inside the Safe Area, there had been the so-called “bandera triangle” to which the UN members had no access, but the situation was similar with the territory controlled by the VRS, because it also had some locations to which access was denied to UN soldiers. Basically, he agreed with Butler’s conclusion that Srebrenica was not completely demilitarized at that time, adding that Muslims had surrendered their heavy weapons to the Bravo Company, and were left with only light weapons, which was incomparable to the heavy weapons and tanks of the VRS, and in view of that he believes that members of the 28<sup>th</sup> Division could not put up genuine resistance. Along those lines, he says: “*the number of the Division members was small, that is, incomparable to the Bosnian Serb army. There were few men, they did not have heavy weapons. Even if there were more men, without the heavy weapons, you can’t call them a battalion.*”

193. The same witness continues to say “*The headquarters of the Army of BiH Division was in a small conference room, without maps or communication means, a room with several tables – for not more than ten persons, and did not resemble a division’s headquarters.*”<sup>72</sup>

194. The Panel had in mind the document that the Defense presented as evidence, about the quantity of materiel brought into Srebrenica, and the comment made by the Army of BiH General Rasim Delić, that neither Goražde nor Sarajevo had such quantities of materiel, but the Panel also had in mind the cases of seizure of weapons by the UN members inside the Safe Area, and on the other hand, the comprehensiveness of the operation launched by the VRS against the Žepa and Srebrenica enclaves, mobilizing significant military and police resources, and larger quantities of more advanced materiel than the one available to the 28<sup>th</sup> Division.

195. When comparing the two adversaries, it is easily noticeable that Srebrenica was in the AoR of the Drina Corps, which deployed enormous manpower around the enclave, and at the same time had at its disposal tanks, armored vehicles, artillery, and mortars. Simultaneously, the Army of BiH unit that remained in the enclave – the 28<sup>th</sup> Division, was not well organized and equipped. It lacked firm command structure and the communication system. Some Army of BiH soldiers had hunting rifles or had no weapons at all, and only a few of them had appropriate uniforms.

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<sup>70</sup> During the examination, the expert witness said he had known that members of the Dutch Battalion, when using the term “bandera triangle”, meant a location in the Safe Area where the 28<sup>th</sup> Division was suspected of stocking up ammunition, weapons and other military equipment. In January or February 1995, the Dutch were prevented from inspecting that location.

<sup>71</sup> OI-3 through OI-21, Defense presented ample evidence with respect to this.

<sup>72</sup> T-77, transcript of evidence given by Robert Franken in the *Krstić* case.

196. The Defense thus claimed that the attack was of military character exclusively, targeting the 28<sup>th</sup> Division forces. However, the estimated number of the Army of BiH members in the enclave and the column was not so big as to affect the civilian character of the population, as the majority of the population in the enclave, and subsequently of the column, were civilians. The Panel notes the position that *“presence within a population of members of resistance groups, or former combatants, who have laid down their arms, does not alter its civilian characteristic”*.<sup>73</sup>

197. Taking into account the fact that the Safe Area was not fully demilitarized, the Panel nevertheless could not accept the Defense’s argument that large-scale crimes committed in Srebrenica were as a matter of fact “retaliation” by the VRS and police force for the incursions made by the Army of BiH into the territory of Republika Srpska, during which individual crimes were committed, and about which Defense witness Zoran Jovanović gave evidence<sup>74</sup> among others, just as it is unacceptable to justify the crime committed by one party by what the other party to the conflict did.

198. The Panel took this position in relation to all the Defense exhibits presented with respect to this circumstance.<sup>75</sup>

199. On this issue, the Panel was also led by the position presented in an ICTY judgment, which reads that *“... when establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent’s civilian population. The existence of an attack from one side against the other side’s civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side’s forces were in fact targeting a civilian population as such. Each attack against the other’s civilian population would be equally illegitimate...”*<sup>76</sup>

200. Accordingly, and in view of the casualties of the past conflict in Bosnia and Herzegovina, the Panel chose not to accept the presentation of evidence pertaining to the crimes committed by members of the 28<sup>th</sup> Division over the Serb population, as that

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<sup>73</sup> *Blaškić*, (Appeals Chamber judgment), Paras. 112-113.

<sup>74</sup> Witness Zoran Jovanović gave evidence at the hearing of 24 February 2012. He authored the book *Srebrenica, the way it actually happened*, which was tendered into evidence in this case as OII-15. Record of examination of this witness by Attorney Slobodan Perić was tendered as defense exhibit OII-14.

<sup>75</sup> OI-20, with respect to this, Defense for the first-Accused tendered into evidence the Notice by the Drina Corps Command to the Intelligence Sector of the VRS Main Staff, strictly confidential No. 17/896 of 12 July 1995, OII-25, the Defense for the second-Accused with respect to this tendered into evidence the list of VRS losses between 9 May 1992 and 25 February 1995. Defense for the third-Accused with respect to this tendered the information about combat results of units and commands of the 28<sup>th</sup> Division, strictly confidential No. 04/1-105-603 of 8 July 1995 as OIII-18, Information and Order by the 2<sup>nd</sup> Corps Command, strictly confidential No. 02/1-604/123 of 2 July 1995 as OIII-10, Report on reinforcements in the war units of the 28<sup>th</sup> Division, strictly confidential No. 03-183-231 of 1 July 1995 as OIII-9, Congratulations on a successfully executed sabotage mission by the 2<sup>nd</sup> Corps Command, strictly confidential No. 02/1 -670/4 of 28 June 1995 as OIII-8, and Preparations for offensive operations, General Staff of the Army of BiH, No. 1/825-84 of 17 June 1995, as OIII-7.

<sup>76</sup> *Kunarac, Kovač and Vuković*, Appeals Chamber, judgment of 12 June 2002, Paras. 87-88.

was not the subject of the Indictment in the present proceedings, nor was it ultimately relevant for examining the criminal liability of the Accused.

**D. KNOWLEDGE OF THE ACCUSED ABOUT THE EXISTENCE OF AN ATTACK**

201. The following condition for the existence of the criminal offense of Crimes against Humanity stipulates that:

- the acts committed in their nature or consequences objectively represent part of an attack,
- the accused is aware that the civilian population is under attack and that his actions are part of the attack.

202. With respect to the awareness of the Accused of the attack, and of their actions being part of the attack, the Panel points out that the Accused, as members of the 10<sup>th</sup> Sabotage Detachment themselves on two occasions participated in the attack on Srebrenica, the first time in late June, which was a preparation for the seizure of the Safe Area, when, led by the Detachment commander Pelemiš, they randomly fired from the Zolja hand-held rocket launchers and automatic weapons, in order to, according to witness Z-1, “*intimidate the population and create chaos*”.

203. The second such occasion was on 11 July 1995, when, together with the Detachment Commander Pelemiš and General Mladić, as well as other high-ranking VRS officers, after the shelling that lasted for several days and the exodus of the majority of the population to the UN base in Potočari, they were among the first to enter Srebrenica town. After that, they searched the houses and directed the population to Potočari, and on that occasion one member of the Detachment killed a Bosniak male following the order of Commander Pelemiš.

204. When it comes to the *nexus* between the actions of the Accused and the attacks that were carried out, the Panel notes that within the attack on the Srebrenica Safe Area, members of the Sabotage Detachment at the Branjevo Farm summarily executed a group of around eight hundred captured civilian Bosniak men who were previously bussed to the execution site, some of them with hands tied with ligatures and blindfolded. Those men were lined up and killed from firearms, more specifically from automatic rifles, light machine guns and pistols, and the only logical conclusion is that these actions, in their nature and consequences, objectively represent a part of the attack.

205. In view of the large number of troops participating in the attack on Srebrenica, and in order to get a better understanding of the position of the Accused at the time of the attack, in the next section of the Verdict, the Panel will provide a brief overview of the structure of the Republika Srpska armed forces, and the formation and activities of the 10<sup>th</sup> Sabotage Detachment.

**1. VRS organization**

206. According to the findings and opinion of the expert witness Richard Butler, the organization, structure and methodology of the VRS operations at the time was identical to the regulations previously in force in the former JNA, and thus, command and control of the Army of RS was based on the principle of unity of command.<sup>77</sup>

(a) Main Staff Structure

207. As established in the final verdicts of this Court, the Main Staff was the supreme military command authority in the VRS, whose commander in 1995 was General Colonel Ratko Mladić. The Main Staff Command was in Han Pijesak, while the forward command post was in Bijeljina. The Main Staff was composed of two arms and six sectors. Two independent units were directly subordinated to the Main Staff: 65<sup>th</sup> Protection Regiment and 10<sup>th</sup> Sabotage Detachment.<sup>78</sup> Parts of the 10<sup>th</sup> Sabotage Detachment were resubordinated to the Drina Corps in early July 1995.

208. In July 1995, the key persons in the Main Staff, in addition to General Colonel Ratko Mladić, were General Colonel Manojlo Milanović, Chief of Staff, and General Ratko Mladić's Deputy, Colonel General Milan Gvero, Assistant Commander for Moral, Religious and Legal Affairs; General-Major Zdravko Tolimir, Assistant Commander for Security and Intelligence; General-Major Radivoje Miletić, Deputy Chief of the Main Staff and Chief of Operations; Colonel Ljubiša Beara, Chief of the Main Staff Security Administration; Colonel Radoslav Janković, Main Staff Intelligence Administration Officer; Colonel Milovan Stanković, Main Staff Intelligence Administration Officer; Lieutenant Colonel Dragomir Keserović, Main Staff Intelligence Administration Officer; Colonel Bogdan Sladojević, Main Staff Operations Section Officer, Colonel Neđo Trkulja, Main Staff Operations Section, Chief of Armored Units.<sup>79</sup>

(b) Corps and Brigades level

209. The VRS had 6 Corps that were deployed in different geographical areas. These were: 1<sup>st</sup> and 2<sup>nd</sup> Krajina Corps, the Eastern Bosnia Corps, the Herzegovina Corps, the Sarajevo-Romanija Corps and the Drina Corps. All the Corps were under the direct command of the VRS Main Staff.<sup>80</sup> Within these Corps, the primary combat components

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<sup>77</sup> S-4 (23)(Report on Combat Readiness of the Zvornik Infantry Brigade covering the period between 1 Jan and 31 Dec 1994).

<sup>78</sup> Established fact No. 8 from the Panel's Decision of 12 January 2011.

<sup>79</sup> T-81 (Srebrenica Military Narrative (revision) – Operation "Krivaja 95" of 1 November 2002, author Richard Butler) ("Butler's Report"), Para. 2.20.

<sup>80</sup> T-82 (Richard Butler's Report on the VRS Main Staff responsibility of 9 June 2006), Para. 1.0.

were brigades, which served to conduct operations under any combat conditions. As such they were placed directly under the Corps Command.<sup>81</sup>

## **2. 10<sup>th</sup> Sabotage Detachment and its position in the Structure of the Armed Forces of Republika Srpska**

210. During the proceedings, the Accused did not deny that they were members of the 10<sup>th</sup> Sabotage Detachment, which was directly subordinated to the VRS Main Staff, with which members of the Detachment concluded *Contracts on Admission of Individuals into the Army of Republika Srpska for a specified period of time*. Those contracts were signed by all the Accused as members of the Detachment, their immediate commander Milorad Pelemiš, while on behalf of the VRS Main Staff, the contracts were signed by General Colonel Ratko Mladić.<sup>82</sup>

211. The structure, time of formation, scope of activities and the command staff of the Detachment are best shown in the document<sup>83</sup> tendered into evidence by the defense of the Accused Franc Kos. The document shows that the idea to establish this type of a detachment, whose mission would be to carry out sabotage activities deep behind the enemy lines came about in mid-1994. The initial meeting when trying to establish the Detachment was attended by officers from the VRS Main Staff: General Zdravko Tolimir, Colonel Petar Salapura, Colonel Ljubomir Beara, Major Slobodan Mamić, and Lieutenant Milorad Pelemiš. The meeting was held on around 10 August 1994, and the primary assignments of the unit, its subordination, logistic support, financing and rules of operation were defined on that occasion.

212. Milorad Pelemiš was appointed the Detachment Commander.

213. With respect to the command, combat environment and responsibilities of members of the 10<sup>th</sup> Sabotage Detachment, the Defense hired military expert Slobodan Kosovac. The Panel already evaluated his evidence in the part of the verdict outlining the general assessment of evidence.

214. In his evidence before the ICTY<sup>84</sup>, the Accused Dražen Erdemović, former member of the 10<sup>th</sup> Sabotage Detachment recalls that sometimes in April 1994, he joined the Army of Republika Srpska, the Special Unit, that was 8 to 10 men strong at the time. As far as he remembers, sometimes in October that same year, the unit changed the name to become the 10<sup>th</sup> Sabotage Detachment, whereas the number of its members grew from 10 to 50-60. The Unit had two platoons, one quartered in Bijeljina, and the other in Vlasenica, and each was 30 men strong. The Accused Franc Kos was the leader of the Bijeljina platoon, while Second Lieutenant Luka Jokić, aka *Lule*, was the leader of the Vlasenica platoon. Detachment leader was Milorad Pelemiš, his Deputy was

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<sup>81</sup> T-82 (Butler's Report on the VRS Main Staff responsibility), Para. 1.0

<sup>82</sup> One such contract was also signed by the Accused Vlastimir Golijan, and was tendered as exhibit OIII-3.

<sup>83</sup> OI- 38 Document about the 10<sup>th</sup> Sabotage Detachment of the Army of Republika Srpska.

<sup>84</sup> T-70 Evidence given by witness Dražen Erdemović in the ICTY case no. IT-05-88-T, Vujadin Popović et al.



Lieutenant Kremenović. Under the chain of command, they received orders from Petar Salapura, Chief of the VRS Main Staff Intelligence Administration, and Major Dragomir Pećanac.

215. When giving evidence, the Accused Franc Kos explained that he had used to be a member of the HVO and the Army of BiH. While in the military, he had been deprived of liberty several times, mostly because of disobedience, and so he had escaped from the military remand in the village of Kovačica at the Majevisa frontline on 23 December 1993. After being interrogated by the VRS, he had been taken to the Batkovići camp. He had been registered by the ICRC and given a registration card.<sup>85</sup> There was Zijad Žigić there (later on he was given a false identity under the name of Živko Mičić), as well as a few others who had defected from the Army of BiH and negotiated the conditions for getting out of the camp with Zoran Manojlović. At that time he did not know witness Z-1, he met him later in Bijeljina.

216. Zijad Žigić, alias Živko Mičić, was with the Accused together in the Batković camp<sup>86</sup>; during his evidence he confirmed<sup>86</sup> that they had left the camp and that they had talked with Zoran Manojlović, who, in his opinion, had been some kind of an intelligence officer in the Corps. He went on to explain that while in the Army of BiH, he had worked together with the Accused Kos on transferring people from Tuzla to the territory controlled by the VRS, and during one such operation they had been captured by the VRS and taken to the detention camp.

217. According to the witness's further testimony, right after it was formed, the Detachment was rather disorganized, and up until 1 October 1994 they were not even registered as a unit. They worked under the control of Zoran Manojlović.

“We were first quartered in the thermo-electric power plant, 7 Croats, the Slovenian and me, until we each completed a mission. We were taught about explosives, although we knew how to work with it even before Captain Mićo arrived (Mićo Milovanović). We were on the Ozren Mountain and then we returned and were quartered in the Army Club in Bijeljina.”

218. Witness Mićo Milanović explained that as early as 1992 there had been an attempt to form a “sabotage type” unit, but the plan worked much later. Zoran Manojlović had come for the witness sometimes in 1994, they had gone to the intelligence center in Bijeljina, and he had been only told on the way there that a group of men had been brought, of which a unit could be made. He remembered that, when arriving at the Center, he had found there Franc Kos, Žigić, Stjepo Pranjić, Ranko Pranjić, Nikola Josić, Marko Mrkonjić, Zoran Pavlović, while Z-1 had arrived sometimes later, in April or May 1995.

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<sup>85</sup> Defense documentary evidence OI-30.

<sup>86</sup> Witness Zijad Žigić gave evidence at the main trial of 14 October 2011. Record of the statement he gave to Attorney Dušan Tomić was tendered as exhibit OI-1.

219. He further explains:

“The group was not official, nor were we a unit, we belonged to no one, to no structure. We were like some kind of a core. As far as I know, they didn’t even have a regular salary, I know I didn’t have one. The Sub-center<sup>87</sup> was in a mountain village near Dobož, I was there in an operation on the Ozren Mountain.”

220. After Mićo Milanović, witness Zoran Manojlović came to the unit. He explained that from Colonel Salapura he had received an order to have an interview with the “defectors”. After they had been captured, they were taken to the Batković camp. During the interview, he had found out that Kos had worked for the intelligence services of Slovenia and the Republic of Croatia. He had been a member of the Army of BiH, and there had also been some information that for a while he had been a member of the HVO.

221. At that time, in view of the nature of missions they carried out, members of the Detachment were issued black uniforms, uniforms of the Army of Republika Srpska, of the USA Army, and uniforms worn by members of the Army of BiH and HVO. The accused Franc Kos and Stanko Kojić confirmed this in their evidence. Witness Erdemović further explained that the black uniform had actually been an overall, and that they had had the 10<sup>th</sup> Sabotage Detachment insignia that were removable. When going to sabotage missions, they would remove the insignia and leave behind all they had with them: military identification cards and other identification documents. They mostly wore black uniforms, and the Accused Franc Kos confirmed that this was true in his and Milorad Pelemiš’s case. The Accused Stanko Kojić mostly wore the so-called *NATO uniform*, that is, the USA Army uniform, and he confirmed this during his evidence. Witness Dražen Erdemović confirmed this in the transcript of his evidence<sup>88</sup>.

222. Witness Erdemović also described that members of the Vlasenica platoon were mostly Pelemiš’s friends, who were not as well trained as members of the Bijeljina platoon, so members of the Bijeljina platoon were usually sent to “*dangerous missions behind the enemy lines*”.

223. Another difference between these two platoons was their ethnic composition: the Vlasenica platoon was mostly made of Serbs, whereas members of the Bijeljina platoon were Serbs, Croats, Muslims, and Slovenians.

224. Even though during the proceedings the Defense attempted to present members of the Detachment as undereducated and insufficiently professional, evidence<sup>89</sup> outlining the organization and activities of the 10<sup>th</sup> Sabotage Detachment was tendered as a Defense exhibit. The document clearly reads that all members of the detachment acted

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<sup>87</sup> Witness Zoran Manojlović explained that the man in charge of the Intelligence Sub-center had been Čedo Knežević.

<sup>88</sup> T- 70 Transcript of witness Dražen Erdemović’s evidence in the *Popović* case on 4 and 5 July 2007.

<sup>89</sup> Defense documentary evidence OI-38.

“like professionals and completed their mission outstandingly well”. Thus, the Defense’s theory along those lines has no foundation in the evidence presented.

**E. INDIVIDUAL INCRIMINATIONS UNDERLYING CRIMES AGAINST HUMANITY**

225. Having found that the general elements of the criminal offense of Crimes against Humanity as referred to in Article 172 of the CC of BiH have been satisfied, the Panel is also going to reason the fulfillment of individual incriminations underlying the crimes under subparagraphs h) and a) of the same Article of the CC of BiH in the further course of elaboration.

226. The accused have been found guilty of the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC of BiH, in conjunction with subparagraph a), as read with Article 29 of the CC of BiH.

**1. Qualification of persecution under Article 172(1)(h) of the CC of BiH**

227. The referenced qualification reads:

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

...

h) persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina;

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

228. Article 172(2)(g) of the CC of BiH provides the meaning of the term *persecution*:

229. *Persecution* means the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.

230. Committing this offense, a perpetrator severely and contrary to international law deprives one person or several of them of their fundamental or human rights, wherein a selection of such persons or a person is made based on a group identity or collectivity, or such group or collectivity is specifically targeted. Such a selection is based on the noted differences between the groups, or on other reasons that are generally accepted as impermissible under international law.

231. Pursuant to the foregoing and within the meaning of Article 172(1)(h) of the CC of BiH, the following are the elements of the criminal offense of persecution as a crime

against humanity:

- 1) the intentional and severe deprivation of fundamental rights;
- 2) contrary to international law;
- 3) by reason of the identity of a group or collectivity;
- 4) any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law; and
- 5) in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina.

232. According to a proper interpretation of Article 172(1)(h) of the CC of BiH, the offense of persecution may be committed by any act which generally constitutes an intentional and severe deprivation of fundamental rights contrary to international law, by reason of the identity of a group or collectivity.

233. The following conclusions on the act of commission (*actus reus*) follow from the ICTY jurisprudence:

- a) A narrow definition of persecution is not supported in customary international law.
- b) In their interpretation of persecution courts have included acts such as murder, extermination, torture, and other serious acts on the person such as those presently enumerated in Article 5 of the ICTY Statute.
- c) Persecution can also involve a variety of other discriminatory acts, involving attacks on political, social, and economic rights.
- d) Persecution is commonly used to describe a series of acts rather than a single act. Acts of persecution will usually form part of a policy or at least of a patterned practice, and must be regarded in their context. In reality, persecutory acts are often committed pursuant to a discriminatory policy or a widespread discriminatory practice.
- e) As a corollary to (d), discriminatory acts charged as persecution must not be considered in isolation. Some of the acts mentioned above may not, in and of themselves, be so serious as to constitute a crime against humanity. For example, restrictions placed on a particular group to curtail their rights to participate in particular aspects of social life (such as visits to public parks, theatres or libraries) constitute discrimination, which is in itself a reprehensible act; however, they may not in and of themselves amount to persecution. These acts must not be considered in isolation.<sup>90</sup>

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<sup>90</sup> Kupreškić, Trial Judgement, para. 615.

234. Persecution is a form of discrimination on the basis of race, religion or political opinion aimed at and resulting in the violation of fundamental rights of the individual.<sup>91</sup> The existence of a separate act of inhumane nature is not necessarily needed for persecution to exist; instead, discrimination itself makes the act inhumane. The crime of persecution includes a wide variety of offenses, including, among others, the acts of physical, economic or legal nature by which the basic or fundamental rights of the individual are violated. Discrimination is one of the referenced elements required for proving the perpetration of the criminal offense of persecution.

235. Bearing in mind the above, the Appellate Panel of the Court concludes in *Bundalo and others* that the criminal offense of Crimes against Humanity by way of persecution is a separate offense that can be perpetrated in one of the alternative manners listed under subparagraphs (a) through (k) of Article 172(1) of the CC of BiH, but also by acts contained in other provisions of the CC of BiH that together constitute a gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 172 of the CC of BiH.

236. In the present case, the accused committed persecution on the national, ethnic and religious grounds by depriving the captured Bosniak men of their lives.

237. It will be evident in the part of the Verdict elaborating on the execution of men at the farming cooperative Branjevo that the accused acted with a discriminatory intent while killing Bosniak men, because the victims were selected solely on the national, religious and ethnic grounds.

238. For easier reference, the Panel occasionally uses the term *Bosniaks* in the operative part and reasoning of the Verdict, which was not generally accepted at the time of the criminal offense; however, this concerns a historical, ethnic and culturological term that, among other things, also includes a unity of faith/religion, and this Panel therefore accepts that the ground for discrimination of a group of Bosniaks in this case may be defined as a religious ground. Ethnic, that is, national and religious grounds are closely related and included in the term *Bosniak*. This refers to the Srebrenica men and civilians of Muslim ethnicity.

## **2. Qualification of murder under Article 172(1)(a) of the CC of BiH**

239. Considering that in the present case persecution was committed by way of killings, the Panel will briefly refer to the elements of these charges as referred to in Article 172(1)(a) of the CC of BiH.

240. Subparagraph a) of the quoted provision includes the following elements:

- That a person is deprived of life, and

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<sup>91</sup> See Tadić, Trial Judgement, para. 697, 710.

- That the deprivation of life was committed with direct intent, because the Accused was aware of his act of commission and was determined to commit it.

241. This individual incrimination was almost identically defined in the ICTY Statute, and the Court was therefore mindful of its definition of murder as an “unlawful and intentional deprivation of human life”.<sup>92</sup>

242. *Mens rea* or a perpetrator’s mental state implies the intent to kill or to inflict serious bodily injuries that will likely result in death, whereas the perpetrator is unscrupulous about whether or not they would cause death<sup>93</sup> The Appellate Panel found that *mens rea* included both direct and possible intent.<sup>94</sup>

243. In the present case, the Panel found that the accused acted with direct intent during the killings in Branjevo, fully aware of the consequences of their actions and, to this effect, endeavored to find the “most efficient” method for killings in order to make sure there were no survivors of the execution by firing squad.

244. Considering that the Indictment also charged the accused with causing serious bodily or mental harm to members of the group, during a requalification of the offense the Panel also considered the elements of inhumane treatment as referred to in Article 172(1)(k), as equivalent to the qualification under Article 171(1)(b) of the CC of BiH.

245. In the context of international jurisprudence, the Panel concluded that inhumane treatment was a deliberate act or omission, that is, the act which objectively is deliberate, not accidental, and which causes serious mental or physical suffering or constitutes an attack on human dignity or harm to bodily integrity.

246. Considering that the accused persons’ intent was solely directed to killing the captives brought there, not to wounding or injuring them or inflicting on them serious physical or mental harm, and taking into account that the severe bodily injuries inflicted on individuals during the execution resulted in death, the Panel decided to only refer to the legal qualification of the offense of persecution by way of killing as a crime against humanity, finding that there is no room for the qualification of inhumane treatment as referred to in Article 172(1)(k) of the CC of BiH.

### **3. Co-perpetration under Article 29 of the CC of BiH**

247. Committing the referenced criminal offense, the accused persons acted as accomplices, pursuant to Article 29 of the CC of BiH pursuant to which “if several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly

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<sup>92</sup> *Akayesu*, Trial Judgment, 589; *Jelisić*, Trial Judgment, 35; *Zoran Kupreškić and other*, Case No. IT-95-16-A, Appeal Judgment of 23 October 2001, 560-1.

<sup>93</sup> *Zejnir Delalić and others* (“Čelebići” case), Case No. IT-96-21-T, Trial Judgment, 16 November 1998, 439; *Akayesu*, Trial Judgment, 589; *Dario Kordić and others*, Case No. IT-95-14/2-T, Trial Judgment of 26.02.2001, 236.

<sup>94</sup> *Pavle Strugar* (“Dubrovnik”), Case No. IT-01-42-A, Appeal Judgment, 17 July 2008, 270.

perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence”.

248. According to Article 29, co-perpetration incurs when several individuals jointly commit a criminal offense by participating in its perpetration or by taking some other actions by which they contribute to the perpetration of a criminal offense in a decisive manner. More specifically, co-perpetration is a form of perpetration wherein several persons who meet all of the requirements for perpetrators, based on a joint decision, knowingly and willingly perpetrate a certain criminal offense. Unlike accomplices in a narrower sense, co-perpetrators do not participate in an offense perpetrated by some other person (other person’s act), but rather, they all together commit (their) joint offense in which process each of them gives their contribution which is important and without which the criminal offense would not be perpetrated or it would not be perpetrated in a planned manner.

249. This form of responsibility for the killing of men at the Farming Cooperative Branjevo was identified with regard to all of the accused, and the Panel will further elaborate on its conclusion in the part of the Verdict analyzing the guilt of the accused.

### **III. PARTICIPATION OF THE ACCUSED IN THE EXECUTION OF CIVILIANS BY A FIRING SQUAD AT THE MILITARY FARMING COOPERATIVE BRANJEVO ON 16 JULY 1995**

#### **A. KEEPING OF CAPTURED MEN IN THE TEMPORARY DETENTION FACILITIES IN BRATUNAC**

250. As many final and binding ICTY Judgments found, due to the artillery attack on the Srebrenica enclave, the women, children and the elderly fled to Potočari, seeking UN protection. However, while civilians were boarding the buses, men were separated from their families and detained in the so-called White House, wherefrom they were bused to temporary detention locations in Bratunac.

251. Simultaneously, a column of men and boys gathered in the area of the villages of Jagličići and Šušnjari and, moving through the forest, attempted to breakthrough to the safe territory controlled by the Army of BiH. The column was constantly shelled and ambushed and men from the column surrendered at various locations to be taken to the temporary detention sites, just like the men separated in Potočari.

252. The surviving witnesses Z-2 and Z-3 whose faith was similar also described the time they spent in detention in Bratunac; however, for fear of being killed by Serb soldiers who took Srebrenica, witness Z-3 set off in a column towards Tuzla, while witness Z-2 went to Potočari with his family.

253. During the day of 13 July, witness Z-3 was captured in the area of Nova Kasaba and taken to the Nova Kasaba stadium at which there were about 1500-2000 Bosniak men who were transported by buses to the Bratunac school after General Mladić addressed them and after the lists of the captives were made.

254. Witness Z-2 was in Potočari and witnessed the shelling of Srebrenica and watched people being taken away never to return, listened to the screams and cries, and when he attempted to get on the bus with his family, he was not allowed to because they were separating men from women and children. So, he was separated and taken to the "White House" which was already crammed with men. From that place, just like other detained men, he was transported to the school "Vuk Karadžić" in Bratunac on 13 July.

255. Therefore, both witnesses were bussed to Bratunac from different locations, however, witness Z-2 was taken into the school, while witness Z-3 stayed on the bus in front of the school.

256. During his stay in the school, witness Z-2 had to put aside all of his personal belongings, and he also saw Serb soldiers taking Bosniaks outside the school and no one of them came back, and he saw them being beaten, he heard shooting, and they did not receive any food throughout the time they spent in the school.

257. Witness Z-3 experienced the same hardship differently. He was watching men being taken out of the buses (4-5 men were taken out of his bus) not to be taken back.



He feared that he could be one of them. He heard shooting during the night and in the morning, a driver turned heating in the bus on and people fainted due to heat and lack of water.

258. Witness Milovan Đokić, driver in the Bratunac Brigade Military Police, also confirmed that Muslim men from Srebrenica were detained in the facilities that served as temporary detention sites, such as primary school “Vuk Karadžić” in Bratunac. Following order of Momir Nikolić and Mirko Janković (Company Commander of the BB Military Police), he went in front of the school where he was supposed “to secure the building against the alleged (Muslim) rebellion”<sup>95</sup>.

259. This witness claims that Srebrenica men whom he saw on that occasion in the school and on the buses wore civilian clothes. The buses were parked in length of 200-300 meters and were surrounded by soldiers and civil and military police. He also saw a dead body in front of the school.

**B. TRANSPORT OF MEN DETAINED IN BRATUNAC TO THE ZONE OF RESPONSIBILITY OF ZVORNIK BRIGADE**

260. Based on the presented evidence, the Panel found that men detained in the detention facilities in Bratunac were bused to the Zvornik area on 14 July. Some of them were transported to Pilice (the Culture Centre and the primary school “Nikola Tesla”). Hereinafter, the Panel will refer to the “Nikola Tesla” school as the “Kula” school, since this is the name the Pilica inhabitants used when examined as witnesses about this circumstance.

261. Therefore, on 14 July<sup>96</sup>, 4-5 buses that were parked in front of the school, with witness Z-3 in one of them, set off towards Zvornik. Thus, witness Z-3 had the opportunity to see from the bus the bodies in front of the hangar of the FC Kravica and traces of bullets on the facade, while shooting was heard from the direction of the back side of the warehouse. The buses carrying the witness Z-2 and Z-3 went directly to the Pilica school.

262. Preparations for taking over and keeping the captured Muslims were previously made in the zone of responsibility of the Zvornik Brigade. Therefore, on 15 April 1994, the Drina Corps Security Service issued the order that “all Commands – from the battalion level upwards – should define locations behind the frontlines at which captured enemy soldiers are to be gathered”<sup>97</sup>.

263. At the time of the Srebrenica fall, the detention locations had already been defined, and the VRS was tasked with blocking the directions of movements of

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<sup>95</sup> Milovan Đokić, testimony at the hearing on 15 March 2011.

<sup>96</sup> Established facts under number 12 in the Decision of the Panel of 12 January 2011.

<sup>97</sup> T- 86.

Srebrenica Muslims and with preventing them from fleeing towards Tuzla and Kladanj.<sup>98</sup> Evidence implies a perfect coordination in capturing Bosniak men, their temporary detention in the area of Bratunac, their deployment and execution in the Municipality of Zvornik, while, at the same time, Vujadin Popović and Ljubiša Beara supervised the detention and execution sites, including the execution sites in the Farming Cooperative Branjevo and the Pilica Dom.

264. Momir Nikolić informed Dragan Obrenović (acting Zvornik Brigade Commander) that Ratko Mladić in person had ordered all captives to be executed in Zvornik and that that should be done by Beara and Popović<sup>99</sup>.

265. Everything was planned to be done in the territory of the Zvornik Brigade, therefore, Momir Jasikovac, the Military Police Commander, visited all detention and execution sites in the Zvornik Municipality. His driver, witness Milorad Birčaković, who accompanied Jasikovac to Lokanj on 15 July<sup>100</sup> (on the way to Lokanj, Branjevo has to be passed by), who then, on 16 July, went to the school in Ročević and Pilica (from 09:00 to 10:00) testified about that. They saw captives at both locations.

**C. KEEPING MEN IN THE SCHOOL “NIKOLA TESLA“ (BETTER KNOWN AS “KULA“ SCHOOL) IN  
PILICA**

266. During proceedings, the Panel found that men were kept in the school “Kula“ in Pilica for two nights.<sup>101</sup>

267. At the relevant time, witness Rajko Babić was deployed to the 5<sup>th</sup> Infantry Battalion of the Zvornik Brigade in Pilica. He was assigned the duties of a political commissioner for moral guidance and informing and was subsequently assigned to a post of administrative adviser. On 14 July, he came to the Command and found a message in the duty roster that a group of 100-200 Srebrenica men would stay overnight in the primary school in Pilica and that they would then proceed towards Tuzla to be exchanged. He further explains that such information used to be radio-communicated to his battalion by the Zvornik Brigade.

268. Shortly thereafter, this witness and several other soldiers were ordered by their superior Slavko Perić to go to the school and remove all equipment from the gym so as to secure sufficient space for the captives. Once the gym was prepared, soldiers began bringing captives in and they entered the gym with their hands placed above their heads. The witness noticed that the guards were very arrogant and issued orders strictly, probably because there were many persons there and everything should be kept under control.

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<sup>98</sup> T- 50, Report on command responsibility in the VRS General Staff, Butler, paragraph 4.9. footnote 95-Order by the VRS GS, number 03/4-1629, 13.7.1995.

<sup>99</sup> T-81.

<sup>100</sup> T-44 Reservists Personal Assignments Sheets.

<sup>101</sup> Established facts under number 13 in the Decision of the Panel of 12 January 2011.

269. Witness Bogoljub Gavrić also watched the captives entering and he remembers that soldiers were in their immediate vicinity rushing them in and shouting and explaining to them where to go and how to behave. Apart from that, he did not hear anyone threatening the captives, although, at one point in time, he heard a shot from the direction of a parked bus. There was a slope and a support wall near the school, and the witness noticed from the place where he was that a captive stumbled from fatigue and then he heard a shot or two shots and a shout ordering him not to flee. It cannot be stated with certainty if the soldier from the escort could see then that the captive did not actually intend to run, because it seemed to the witness that he only slipped.

270. Witness Bogoljub Gavrić noticed on that occasion that the men brought there predominantly wore civilian clothes, although there were some “*more colorful clothes and blue shirts like those conductors’*” as well. They were at the age of 18 and older, including old men at the age of 60.

271. Other evidence presented will show that the referenced violent and self-willed behavior of soldiers was actually an integral part of a pattern of an inappropriate treatment of captives who would only stay in the school until the time of execution and it will follow from further elaboration that, while in the school, the captives were verbally and physically ill-treated, deprived of food or minimum hygienic conditions on the premises they occupied.

272. Witness Mile Tejić<sup>102</sup> did notice that food and water were brought to people in the school, however, witness Mićo Manojlović, who was upstairs together with witness Tejić claims that soldiers were actually giving the captives their own food, and those were sporadic cases. In principle, both witnesses agree that the food was insufficient for such a large number of captives and that they were kept in absolutely inhumane conditions.

273. Witness Rajko Babić further confirms that although the gym was initially cleaned and large, it became stuffily during the day because it was the month of July and very hot. The weather was very hot those days and the temperature reached even 32°C, and eventually men stripped to the waist. Regardless of that, heat became unbearable and “*unpleasant smell spread from the room so that soldiers who stood guard had to switch every 5 minutes.*” Finally, when it became too warm, several of them were taken from the gym to the classrooms upstairs.

274. Therefore, according to evidence, buses began to arrive at around 11:00 or 11:30 hrs. on 14 July, and men got off the buses and entered the school through the official entrance, with their hands clasped behind their heads.

275. A large number of other witnesses confirmed that members of the 1<sup>st</sup> Battalion of Zvornik Brigade participated in securing the captives in the “Kula” school in Pilice.

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<sup>102</sup> Witness Mile Tejić was examined at the hearing of 18 March 2011.

276. The Panel finds it possible that privates commented among themselves that the men would be exchanged, because, at that time, they had no knowledge of the overall plan for the execution of men, just like members of the 10<sup>th</sup> Sabotage Detachment did not have it either.

277. Anyhow, rumors about the exchange that was spread among those present was to the advantage of the perpetrators of genocide, because spreading such misinformation prevented panic amongst the men detained in the school.

278. During proceedings, the Panel indisputably concluded that unidentified soldiers killed several men who were in the school.

279. During the night, witness Dragan Jovanović<sup>103</sup> saw two or three dead bodies from the distance, and he also noticed that some soldiers were shooting into the air while men were getting off the buses. While in front of the school, he heard that one captive had jumped through the window attempting to escape.

280. Witness Rajko Babić also claims that there were 3-4 dead bodies covered with blankets in the schoolyard. He assumed that one dead body belonged to a soldier who was killed on the first day; soldiers talked that the second man attempted to escape and the third one cut through the articulated bus and was killed.

281. Witness Jevto Bogdanović,<sup>104</sup> who was a member of the labor detail, also confirmed that the dead bodies stayed for a while in the schoolyard. Having arrived in front of the school in Pilica, he noticed that, near the fountain, there were no less than 9 dead bodies that were subsequently taken away by Jovo, a neighbor, who followed an order by a "soldier wearing a black cap".

282. When correlated with each other, these testimonies clearly indicate that the captives spent a short but horrible time in detention in the Kula school, in which the atmosphere of terror was maintained by ill-treatment, hitting, insults, keeping the captives in non-hygienic conditions and by sporadic killings of captives.

283. It clearly follows from the analysis of witness testimonies that there were individual cases of murders before 16 July, and the bodies of those killed were subsequently removed from the schoolyard. Therefore, there is no evidence that, during the short time of their stay in front of the school, the accused saw the bodies of the killed captives.

#### **D. TRANSPORT OF MEN BY BUS TO THE EXECUTION SITE IN THE FARMING COOPERATIVE**

##### **BRANJEVO**

284. Based on the presented evidence, the Panel found that men from the Kula school were transported to the Farming Cooperative Branjevo on 16 July.

285. Witness Rajko Babić described that, on 16 July in the morning, he saw buses parked in front of the school, and men were forced onto the buses and were previously ordered to tie one another's arms behind their backs because, according to the witness, they "*smelled very badly and no soldier wanted to come closer to them.*" This was also confirmed by witness Zoran Gajić, who participated in having the last group of men board the buses. On that occasion, a "high-ranking officer of VRS" was in front of the school and he said that all those in the school had to leave. During his testimony before the ICTY, witness Rajko Babić learned that that was Colonel Popović.

286. Upon his return to the battalion, witness Rajko Babić also found out that the buses were driven to the Farming Cooperative Branjevo and that the captives from the school had been executed. Then he looked into the duty roster and noticed that a sheet of paper he saw on 14 July and on which the arrival of captives at the primary school Kula was recorded was torn out from the duty roster, about which the witness became suspicious, but he did not dare to raise that issue, particularly not with his superiors.

287. On the day when men were transported to the Farming Cooperative Branjevo, witness Mile Tejić was also in front of the school and he provided the following description:

"Around 10:00 hrs. some guys wearing camouflage uniforms and camouflage hats on their heads, arrived in a large olive-drab van. Upon their arrival, they entered the classrooms and shouted at us, captives, cursed our Muslim mothers, talked to that officer, and then boarding the *Drina Trans* buses which were parked on the road by the school at about 11:00 hrs., began. Together with military police officers among whom he recognized Zoran and Boban, those guys participated in having the captives board the buses, ordering them to form a single file and keep their hands above their heads. When they emptied our and one more classroom, Neđo Manojlović said to me: *Let's go away from here. This is not for us.* We were told that the people would be exchanged, and I found out subsequently that they had been killed in Branjevo, where they were buried as well. I do not know who killed them, nor have I ever learned who those men wearing the camouflage hats were."

288. During cross examination, the witness explained that he considered the guys wearing camouflage uniforms "*the mafia men, because they were arrogant with everyone, they shouted and cursed. They were younger, about 18-20 years of age, and wore camouflage uniforms, while other soldiers wore different parts of clothes – if they had trousers, they did not have tunics. The word was spread later on that they were Sarajevans and that it was them who killed those captives.*"

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<sup>103</sup> Witness Dragan Jovanović was examined at the hearing of 15 March 2011.

<sup>104</sup> Witness Jevto Bogdanović was examined at the hearing of 1 February 2011.

289. Savo Stević<sup>105</sup> also noticed a middle-aged VRS officer of medium height in front of the school, and there were 7 or 8 soldiers with him who said that they were from Sarajevo. Like other witnesses, he describes that they wore “*camouflage uniforms, someone had caps, someone had cloth caps, someone scarves, for the weather was hot.*”

290. Witness Bogoljub Gavrić does not remember a tall VRS officer in front of the school on 16 July, but he does remember Slavko Perić and the arrival of buses. He further describes that they had men lined up at the school entrance and put them blindfolds made of some fabric. He allows for the possibility that their hands were tied and eyes blindfolded before they boarded the buses. They headed towards the Pilica Dom. The Farming Cooperative Branjevo is in the same direction. Every bus was escorted, just like at the time of the arrival of the captives. Eventually, no captive remained in the school. He remembers that the total of about 12 buses, that is, about 600 persons, were driven away.

291. Considering that they were driven away on several separate occasions, while the remaining captives were boarding the buses, artillery and rifle fire was already heard from the direction of the Farming Cooperative. During cross examination, the witness explained that it could not have been combat fire, explaining that “*it had never been that way since the time I was there.*” Considering that other examined witnesses confirmed the presence of Colonel Popović in front of the school on 16 July and that the witness does not want to strictly confirm that the men were bussed to the execution sites, while indirectly indicating that it was unusual to him to hear shooting from the direction of the Branjevo Farming Cooperative, the Panel finds that he avoided in his testimony to offer any more accurate information; however, his testimony is fully consistent with the testimonies of other witnesses with regard to the conditions in which the men stayed in the school and the manner in which they were transported to Branjevo.

292. Witness Zoran Bojić and several soldiers who went to the family patron-saint’s day on 15 July, moved around at about 18:00 hrs. on 16 July, and found only a few persons on the road near the school who informed them that there was nobody in the school. The witness and his colleagues went to the Brigade Command straight away and found there, at the meeting, Rajko Babić – moral guidance officer, Commander Pelemiš and Commander Slavko Perić who said to them: “*It seems that those fools killed those men!*”, referring to the people from the school. Next day, Slavko Perić asked the witness to give him a lift to the Pilice Dom to carry some food and, upon their arrival, the witness parked the car in front of the coffee-house, and then he noticed dead bodies being loaded onto the truck.

293. On his way back, Slavko Perić said that some security officers had killed those men because of a rebellion, while the witness’s uncle, Zdravko Lakić, subsequently told him that he was loading the dead bodies and that “*it was so terrible that he could not do*

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<sup>105</sup> Witness Savo Stević was examined at the hearing of 1 April 2011.

*that*“. He has never commented on the number of those killed in the Dom. Afterwards, rumors were spread in the town that men from the Pilica school had been executed in the Dom and at the Branjevo Farming Cooperative.

294. On the same day, that is, on 15 July, witness Mićo Manojlović<sup>106</sup> also went to a „*some see-off party*“ in the village of Glavice, so that he arrived in front of the school the next day, on 16 July, at about 10:00 hrs. An order was issued to them that day that the captives were to be escorted onto the buses, so he and other members of the unit formed a cordon through which the captives walked. They were told that they would be exchanged. On that occasion, he saw a commanding officer, but he has never found out as to who he was. Some people who were 25-30 years of age also arrived wearing black uniforms and „*with a prison haircut and wearing earrings*“.

295. After men were taken away by buses, the witness went to the Ljubo's Coffee House across from the Pilica Dom. He wanted to peep in the hall of the Pilica Dom, but a soldier yelled at him so he did not enter. He only managed to see that there was a large number of dead bodies of those killed in the hall. One of those “*wearing earrings*” invited him to join them in killing the men, but he refused. He remembers that on the same day the road towards Branjevo was also blocked. In the further course of his testimony, the witness confirmed that everybody in Pilica knew at the time that people had been killed there.

296. After the men were taken away by buses, like witness Mićo Manojlović, witness Savo Stević<sup>107</sup> also went to Ljubo's Coffee House wherefrom the Pilica Dom could be seen. There were both civilians and military there and they did not say anything. It was only said that there were people there who were brought from Srebrenica. Witness Savo Stević learned later on that people from Pilica school were killed in Branjevo, but he does not know who did that.

297. Witness Stanko Kostić<sup>108</sup>, also a member of the First Battalion of the Zvornik Brigade, was not sent with others to guard the captives, because he had a day off. However, he came to the school self-initiatively when he observed some commotion. On that occasion, he was standing near the shop in the vicinity, watching what was going on, and he thus saw Slavko Perić, the Brigade Security Officer, in front of the school. He recognized several Zvornik Brigade soldiers, and he claims that, from the Command, Perić, Babić and Dragan Pantić were present there, but there were many locals who came there out of curiosity.

298. On that day, he went to the school on several occasions and he did not hear shooting, nor did he see dead bodies at that time. One evening, on his way to the frontline and when passing by the school, he saw that men were boarded onto the buses. He was addressed by an unidentified soldier who cursed his Serb mother and

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<sup>106</sup> Witness Mićo Manojlović was examined at the hearing of 29 March 2011.

<sup>107</sup> Witness Savo Stević was examined at the hearing of 1 April 2011.

<sup>108</sup> Witness Stanko Kostić was examined at the hearing of 1 April 2011.

asked him to show them a way to Branjevo. He entered the bus and accompanied them to the gate at the entrance to the Branjevo Farming Cooperative, where the same soldier forced him out of the bus, so he stayed at the crossroads, that is, at the gate<sup>109</sup> (at the spot he marked at the photograph) for the next half an hour. While waiting there, he heard shots, but he cannot state if they were individual or firing in rapid succession, but he did not think at the time that they had killed the men from the bus. Initially, he believed that they were transferred to the farming cooperative because VRS soldiers also used to sleep there. He reached this conclusion because the bus with which he came there returned empty and he took it to return to the school.

299. It was only at a later point in time, while he was at the frontline, that witness Kostić learned that the people were killed at the Branjevo farming cooperative, which the Panel cannot accept as truthful because, although the witness claims that he was standing at the place from which the execution site could not be seen, his explanation is unconvincing and contrary to logical conclusions of a person of average intelligence, considering that shortly after the arrival of buses transporting the captives a firing in rapid succession was heard and the bus returned empty.

300. Witness Zoran Gajić<sup>110</sup> who, being one of the guards, was in a position to watch the executions in Branjevo, contested the testimony of witness Kostić in the relevant part, claiming that he, together with witness Stanko Kostić, escorted the last group of people onto the bus to the Branjevo Farming Cooperative on 16 July.

301. Therefore, the Panel accepts that the two of them set off in the last bus, however, unlike witness Kostić, witness Zoran Gajić described in detail what he saw upon arrival at the Branjevo Farming Cooperative:

“I see some younger soldiers with shaved heads, eating sandwiches. They were armed with automatic rifles, having a machinegun M84 in the vicinity. They wore uniforms, like black ones with short sleeves. They took out those that we had brought there and ordered them to sit down a few meters away from the bus. At the field which he marked on the photograph<sup>111</sup> the witness saw dead bodies. He cannot say how many buses headed from the school towards Branjevo, however, according to the number of people and what he saw at the field, there were around 1.000 of them. They were all civilians and men of various ages. The same people I also saw later on in front of the Pilica Dom, where security was provided and shifts rotated every two hours. Afterwards, I heard that those people had also been killed.”

302. The description provided by witness Zoran Gajić largely corresponds to the description of executions at the Branjevo Farming Cooperative provided in the testimony by the Accused Franc Kos, Vlastimir Golijan, witness Z-1 and witness Dražen Erdemović, who themselves participated in the execution of the captives brought there.

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<sup>109</sup> T-17 – witness marked the referenced location at the photograph presented to him.



303. Thus, the Panel concludes that witness Kostić Stanko deliberately makes deviations in his testimony in order to protect himself against self-incrimination.

304. Apart from the already stated, another illogicality also refers to witness Kostić's statement that a bus crowded with captives came by in the evening hours, although the presented evidence indicates that the executions in Branjevo ended at around 16:00 hrs. Furthermore, witness Kostić's claim that soldiers asked him about the direction in which to go to reach the Farming Cooperative in Branjevo is also illogical as it was quite unnecessary considering that the same buses were already transporting the captives from the school to Branjevo all day long.

305. Therefore, the Panel accepts that the event happened as described by witness Zoran Gajić who, together with Stanko Kostić, was in front of the school, participated in boarding the captives on the buses and escorted the last bus to the Branjevo Farming Cooperative.

**E. LEAVING OF THE DETACHMENT MEMBERS FROM THE DRAGAŠEVAC BASE FOR THE FARMING COOPERATIVE IN BRANJEVO ON 16 JULY 1995**

306. Based on the presented evidence, the Panel concluded that, in the morning hours of 16 July, eight members of the Detachment who happened to be in the Dragaševac base, that is, the accused Franc Kos, Stanko Kojić, Vlastimir Golijan, Zoran Goronja, witness Dražen Erdemović, protected witness Z-1, Brane Gojković and Aleksandar Cvetković, were assigned a task to leave for the Farming Cooperative in Branjevo to guard the captives.

307. During the proceedings, the protected witness Z-1 confirmed that the eight listed members of the Detachment left for the Farming Cooperative in Branjevo on 16 July. However, this witness claimed that the same group, together with Zoran Obrenović a.k.a. "Maljić" and Luka Jokić, left the base the previous day as well, that is, on 15 July, when they went to the Milići military base in the van, stayed there for a short time and returned to Dragaševac.

308. The testimony of witness Z-1 about a part of the unit leaving for the military base and coming back has not been corroborated with any other presented evidence.

309. The only witness who, apart from witness Z-1, mentions 15 July as the date on which the Detachment members left the base to perform a task, is witness Dragan Todorović. However, having analyzed and compared his testimony with other witnesses' testimonies, the Panel found that the event described by Todorović actually took place on 16 July.

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<sup>110</sup> Witness Zoran Gajić testified at the hearing of 22 February 2011.

<sup>111</sup> T-12 and T-13 – a photograph presented to witness Zoran Gajić.

310. Thus, witness Dragan Todorović claims that, on 15 July, Dragomir Pećanac, Adjutant to General Mladić, and one more vehicle with a person unknown to him in it, arrived at the base. A desk officer told him later on that it was Colonel Vujadin Popović, commanding officer in the Drina Corps. On that occasion, Pećanac talked to Zoran Obrenović, they shouted at each other and argued about some order, thereafter Zoran Obrenović said that “that” about which they had argued he did not want to execute because he only and solely acted upon the orders of Milorad Pelemiš. Nevertheless, a group of 10-15 members of the Detachment, including Z-1, Savanović, Cvetković and Franc Kos, was selected. He was not sure about others, but he only knew that Erdemović volunteered.

311. Witness Dragan Todorović further testified that Pećanac stayed in the base for about 15 minutes and, on that occasion, ordered the witness to prepare materiel and technical equipment and other necessary items, meaning howitzer, mortar bombs, explosive, fuses and similar, all of which the witness put in a black van and Franc Kos received it because, as a rule, a group leader was supposed to receive equipment.

312. Based on other presented evidence, the testimony of Dražen Erdemović, and the Accused Franc Kos in particular, and also pursuant to documentary evidence<sup>112</sup>, the Panel concluded that witness Dragan Todorović actually described the events of 16 July, erroneously believing that the referenced actually happened on 15 July.

(a) Analysis of testimony of witness Dragan Todorović

313. The Panel reached the referenced conclusion upon a detailed analysis and a comparison of his testimony with other witnesses’ testimonies and presented documentary evidence.

314. Namely, witness Dragan Todorović claims in his testimony that it was he who assumed the obligations concerning the funeral of soldier Koljivrat so that, having learned about the event, he went to the hospital straight away to take over the body of slain Koljivrat, and secured a vehicle for his transport and a vehicle for a group of members of the unit who were to attend the funeral.

315. Afterwards, he and several members of the Detachment, including Dražen Erdemović, driver Željko Vukašinović, witness Srđan Brezo, and possibly the Accused Zoran Goronja, went to Trebinje on 13 July to attend the funeral, and returned to the Dragaševac base on 15 July at around 11:00 hrs. On their way back, they shortly stopped by the family house of the witness Srđan Brezo in Pale.

316. In this part, the Panel credited the witness Dragan Todorović, because his testimony is consistent with the testimony of witness Dražen Erdemović, who confirms that he, witness Todorović and several members of the Detachment went to Trebinje on

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<sup>112</sup> Documentary evidence for the Prosecution T-43.

13 July to attend a funeral on 14 July. Afterwards, on 15 July in the early morning hours, they were back to the Dragaševac base where they spent the whole day taking rest.

317. The Panel's conclusion that, during his further testimony, the witness Todorović described the events of 16 July is corroborated by the statements of a number of witnesses who confirm that members of the unit did not have any assignment to perform on 15 July.

318. Thus, witness Dragan Todorović himself claimed at one point in time that the Commander Pelemiš did not give any order after the unit members came back from the funeral. He only deployed some of them to the duty and allowed some to take leave. This was confirmed by witness Srđan Brezo, who submits that, on that occasion, the Commander allowed him to take a 7-day leave, and he only learned about the Branjevo events from the testimony of D. Erdemović before the Tribunal.

319. Witness Dražen Erdemović, who does not deny his participation in the killings in Branjevo during the day of 16 July, categorically claims that he took a rest in the base on 15 July, which the Panel accepts as truthful, because it finds it to be illogical that after a trip that lasted for almost a whole night, witness Dražen Erdemović would volunteer to perform any task, immediately upon his arrival at the base on 15 July.

320. Accordingly, on the grounds of consistent testimonies of Dražen Erdemović and Srđan Brezo, the Panel concludes that, after they returned from the funeral, that is, on 15 July, until the morning hours of 16 July, members of the unit, including the accused, were not assigned any other tasks.

321. The referenced conclusion was also corroborated by the testimony of the witness Velimir Popović who testified that, on 15 July, in the base, "*lamb*s were roasted, and members of the Vlasenica Detachment visited their homes". One of those who visited their homes was the Accused Vlastimir Golijan as well, and he confirmed in his testimony that he spent the whole day of 15 July taking rest and that he planned in the evening to go home for a birthday party, considering that most part of the unit members were on leave.

322. Furthermore, there are other coincidences in the testimonies, indicating that witness Dragan Todorović actually described the events of 16 July.

323. His testimony is consistent with the testimonies of the Accused Franc Kos and Dražen Erdemović with regard to the identity of persons who came in front of the base in Dragaševac (one of them was Dragomir Pećanac) and to the volunteering of Dražen Erdemović to leave for Branjevo; however, the Accused Franc Kos and witness Dražen Erdemović place these events on 16 July, not a day before, as erroneously stated by witness Todorović.

324. In his further testimony, the Accused Franc Kos mentions a quarrel between Pećanac and a unit member, Zoran Obrenović, wherein witness Dragan Todorović claims that Zoran Obrenović refused to carry out some order of which Pećanac informed

him on that occasion, saying that the Detachment members only act upon the orders of the Commander Pelemiš, while the Accused Kos claims that these two persons quarreled about some money (2 million marks) and 12 kg of gold, thereafter Zoran Obrenović and Pećanac, together with Luka Jokić, entered the Commander Pelemiš's office and afterwards informed those present that they should leave for Branjevo to guard the captives.

325. According to the Accused Franc Kos, Pelemiš was present there and confirmed the order issued by Pećanac.

326. Unlike the Accused Franc Kos and Dražen Erdemović, witness Dragan Todorović claims that Commander Pelemiš was not in the base compound on that occasion, which the Panel finds to be untruthful, because all other presented pieces of evidence indicate that Pelemiš was present in the Dragaševac base from 13 July onwards.

327. Thus, witness Dražen Erdemović provides the following explanation in his testimony<sup>113</sup>:

"In the morning hours of 13 July, Pelemiš was in the building in Dragaševac and I remember that he only had a small adhesive plaster strip on his head. He appeared to be healthy and was in full command over the unit. He even ordered that a captive "Mujo" whom they kept in the Sušica camp and used for some operations should be killed, but he emphasized that the killing should not be "loud"."

328. On the other side, witness Velimir Popović, who was in the hospital to donate blood at that time, does not remember that he saw Commander Pelemiš there, which additionally supports the Panel's conclusion that he was present in front of the Dragaševac base both days, that is, on 15 July as well, when he granted a furlough to the unit members and selected some of them to be on duty, and also on 16 July when he issued an order for leaving for Branjevo.

329. Based on other presented evidence as well, the Panel found that the referenced operation was ordered by Dragomir Pećanac, Deputy to Colonel Petar Salapura, and confirmed by Pelemiš, Detachment Commander. According to witness Dražen Erdemović, Petar Salapura, Chief of Intelligence Centre of VRS GC, was entirely responsible for sending members of the 10<sup>th</sup> Sabotage Detachment to perform tasks and missions, while his Deputy, Dragomir Pećanac, was responsible for the preparation of the operations in the Srebrenica region.

330. Therefore, based on the presented evidence, the Panel undoubtedly concluded that, on 16 July, upon the order by Dragomir Pećanac and Commander Mišo Pelemiš, members of the Unit went to the *Standard* barracks in Zvornik in a van, wherefrom they

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<sup>113</sup> T-68 Statement by witness Dražen Erdemović given on 24, 25, 26 and 27 June 1997, and on 12 August 1998; it was admitted by the Court Decision No: S1 1 K 003372 10 Kri dated 7 September 2011.

proceeded to the *Kula* school and the Branjevo Farming Cooperative, escorted by the military police officers.

331. Witness Dragan Todorović claims that, before the group set off, he himself put MTD into a Volkswagen van, which equipment was received by the Accused Franc Kos.

332. The presented evidence corroborates that this witness was in charge of securing vehicles, MTDs and logistics in the 10<sup>th</sup> Sabotage Detachment. However, it clearly follows from the documentary evidence tendered into the case file that the materiel and technical devices were issued to members of the Detachment on 16 July (1200 pieces of ammunition for a machinegun M-84), while the records for 15 July do not contain data on the issuance of MTDs. Namely, on 15 July, it was only recorded that the Unit members returned from the funeral, and there is no data on any issuance of MTDs. Therefore, for this reason as well, the Panel does not accept the testimony of witness Todorović, according to which he prepared and handed over the equipment to the group on 15 July.

333. Besides, it clearly follows from the notebook tendered into evidence that the issuance of the MTD on 14 and 15 July was recorded in the same handwriting and the Panel therefore concludes that it is not Dragan Todorović's handwriting at all because, as he said it himself, he attended a funeral in Trebinje on 14 July. The handwriting was different on 16 July when the issuance of MTDs (including the machinegun ammunition, among other things) was recorded; therefore, considering the role of a logistics officer of the 10<sup>th</sup> Sabotage Detachment and pursuant to all of the presented, the Panel finds that, on 16 July, witness Dragan Todorović did issue the equipment which he put in a van in which the Detachment members set off to perform the Branjevo assignment.

334. Regardless of this fact the Panel observes that, in the context of handover of MTDs, witness Dragan Todorović identifies the Accused Kos as the leader of the group that left for Branjevo, and it was also mindful of a number of other testimonies corroborating such arguments.

335. Witness Velimir Popović, who confirms the testimony of witness Todorović, also claims that the group leader could only be the Accused Franc Kos, that is, he states that the Accused Kos could have led the execution of such an operation, while the defense witness Dalibor Đukić claims that the Accused was a group leader in other operations as well.

336. At the same time, witness Dragan Todorović categorically claims that Brane Gojković could not have been in command of the Detachment members who outranked him, and he primarily had in mind Dražen Erdemović, who was a sergeant, and the Accused Franc Kos, who was a 2nd Lieutenant.

337. Therefore, the Panel does not accept the finding of the expert witness Kosovac stating that, based on the available information obtained from the witness testimony, it is

not possible to find beyond a doubt who was the unit leader at the relevant time, that is, who was the group leader, wherein the Panel observes that, at one point in time, the expert witness himself quoted the order<sup>114</sup> to go on the Bijeljina-Vlasenica-Bratunac march, on which occasion the Unit was led by none other than the 2nd Lieutenant Franc Kos.

**1. Killing of captives at the Branjevo Farming Cooperative**  
**- General Factual Findings**

338. Based on the presented evidence, the Panel found that, on 16 July, members of the 10<sup>th</sup> Sabotage Detachment, including the Accused Franc Kos, Stanko Kojić, Vlastimir Golijan, Zoran Goronja, Dražen Erdemović, witness Z-1, Brane Gojković and Aleksandar Cvetković, following the order of Dragomir Pećanac and Commander Mišo Pelemiš, reached the “Kula” school in Pilica in a van, wherefrom they, escorting VRS commanding officers, Vujadin Popović among others, went to the Branjevo Farming Cooperative where they were ordered to execute the captives who were to be brought there from the school by buses.

339. Analyzing the testimony of the Accused and the witnesses, witnesses Z-1 and Dražen Erdemović in particular, the Panel finds that there are certain discrepancies in the description of the manner in which the captives were executed at the Branjevo Farming Cooperative; however, the presented evidence clearly shows that the accused participated in the killings in Branjevo as co-perpetrators wherein they took the men out of the buses, led them to a part of meadow at which they ordered them to form a line with their backs turned to the members of the Detachment who were initially killing them firing from a M-84 machinegun, which was firstly used by Zoran Goronja and, once they realized that this weapon only injured the men thus “slowing down” the accused in performing their assignment, considering that they had to make an effort to allow nobody to survive, they decided in the further course of the executions to take smaller groups of men out of the buses, bring them to the execution site and summarily execute them.

340. Although the number of those killed was mostly contested during proceedings, the Panel indisputably concluded based on evidence that, on 16 July, from 10:00 to 16:00 hrs., about 800 men, among whom there were those older than 70 and younger than 18, were executed at the Branjevo Farming Cooperative. This conclusion is grounded on the witness testimony and documentary forensic evidence obtained at the execution site.

341. Considering that, in order to diminish their own responsibilities, the accused endeavored in their testimony to devaluate their respective roles in the executions in Branjevo, the Panel will present the events from the perspective of the accused, comparing their testimony with those of the Z-1 and Dražen Erdemović who participated in the executions themselves.

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<sup>114</sup> T- 36 Order by the Command of the 10th Sabotage Detachment, No. 123-2/95 of 10 July 1995.

## **2. Testimony of the Accused Franc Kos and Stanko Kojić about the Branjevo executions**

342. The Accused Franc Kos and Stanko Kojić testified about the killings of captives in Branjevo.

343. The Accused Franc Kos claimed in his testimony that, in the morning of 16 July, a telephone rang about 04:30 hrs., Colonel Beara was on the line ordering the Accused Franc Kos to take 7 soldiers with him and report to the Command in Vlasenica. The Accused initially refused to follow Beara's order saying that there were no soldiers in the base and that his Commander was absent: "*I said I can't, neither soldiers nor the Commander are here ....I won't!*"

344. Then Beara contacted him by phone again at about 05:30 hrs., checking if he had set off and, after the Accused Kos answered that he had not, he hang up.

345. Afterwards, at about 06:30 hrs., Dragomir Pećanac, Commander Pelemiš, Dragan Jokić and Dragan Obrenović arrived in front of the base and talked with Pelemiš about something: "*They talked about something in there, about some money, some gold, they have to go somewhere to take some money, 2 million marks and 12 kg of gold, later on a word was spread that this what we had done would be rewarded.*" Then they asked the Accused to enter the office where Pećanac and Pelemiš informed him that he should go with a group of soldiers to the Branjevo Farming Cooperative to guard the captives. At that point in time Dražen Erdemović was standing at the door and volunteered to perform the assignment.

346. For that purpose they were provided with the unit van which was driven by Aleksandar Cvetković. The Accused Franc Kos assumes that, on that occasion, Commander Pelemiš issued some instructions to Brane Gojković, while he only informed the others to follow a red *Opel Kadett* car. The Panel notices that, during his testimony, Franc Kos endeavored to diminish the importance of his role in the performance of the assigned task from the very beginning, which he actually did by claiming that the group setting off to Branjevo was led by Brane Gojković, although other presented evidence shows the status of the Accused Franc Kos in the unit. Other examined witnesses confirm that during some other tasks he was the group leader as well.

347. At one point in time the Accused himself expressed his disbelief that Pelemiš could have selected a member of the Detachment having a lower rank than his own, to give orders to everybody, which Dragan Todorović also confirmed in his testimony, claiming categorically Brane Gojković had a lower rank than Dražen Erdemović as well, so he could not have possibly given orders to him, let alone to Franc Kos, nor could have he been a group leader to that effect.

348. The Accused further describes in his testimony that the red *Opel Kadett* car, prior to stopping in front of the school in Pilica, stopped for a while in front of the "Standard" barracks in Zvornik, at which point Aleksandar Cvetković and Brane Gojković got off the van and, according to the Accused, went to the barracks to be further informed of the

assignment they had been tasked with.

349. The Panel concludes that, in this part again, the Accused deliberately avoids to state that he himself also went towards the Command, as clearly stated in the testimony of Z-1, which is logical considering that the Accused was a leader of the group heading towards Branjevo at that time.

350. Afterwards, members of the Detachment were told to continue to follow the red *Opel Kadett*, which they did, and reached the Branjevo Farming Cooperative driving behind it.

351. It is evident that the Accused avoided to confirm in his testimony the presence of members of the 10<sup>th</sup> Sabotage Detachment in front of the “Kula” school in Pilica, although witness Z-1 and the Accused Vlastimir Golijan clearly describe that prior to reaching the Branjevo Farming Cooperative, they shortly stopped at the school where, according to the testimony of most examined witnesses, commanding officer Popović and some other VRS officers were present.

352. The examined witnesses noticed a van carrying young men 25-30 years of age, who wore rather new camouflage uniforms, caps, hats and scarves, and who behaved in an arrogant manner. According to the presented evidence, those could only have been members of the 10<sup>th</sup> Sabotage Detachment tasked with committing the executions in Branjevo. The Accused Franc Kos deliberately leaves out of his testimony the fact that the Detachment members shortly stayed in front of the school, probably because all witnesses described their presence in a negative context.

353. Witnesses who saw Lieutenant Colonel Popović in front of the school claim that he was shouting on that occasion that all captives should be killed; however, it was not proved during the proceedings that he did it in the presence of the Accused, that is, that they could have heard that.

354. Thus, the Accused Franc Kos skips in his testimony the fact that they stopped in front of the school “Kula“, and he further describes that the Detachment members, driving behind the commanding officers in the red *Kadett* car, went to the Branjevo Farming Cooperative where they were told that buses with captives were soon to arrive one by one. Twenty minutes later, the first bus arrived and they were told that the captives were to be killed.

“The first bus has arrived. Then they said that those men were to be executed by firing squad. That was said by a man who brought us there. He wore uniform, a new uniform – a camouflage one. I don’t know if he was a member of the Zvornik Brigade...he was, probably....I did not know those people. He said to all of us that we had to shoot those men to death, he said they were war criminals. Then soldiers who came as escort – I think there were two of them – began to take people off the bus and to the site at which we were to execute them, which we did.”

355. During cross examination, the Accused Franc Kos claims that the commanding officer who ordered the captives to be liquidated in Branjevo actually was Lieutenant<sup>72</sup>



Colonel Vujadin Popović. He learned about his name later on and he did not know who he was at the relevant time. Witness Dražen Erdemović confirmed in his testimony that “one Lieutenant Colonel” said that the captives should be executed.

356. In his statement made during investigation, the Accused Franc Kos described that with the third bus of the captives witness Dražen Erdemović objected to the killings, which a few members of the Detachment noticed and testified accordingly, however, witness Z-1 testified that it was exactly the Accused Franc Kos who turned to Erdemović saying that if he were to disobey the order, he himself may well join the line of people to be executed.

357. Upon issuing the order, an M-84 machine-gun was put on the straw bales on the part wherefrom the entire farm could be seen. This weapon, according to the Accused Franc Kos, was used for the execution of the captives from the first bus. However, it inflicted bad injuries and proved to be an “*inefficient manner of killing*”. Then, according to the Accused Kos, the Fourth-Accused Zoran Goronja fired a burst at the captives, and witness Z-1 said to him: “*Do it, kid, what are you waiting for? Shoot!*” The Accused Stanko Kojić also confirmed in his testimony that Zoran Goronja also fired the machinegun.

358. Nevertheless, witness Z-1 avoids to confirm in his testimony that the executions in Branjevo were committed by firing machinegun, although he does not deny that within the material–technical devices the Detachment was also issued an M-84 machinegun for which, according to the records tendered into evidence on 16 July, 1,200 pieces of ammunition were provided.

359. Based on the presented evidence, the Panel concludes that the referenced weapon was used for the executions initially, but it inflicted bad injuries so the accused therefore moved on to another form of execution.

360. Considering that the initial method of killing resulted in a large number of injuries, they agreed upon executing the captives in the groups of 10.

“Fifty people came in the first group, Goronja was shooting but not until the end. Aleksandar Cvetković was then shooting until the end. In general, they were all dead. When the second group was brought there, Z1 was first to start firing at them in bursts, which resulted in a large number of injured persons. Then I approached four men to help them. Stanko Kojić said it was better that way ... and he took a pistol ... and shot two men in their heads. Then Gojković and Erdemović arrived. Erdemović quarreled with Gojković about something. They said they would bring 10 by 10 there and fired short bursts at them. There were no wounded people ... all were dead there.”

361. As evident in the testimony, the Accused Franc Kos believed the execution of those wounded by firing squad was a human act, because they were “in pain”, so he himself killed 4 wounded men using a pistol. The Accused Z-1 fired in rapid succession at the captives, and the Accused Kojić would then approach and shoot them in the head.

362. Witness Z-2 who survived was not hit, but he fell down on the ground and heard a soldier asking if there were survivors. Two persons responded and that soldier fired a bullet at each of those Bosniaks who answered him.

363. The Accused Franc Kos also described the execution saying: *“People who were brought there were blindfolded, some of them wailed, some moaned, some cursed, but generally speaking, they headed towards the execution site calmly. Each of them turned their backs self-initiatively, there was no order.”*

364. The Accused Franc Kos also remembers that at the time of the arrival of the second, third and fourth bus, they began asking for money from the captives, promising to release them if they survive, which was also confirmed by the protected witness Z-2, who survived the execution by firing squad in Branjevo. The Accused Franc Kos claims that, at that point in time, he said to the Stanko Kojić *„kid, don’t do that!“* at which he turned responding: *„Nobody will tell me what to do!“* The Accused further claims: *„Geza (Stanko Kojić) arrived and asked: Men, do you have money? They were silent, hiding their faces. Then Geza approached and straightened the line of men.“*

365. At one point in time when the next bus arrived, the Accused also turned to the Accused Vlastimir Golijan with whom he discussed the ongoing executions:

*“Vaso, what are we doing here? There is a man there who used to help Serbs, helped people, what kind of a criminal he is? and he turned to me saying: Where is he!? When I showed him that he was in the hangar, he went...run... now I don’t know if he himself killed him or someone else did that, but he said – I don’t want any alive witness so that he can recognize me later!“*

366. During the executions in Branjevo the Accused further testified that members of the Detachment made a lunch break and the Accused Stanko Kojić and Zoran Goronja even asked for a crate of beer. However, the Panel notes that, in his statement made during the investigation<sup>115</sup> the Accused Franc Kos did not mention the referenced circumstance, that is, he did not claim that the Accused Stanko Kojić or any other member of the Detachment left the Branjevo Farming Cooperative during the execution by firing squad.

367. At the end of his testimony, the Accused Franc Kos noted that a TAM truck carrying soldiers came with the last bus and these soldiers finished the killing of the remaining captives, about which many witnesses testified, including witness Srđan Brezo, protected witness Z-1, and the Accused Franc Kos, and Dražen Erdemović also mentioned that in his testimony given before the ICTY.

368. Thus, the Accused Franc Kos provides the following description:

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<sup>115</sup> Record on interviewing the Suspect Franc Kos by the Prosecution of BiH, number: KT-RZ-157/05 of 9 August 2010.

“We were unaware that more of them would come. We believed that there would be only one bus. With the fifth bus, Z1 arrived and said to me: *Those down there sent word that you must do it faster, they have rebelled and want to break the door open and flee.* Then I said to him I could not do it any longer, not only I but others as well. Then we all moved away and sat down. When the next bus arrived, soldiers who escorted it forced them out. The bus was followed by a TAM truck with other soldiers who began to yell at us for not doing the execution. Then ill-treatment began, some were beaten, some were chased across the tilled field. That was another group that came there, the one that did not belong to the 10<sup>th</sup> Detachment. I don’t know what that group was.

“Thus, this group of soldiers came with the sixth bus. They forced even drivers and military police officers to also kill one or two captives to prevent them from talking. I saw that the sixth bus arrived and also the seventh bus which was half empty – we were there all the time.”

369. Thus, the Panel finds that, upon the arrival of the last, half-empty bus with the captives, a military TAM truck came carrying several soldiers whose membership has not been entirely proven during the case trial.<sup>116</sup> These soldiers only killed the captives from the last bus, therefore this circumstance does not affect the Panel’s conclusion on the manner in which the Accused participated in the executions at the Farming Cooperative in Branjevo, nor does it affect the total number of the killed men.

370. The Accused Franc Kos was then approached by Dražen Erdemović who said to him that the soldiers who came there by a TAM truck requested to go in front of the Dom and continue with the execution of the captives, which the Accused and other members of the Detachment refused to do. To this effect, he states:

“People came on that bus, I myself did not hear that, but Dražen Erdemović said that to me later on – they asked us to go to the Dom for more executions. I said I would not do that, and Dražen said the same, and that was the end of the matter. Our whole group had previously stopped killing, and we did not want any more of that.

When they left, we were told to go to the coffee-shop in Pilica and we went there. That was the coffee-house across from the Pilica Dom. There were military police....civilian police officers in uniforms in front of the Dom. I entered the coffee-house, together with all of the Detachment members. I think that Erdemović, I and the Accused Vlastimir Golijan sat next to the door. Suddenly, explosions and bursts of fire were heard and one soldier came from across and said that everything was finished over there and asked if there was someone who would like to check if there were survivors. He brought 500 marks with him, covered with blood. Then Erdemović stood up and left. Then Beara came and thanked us for the completed task....he was under the influence of alcohol, and we also had consumed brandy while in Branjevo.”

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<sup>116</sup> In the Verdict number: IT-96-22-T of 29 November 1996 against Dražen Erdemović, the group of soldiers who arrived subsequently and participated in the executions in Branjevo were referred to as „the soldiers of another brigade“; therefore, it was not indisputably established at this trial as well to which particular formation these soldiers belonged.

371. In his statement made during the investigation, the Accused Franc Kos described in detail the arrival of soldiers in a TAM truck and what a lieutenant who came to Branjevo in a jeep vehicle said to them:

“Those guys came in a TAM truck, someone arrived in a jeep vehicle.....it was probably some.....was he a corporal or a lieutenant, I don't know. He said: Go down there now, we have a problem in the Dom, they rebelled and do not want to get out, let us see what to do with them. Those in the TAM truck set off immediately. When we reached the spot, really, in the Dom.....the Dom was full.”

372. During cross-examination at the main trial, the Accused was no longer uncertain about the identity of the commanding officer who arrived at Branjevo in a jeep vehicle, and he therefore claims that that was the same officer who initially ordered the execution by firing squad in Branjevo, whom the Accused identified as Vujadin Popović.

373. Therefore, all witnesses consistently testified that, from the Farming Cooperative Branjevo, members of the Detachment went to the “Ljubo’s Coffee-House” situated across from the Pilica Dom.

374. Witnesses Dražen Erdemović and Z-1 testified that the Accused Franc Kos and Brane Gojković, upon arrival at the “Ljubo’s Coffee-House” refused to kill the captives in the Dom, saying that they should have been issued an order by their direct superior, Commander Pelemiš, for such an assignment, which the Accused Franc Kos also confirmed in his statement made during the investigation and added that, during their stay in the “Ljubo’s Coffee-House”, Colonel Beara congratulated them for the successfully performed task in Branjevo.

375. As already reasoned, it is evident that, while testifying, the Accused Franc Kos made minor deviations on several occasions in order to diminish his own responsibility; consequently, special attention was paid to the analysis of his testimony, which was thoroughly examined relative to the testimonies of witness Dražen Erdemović and Z-1, the testimony of the Accused Stanko Kojić, and in relation to the testimony of Vlastimir Golijan, considering that all these persons participated in the executions at the Military Farming Cooperative in Branjevo on 16 July 1995.

376. The testimony of Franc Kos was also considered relative to his statement made in his capacity as a Suspect, which the Panel adduced into evidence, because it was taken in accordance with the CPC, that is, during the investigation the Accused received relevant instructions, including, among others, a warning that the statement might be used at a main trial.

377. The Panel does not deny the right of the Accused to protection against self-incrimination, but it notes though that an incorrect presentation of the events and changes to the statements aimed at deviating the truth, cannot be relevant in the final evaluation of evidence. Thus the testimony of the Accused Franc Kos was found to be relevant only in the part in which it has been corroborated with other presented evidence, wherein the testimonies of other direct participants in the events in Branjevo have

primarily been taken into account.

(b) The testimony of the Accused Stanko Kojić

378. To a certain extent, the testimony of the Accused Stanko Kojić has been consistent with the testimony of the Accused Franc Kos, except when describing his own actions, because the Accused Stanko Kojić endeavors to diminish or exclude his participation in the relevant events.

379. Thus, he identically describes the gathering of members of the Detachment in front of the base in Dragaševac, leaving for the Farming Cooperative in Branjevo and, like the Accused Franc Kos, he also skipped to describe a stay of members of the Detachment in front of the school “Kula” in Pilica for a short period of time, wherefrom the captives were transported to Branjevo.

380. The Accused Stanko Kojić also claims in his testimony that they only received an order for the execution of the captives upon arriving at the Farming Cooperative in Branjevo from an “*old man with ranks*”, and that by that time they believed that they would only guard the captives. Then, some commanding officers with ranks informed them that the buses would transport the captives to be executed.

381. The Accused further describes the executions that followed:

“The first bus arrived, they mounted an M-84, my ears were buzzing, I could not believe what was going on. Z1 pulled out a “škorpijon” pistol and placed the Goronja kid behind the machinegun. Erdemović and I were talking and Erdemović said : *Can't you see what would happen, they want to kill the people!* I was horrified, and he began to object. Brane said *it must be done....orders cannot be disobeyed... a bullet in the head.*

I had never before killed either a soldier or a civilian. They placed Goronja behind the machinegun. Z1 took the machinegun and began to shoot at the people. I was shocked... I took the pills I had in my uniform. My hands were shaking, but I had to shoot. I was shooting above their heads. If I had missed them, someone else would not have ... such as Z1. I remember the first bus when that one fired the machinegun and people were screaming, and the Slovenian took a rifle and shot them in the heads, then Z1 moved on with the “škorpijon” to shoot those who stayed alive.”

382. Therefore, the Accused Stanko Kojić confirms that an M-84 machine-gun was initially used for the execution of the captives, and that the Accused Franc Kos “finished off” those wounded. Attempting not to incriminate himself during his testimony, the Accused claimed that he was also shooting above the captives’ heads who were “finished” then by witness Z-1, which the Panel finds to be ungrounded because such claims of the Accused are contrary to the presented evidence and the testimony of Jugoslav Petrušić before whom the Accused Stanko Kojić boasted about the number of persons he had killed in Branjevo.

383. In order to diminish his role in Branjevo, the Accused Kojić also testified that when the third bus arrived, “an old man also arrived with a crate of beer” whom he gave his

weapons and, together with Zoran Goronja, left for Pilica to buy a crate of drink and returned only when the executions at the Farming Cooperative in Branjevo were finished. The illogicality in the Accused's testimony is evident in this part because, if "an old man also arrived with a crate of beer" indeed, it was quite unnecessary for him and the Accused Goronja to go to Pilica to fetch drink.

384. Having deliberately reduced his role in the killings in Branjevo in this part of his testimony, the Accused Stanko Kojić, in the further course of his testimony, again presented the events in the same manner as was done by the Accused Franc Kos, when depicting the arrival of unknown soldiers by truck, and the leaving of members of the unit for the "Ljubo's Coffee House" in Pilica, where they disobeyed Beara's order to go to the Pilica Dom and kill the captives.

"Later on, we were in a restaurant in Pilica... there was a lunch there....they asked us to go to the school and we all refused. I don't know who asked for that, nor do I know who was in command, I was but an ordinary soldier. There was a Colonel, an old man....I think he was in charge. We did not say that we would not do the killings, we said that we could not do that any longer. Then other soldiers went there and said that they had finished everything.

385. The Accused Franc Kos also claims in his testimony that, on that occasion, they refused to go to the Pilica Dom to kill the captives because they were "*hungry and thirsty and they could not do that any longer*".

386. Having evaluated the testimony of the Accused Stanko Kojić, in the context of all other presented pieces of evidence, the Panel concludes that, by occasional deviations in his testimony, the Accused endeavors to fully devalue his role in the killings in Branjevo so as to diminish his own criminal responsibility. However, the Panel does not give credence to these parts of the testimony because they have not been corroborated by any other presented evidence, and it only finds relevant the parts of the Accused's testimony which were consistent with that of the Accused Franc Kos and the protected witness Z-1.

(c) Testimony of Dražen Erdemović

387. The Panel finds the testimony of this witness to be corroborative, considering that, under the Law on the Transfer of Cases, a transcript of his testimony<sup>117</sup> has been tendered into evidence, and he did not appear before the Court for cross examination.

388. Thus the Panel finds the testimony of Dražen Erdemović to be predominantly consistent with the testimony of the Accused Franc Kos, in the part in which he describes the assignments of tasks in the Dragaševac base by Dragomir Pećanac and Commander Pelemiš. Witness Dražen Erdemović confirms in his testimony that, on that occasion, he volunteered to perform the task in the Farming Cooperative in Branjevo.

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<sup>117</sup> T- 70 Transcript of testimony of witness Dražen Erdemović in *Popović*, of 4 July and 5 July 2007.

389. Witness Erdemović further describes the movement of the unit members in a van which was driven by Aleksandar Cvetković, their stoppage next to the Military Command in Zvornik, and the commanding officers of VRS driving a red *Opel Kadett* car in front of them all the time, in which manner they reached the Branjevo Farming Cooperative where they were ordered to kill the captives. In that part, his testimony is also consistent with that of the Accused Franc Kos.

390. The Accused Franc Kos, Stanko Kojić and witness Z-1 confirmed that, at one point in time, Dražen Erdemović protested against the killings of the captives in Branjevo, while a part of the testimony of witness Dražen Erdemović, in which he describes the manner of execution of the captives in Branjevo, is consistent with other presented evidence.

391. Thus, he also mentions in his testimony a fact that the men were brought there blindfolded, that they were initially killed from an M-84 machinegun, which was a "*powerful weapon and only mutilated people*", so the unit members decided to find a more expedient manner of killing and began to take the captives off the bus in groups of 10 and shoot them by firing automatic weapons. According to the presented evidence, the individual members of the Detachment who "finished off" those wounded were the Accused Franc Kos and Stanko Kojić.

392. Witness Erdemović also describes the arrival of unidentified soldiers in a military vehicle TAM, for whom he claims to be "some guys from Bratunac", and they arrived along with the last bus transporting the captives, which was half empty, as also confirmed by other examined witnesses.

393. Then, Dražen Erdemović, just like the accused Franc Kos, describes his going to the "Ljubo's Coffee-House", disobedience of order to kill the captives in the Pilica Dom, and the return to the Dragaševac base.

394. Finally, with regard to the number of slain captives, witness Dražen Erdemović mentions a bus which was slightly bigger than the one mentioned by the Accused Franc Kos and Stanko Kojić, and the witness Z-1. However, the Panel presented its position in this regard, which refers to the total number of those killed at the Branjevo Farming Cooperative.

## **2. Testimony of witness Z-1 about the events in Branjevo**

395. The leaving for Branjevo was also described by the protected witness Z-1, who detailed the events prior to and on the day of the execution at the Branjevo Farming Cooperative during his testimony at the main trial and, evaluating his testimony, the Panel observed considerable differences relative to the testimony of other witnesses and the Accused Franc Kos and Stanko Kojić.

396. Having analyzed the testimony of the witness Z-1 in the context of other presented evidence and the testimony of the Accused Franc Kos, the Panel found it proven that, on the relevant date, that is, on 16 July, two commanding officers of VRS, that is, Major

Dragomir Pećanac and one more person whom the witness Z-1 could not identify, arrived in front of the base in Dragaševac.

397. The officers entered the office of the Unit Commander Mišo Pelemiš, and stayed there for about 30-40 minutes, then stepped out of the office to address the gathered members of the Unit, among whom there was the witness Z-1. Pećanac informed them and Pelemiš confirmed that all Muslims from Srebrenica would be executed.

398. The Accused Franc Kos identically described the arrival of Major Pećanac, however, he claimed that, before entering Pelemiš's office, Pećanac had a minor quarrel with Zoran Obrenović.

399. Unlike witness Z-1, the Accused Franc Kos and Dražen Erdemović, who were at the base at the relevant time and were present there when Pećanac addressed the members of the Detachment, do not claim that the order for killing the captives in Branjevo was issued on that occasion.

400. In his further testimony, witness Z-1 claims that, on that occasion, he objected to Pelemiš's order, of which he informed him in his office, after which Pelemiš cursed his Croatian mother, cocked his pistol and pressed it against the witness's back of the head saying that he had to leave for Branjevo nevertheless.

401. In this part also the Panel finds the testimony of witness Z-1 not to be credible, and submits that he attempted in his testimony to diminish the importance of his role in carrying out the task in Branjevo. Analyzing the testimony in this part, the Panel observes that it is unsubstantiated with other presented evidence, wherein the Accused Franc Kos did not mention in his testimony that anyone had opposed leaving for Branjevo, primarily because they had been informed that they should only guard the captives and no executions were mentioned at all, which was likely the reason for Dražen Erdemović to volunteer to carry out the task.

402. Witness Z-1 describes the leaving of the Unit members for Branjevo in the morning hours of 16 July, their stopping near the Vlasenica military base for a short time when Kos, Gojković and Cvetković got out for a little while and talked with some members of the military police, then returned to the van and said to set off following a red *Opel Kadett* car which was driving in front of them.

403. According to witness Z-1, before reaching Branjevo, the red *Opel Kadett* car stopped in the vicinity of the "Kula" school in Pilica, so the van transporting the Detachment members also stopped at the same spot. Several members of the Detachment, including the Accused Franc Kos and Aleksandar Cvetković, headed towards the school where they briefly talked with the officers from the red *Opel Kadett* car.

404. On that occasion, the Accused also wore new camouflage uniforms which kept them distinct from other members of the Zvornik Brigade, and their arrival in front of the school was therefore noticed by almost all examined witnesses who, being members of



the Battalion of the Zvornik Brigade, were engaged in guarding the school. They confirm in their testimony that before the captives were transported to Branjevo, some younger guys in rather new camouflage uniforms arrived by van in front of the school.

405. After spending a short time in the schoolyard, members of the Detachment were told to continue following the red *Opel Kadett* car and so they reached the Branjevo Farming Cooperative.

406. Witness Z-1 further claims that, while travelling, the Accused Franc Kos explained to them that the execution of the captives who were to be brought there by buses would take place there. He explained that, upon their arrival, the captives would form a line with their backs turned to the firing squad, and that it would be necessary to execute them by shooting in the back of their heads. Having arrived at the farm, the Accused Franc Kos showed the exact execution site to everybody.

407. However, in his statement made during the investigation, witness Z-1 did not testify in the foregoing manner. Instead, he claimed that only upon arrival at the Branjevo Farming Cooperative did the Accused Franc Kos and Brane Gojković talk to the officers in the red *Opel Kadett* car who informed them that the buses would soon begin to arrive carrying the captives from the school "Kula", who should then be executed at that locality. More accurately, the order for the execution was given by one of the officers whom witness Z-1 described as follows: *"one of them was 170-180cm tall, weighed about 100kg, black haired, while the other one was taller, having dark hair"*.

408. Therefore, the statement witness Z-1 made during the investigation is in this relevant part consistent with the testimony of the Accused Franc Kos, Stanko Kojić and Dražen Erdemović, and the Panel therefore concludes that the order for killing the captives was given only upon the arrival at the Branjevo Farming Cooperative. It was found based on other presented evidence that it was one of the VRS officers, whom the Accused Franc Kos identified as the Lieutenant Colonel Vujadin Popović, who gave the order to execute the captives.

409. The Panel submits that, by altering his testimony at the main trial, witness Z-1, endeavored to show that the Accused knew about the executions even before their arrival at the Branjevo Farming Cooperative which, as already explained, was not proven beyond any reasonable doubt during the proceedings.

410. In his testimony at the main trial, witness Z-1 claims that, while executing the captives, members of the Detachment also knew that mass executions were simultaneously carried out at other locations, of which they were allegedly informed by their superior Pelemiš, back when the tasks were assigned in Dragaševac. However, considering that it was not proved that the order for execution was issued prior to reaching Branjevo, the testimony of witness Z-1 in this part was not corroborated with any other presented evidence.

411. The Panel observes that witness Z-1 primarily testified at the main trial towards diminishing the importance of his role in Branjevo, endeavoring at the same time to

support the Prosecution theory about the accused's awareness of the massive scale of the crimes being committed in the zone of responsibility of the Zvornik Brigade, that is, of the existence of a genocidal intent on the part of the accused, which was not proved beyond any reasonable doubt during the proceedings.

412. Witness Z-1 further describes:

"After some 20-30 minutes, buses with captives began to arrive. A blue bus was first to arrive and it was driven by a uniformed middle-aged man. The escort consisted of two military police officers with automatic rifles and white belts. They wore camouflage uniforms, There were about 40-50 captives on the bus, some were sitting, some were standing. Every bus was escorted by one or two members of the military police."

413. The buses then stopped several meters away from the members of the Detachment, then they took the captives out of the bus in a column of 8-10, whom the accused Franc Kos and Brane Gojković would then escort to the execution site. In his statement made during the investigation, witness Z-1 categorically claimed that, in a manner, the accused Franc Kos and Brane Gojković had the leading role in the execution of the task.

"So they took out the first column, made them form a line with their backs turned to us....I think those on the first two buses were blindfolded. They were taken to the hangar forming a line one by one, while 8 of us were standing behind them and there we were firing a bullet in the back of their heads. Those were single shots.... occasionally, there were short bursts of fire. Later on, some were shot again to make sure that they were not alive....others were waiting .....then the Slovenian and Brano took the other group and then again, in the same manner....At one point in time, Erdemović opposed the firing by execution squad, and was told: *If you do not want to obey the order, join their line.* That lasted from about 10:00 or 11:00 to 14:00 or 15:00 hrs. I cannot say how many people were killed that day. I know that one of the drivers was also shooting. ...Brano ordered him to do so... he said, to prevent him from being a witness. As far as I can remember, the escorting military police officers did not shoot."

414. In his statement made during the investigation, witness Z-1 also described that the accused Franc Kos and Brane Gojković fired a bullet into some of the survivors in order "*to make sure they are not alive*", which the Accused Franc Kos also confirmed in his testimony, just like he confirmed that it was only witness Dražen Erdemović who opposed to the executions in Branjevo.

415. At the presented photograph<sup>118</sup>, the witness marked a part of the route the captives crossed and the location to which they were taken (1) buses and (2) the execution site. He does not remember if the captives had their hands tied behind their

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<sup>118</sup> T-47 A photograph presented to witness Z-1 during the examination.

backs, nor does he remember if anybody talked to them. He does not remember if anybody asked for something from them, ill-treated or insulted them.

416. However, according to his statement made during the investigation, he remembers that, after getting off the bus, the captives were ordered to keep their hands above their heads or behind their backs, and he also remembers that one of the captives rebelled while leaving the bus and Brane Gojković executed him by firing a pistol bullet in the back of his head. He also remembers an attempted escape of one captive whom the Accused Stanko Kojić killed with a pistol from the distance of 20m. He remembers that the drivers had to kill the captives as well, so that they cannot testify about what they saw. This was also confirmed by the Accused Franc Kos in his testimony, however, he did not identify the Accused Kojić as being a person who shot the captive who attempted to escape.

417. Witness Z-1 further describes that not many people were on the last bus, so two police officers escorting the bus commented on that saying: *“You finished the job!”* and then they said they could leave. As far as he remembers, the killings lasted from about 10:00 to 15:00 hrs, and approximately 600-700 people were executed.

418. Afterwards, they went to the coffee-house across from the Pilica Dom, where they met Colonel Beara who asked them to continue to execute the captives detained in the Dom. *“He said that there were about 500 captives who should be executed by firing squad”*. However, the Accused Kos and Gojković objected to that saying that they had not received an order from their direct superior Pelemiš to that effect.

419. They stayed there for about 15 minutes and left for Vlasenica. Upon their arrival in the base, they did not find Pelemiš there and the witness is therefore not certain if anybody reported to him about the foregoing, while he himself did not discuss the task completed with anybody. There were rumors about the number of the killed people and he knows that some persons, like the Accused Kojić, a.k.a. “Geza”, boasted of killing about 200-300 persons, however, the witness has never talked about the referenced event with any of other Accused persons.

420. During the proceedings, the defense attempted to contest the credibility of the protected witness Z-1 in its entirety, claiming that he was partial, because he entered into the plea agreement with the Prosecution, that he was not telling the truth and that he deliberately avoids details discriminating him, which the Panel cannot accept as an argument.

421. In several cases has the Constitutional Court of Bosnia and Herzegovina considered the issue of probative value of a testimony of a witness who has entered the plea agreement, and concluded that evidence provided by a witness who testified after entering the plea agreement or being granted immunity should not be deemed to be unreliable, that is, it should not be refused, nor should they be analyzed in much more detail than other evidence. *“As to the testimony of the mentioned witness (who concluded an agreement with prosecution confessing his guilt), even though such*

witnesses may often be unreliable, it in itself is not a reason not to have faith in the statement of such witness.”<sup>119</sup>

422. The Constitutional Court of BiH further referred to a standard that the reasoning must satisfy the requirement of a careful and thorough evaluation of evidence, and that the court's conclusion has to be real, reasoned and based on objective facts.

423. In the second instance Judgment in *Krajišnik*, the ICTY Appeals Chamber was of the view that the Trial Chamber should at least briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused so as to show its cautious assessment of this evidence.

424. In the present case, the Panel did take into account that witness Z-1 had entered into a plea agreement and that he was convicted by a final and binding verdict for the events in Branjevo. This means that the Court gave special attention and care to the testimony of this witness, and it did not solely ground its conclusions on the decisive facts on this testimony, exactly because this was a witness – accomplice who had entered into the plea agreement.

425. Analyzing the testimony of witness Z-1, the Panel did notice that he attempted to diminish the importance of his participation in the attack on Srebrenica and in killing the captives, and he therefore did not mention his presence in front of the hangar in Kravica, as mentioned by the Accused Franc Kos, exercising his right against self-incrimination.

426. For the same reasons, he also avoids to confirm the arguments of the defense that, during the execution, he kept telling Zoran Goronja that he had to “*work faster and bloody his hands*“, and that he asked the captives in the Pilica Dom to pay for water, evidently attempting during his testimony to by all means diminish his role at the Farming Cooperative in Branjevo, at the same time trying not to incriminate himself for the events with which he has not been charged at all.

427. Pursuant to the foregoing, the Panel has already accepted the parts of the witness Z-1’s testimony which are consistent with other presented evidence, primarily with the testimony of the Accused Franc Kos, survivor witnesses Z-2 and Z-3, and witness Dragan Todorović. Also, in the part when, at the main trial, witness Z-1 changed his statement made during the investigation, the witness additionally incriminated those accused. The Court did not accept these parts of the testimony because they have not been corroborated by other presented evidence, and the Panel got an impression that the witness did not recall some new details, but he deliberately made the situation of the accused more difficult. This is particularly so if it is taken into account that, in his statement as a witness, the Accused Franc Kos described a certain amount of criminal acts on the part of witness Z-1, which were not stated in the factual description of the

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<sup>119</sup> M.Š. AP-661/04, Constitutional Court of BiH, “Decision on Admissibility and Merits“, 22 April 2005, para. 37.

plea agreement. Also, during the testimony, there rose a certain amount of antagonism between the witness and the accused persons.

### **3. Testimony of survivor witnesses Z-2 and Z-3 about the killings in Branjevo**

428. Only two witnesses survived the executions by firing squad in Branjevo, that is, Z-2<sup>120</sup> who was heard at the main trial and protected witness Z-3<sup>121</sup> whose testimony was tendered into the evidentiary material based on the Law on the Transfer of Cases.

#### **(a) Testimony of protected witness Z-2**

429. The manner in which the captives were killed upon being brought to Branjevo was thoroughly described by protected witness Z-2 who was, together with other men, separated in Potočari and temporarily detained in the primary school “Vuk Karadžić” in Bratunac, wherefrom he was transported by bus to the school “Kula” in Pilica on 14 July.

430. Thus, this witness describes that they stayed in the school “Kula” in Pilica for two days and then they were bused to the Farming Cooperative in Branjevo on 16 July. Prior to boarding the buses, soldiers distributed to them some fabrics to be used for tying each other’s hands. The order was to keep their heads bent looking down, and that is how they acted all the way to Branjevo.

431. He remembers that, on that occasion, one or two soldiers escorted the bus, and after being 2 or 2,5 km away from the school, he already heard the sound of shooting coming from the hill towards which they headed. His bus reached the hill and was surrounded by soldiers, Bosnian Serbs who cursed and shouted: *“They said: Get out! They cursed Alija and Haris....and then you see the death...until that time you didn’t know, and at that moment you see with your eyes that there is no more life.....the end.”*

432. Half of the men on the bus on which the protected witness who survived were ordered to get off the bus and, while he stayed on the bus, he was watching them being taken by the soldiers down the path to the meadow at which there were dead bodies already. He heard two bursts of fire and watched every of the captives falling down on the ground. Then, witness Z-2 was ordered to get off the bus together with other captives. He was escorted by members of the Detachment. One of them asked for money, and as the witness did not have it, he kicked him in the stomach. That one who kicked him asked if *„someone wants to cross himself with a sign of cross, to be spared?”*

“Then I thought, I will not respond, I have my own religion, I want to keep my own religion, and if I am to be killed, let me vanish, if I am to vanish, so be it, my religion is my religion and I respect my religion, if you do not respect your own, you do not respect other persons’ one either, so if I am to be killed, so be it. Two persons responded.....but there is nothing of that, nothing, maltreatment only.”

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<sup>120</sup> Protected witness Z-2 testified at the hearing of 24 May 2011.

<sup>121</sup> T -71 transcript of witness testimony for Z-3 dated 14 April 2000.

433. The Accused Franc Kos also described during his testimony that Z1 was hitting a man, asking for money, also saying that he would convert him into Christianity (Translator's Note: possible meaning: *cross him with the sign of the cross*).

434. The Accused Vlastimir Golijan admitted in his statement of facts that his activities included the escorting of Bosniaks from the bus to the meadow where they were executed by firing squad. Erdemović also stated that Vlastimir Golijan and Brano Gojković also escorted the captives to the meadow, while witness Z-1 claims that the Accused Franc Kos did it occasionally as well.

435. While being taken to the meadow, Z-2 saw dead bodies. The captives had to go between those groups of dead bodies, then soldiers told them to stand right and turn their backs to them. Their hands were tied still. Then an order "Fire!" was heard and 1-2 bursts were fired at them.

436. Witness Z-2 who survived was not hit but he fell down on the ground, and another person fell over him. While they were lying there, he heard a soldier asking if there was anyone alive. Two persons responded and that soldier fired a bullet from a pistol in each of the Bosniaks who responded.

437. While lying under the bodies of the killed persons, witness Z-2 observed the arrival of several other buses and approximately seven or eight columns were executed in the same manner in the vicinity of the spot at which he was. When the executions stopped, a five-soldier patrol walked among the bodies killing all those who survived.

438. In his testimony, the Accused Franc Kos confirmed that he himself participated in the "finishing off" of those wounded, considering that to be a "*humane gesture*" by which he "*put them out of their misery*", that is, "*he helped them not to suffer*". The Accused claims that the "finishing off" was also carried out by the Accused Stanko Kojić and the protected witness Z-1.

439. During the cross-examination of the protected witness Z-2, the defense for the Accused Franc Kos stated that this witness authentically described the events in Branjevo and presented the accurate details of the manner in which the executions were carried out.

440. After lying on the meadow for the rest of the day, Z-2 ran away a few hours before dark, rushing over the dead bodies into the bushes at the end of the meadow together with several other survivors<sup>122</sup>. When he looked around, the witness assessed that there were about 1,000 to 1,500 dead bodies lying on that meadow<sup>123</sup>.

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<sup>122</sup> Witness Z-2.

<sup>123</sup> Witness Z-2, testimony at the main trial.

(b) Testimony of witness Z-3

441. Another survivor, witness Z-3<sup>124</sup> was captured in the vicinity of Nova Kasaba, where he was kept at the football stadium together with other captives, and subsequently transported to the temporary detention sites in Bratunac, wherefrom they were bused to the school “Kula” in Pilica on 14 July.

442. The captives stayed for two days in the “Kula” school and, on 16 July in the morning hours, their transportation to the Branjevo Farming Cooperative by buses began.

443. Upon arriving at the farming cooperative, the witness observed killed people lying on the meadow. Buses stopped and soldiers began to take off the captives who were tied. They made them form a column of about 10 people and took them towards the meadow where the dead bodies already were. In this part, the witness’s testimony is identical to those provided by the Accused Franc Kos and witness Z-1 who confirmed that, after the second or third bus, they began to take the captives in groups of 10.

444. Once these persons reached a certain location, they were ordered to turn their backs to the Unit members who would then begin to shoot. *“When they began to shoot, I threw myself on the ground. My hands were tied behind my back and I fell on my stomach, facing the ground, and one man fell on my head. I think he was killed immediately and I felt hot blood covering me.”*<sup>125</sup>

445. While he was lying, he heard a voice saying that people should not be shot in their heads because their brains burst, and that they should shoot them in their backs. So the witness was shot with one bullet in his back, but the bullet went through under his left armpit, and only scratched him. He heard members of the Detachment asking if there was anyone alive, shooting at those who responded. One man begged them to kill him, and they responded: *“Let him suffer. We shall kill him later.”* Then, single shots followed while they were killing other survivors.

446. Witness Z-3 stayed there for a while, lying among the dead bodies and pretending to be dead. Later on, during the day, a vehicle transported more bodies to that site<sup>126</sup>. He spent a night of 16 July there and the next day ran away and hid himself under the bridge in the vicinity of the execution site. From that place he could hear the sound of the machines and vehicles in operation. That lasted most of the day of 17 July.<sup>127</sup>

**4. Statement of facts by the Accused Vlastimir Golijan**

447. In the statement of facts the Accused Vlastimir Golijan made to his Defense Counsel on 4 April 2011, which was tendered into defense evidence in the present case, the Accused notes that, on 1 May 1992, therefore at the time when he had not reached

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<sup>124</sup> T -71 Transcript of testimony of witness Z-3 in *Krstić* of 14 April 2000.

<sup>125</sup> T -71 Transcript of testimony of witness Z-3 in *Krstić* of 14 April 2000.

<sup>126</sup> T-71.

<sup>127</sup> *Ibid.*

18, he was mobilized into the PSS Han Pijesak; in late 1994, he was transferred to the 10<sup>th</sup> Sabotage Detachment and stayed in the VRS until 30 April 1996.

448. He confirmed the charges against him, specifically that he entered Srebrenica for the first time in the first half of 1995 through a coal mine, and the second occasion took place on 11 July, together with members of the Detachment and that he participated in the execution of the Muslim captives detained in the school "Kula", on 16 July 1995. In that part, the Accused corroborates the testimony of the Accused Franc Kos claiming that the order for the execution of the captives by firing squad was given only upon arriving at the Farming Cooperative in Branjevo, which members of the Detachment reached travelling in a van that followed a red *Opel Kadett* car from the "Standard" barracks in Zvornik.

449. In his statement the Accused admits that he was killing Muslims, 25 to 50 of them in total, at the Branjevo Farming Cooperative, using an automatic rifle. His activities predominantly referred to taking the captives from the bus to the execution site, which is consistent with the testimonies of other witnesses who claim that the captives were mainly brought there by the Accused Golijan and Brane Gojković.

450. The Panel is satisfied that the referenced statement was conceived in a manner to generally describe the activities of members of the 10<sup>th</sup> Sabotage Detachment at the beginning of the attacks on Srebrenica, while, with regard to the killings in Branjevo, he offers an unrealistic number of persons he killed, thus almost entirely devaluing the importance of his role. However, the Panel was mindful of the relatively small number of members of the Detachment compared to the number of the killed people and it therefore cannot accept that the accused participated in the killings of no more than 50 captives, that is, that the role of any member of the Unit in Branjevo was insignificant, because the intensive executions in which they all participated from 10:00 to 16:00 hrs. resulted in the death of about 800 persons.

451. With regard to the state of mind of this Accused, the Panel could not accept that he had acted upon the orders out of fear for his life, which shall be reasoned in more detail in the further course of the Verdict. Besides, all presented pieces of evidence show that all of those accused of committing the offense acted systematically, in an organized manner and voluntarily, wherein it was only Dražen Erdemović who, at one point in time, openly expressed his disagreement with the killings of the captives and was warned exactly by the Accused Franc Kos to continue with the killings.

452. Although the Accused openly expressed his regret over the acts he had committed, the Panel cannot disregard the gravity of the committed crime and the massive scale of the crime, and the true regret of the accused should in such cases be followed by a truthful and accurate presentation of the events of which he feels guilty, which is not the case here.

453. On the contrary, the Accused has been attempting constantly to protect himself, justifying the killings with fearing for his own life, although the Panel notes again that none of the examined witnesses said that the Accused Vlastimir Golijan had also

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opposed the killings. Quite the contrary, he did his best not to leave a witness to the killings, as Franc Kos explained in his testimony. The Accused Stanko Kojić, who claims that he was shooting above the captives' heads, and the Accused Franc Kos who diminishes the number of those killed and who considers the "finishing off" of the survivors to be "*a deed of mercy*", also attempted to protect themselves in the same manner.

454. The Panel does not contest the right of the accused persons against self-incrimination, but it notes that the incorrect presentation of the events and the alteration of the testimony towards deviation from the truth cannot be relevant in the final evaluation of evidence.

## 5. Testimony of Petar Cvjetinović

455. With regard to the circumstance surrounding the killings at the Farming Cooperative in Branjevo, the defense also summoned witness Petar Cvjetinović<sup>128</sup>, who allegedly directly watched the execution.

456. Describing his participation in the events of 15 and 16 July, this witness claimed at the main trial that, those days, he had been contacted by Colonel Petar Salapura who had asked the witness to come to a private house of one Savo Jovanović, whose basement was occupied by the military security service. In the house, the witness found Salapura, Mišo Pelemiš and Zoran Manojlović. Petar Salapura then addressed the witness saying that he was an ideal person for a job in favor of Republika Srpska, and then he explained to him that he should accompany Pelemiš on his way to the Farming Cooperative Branjevo where members of the 10<sup>th</sup> Sabotage Detachment should be, in order to assist in something. The witness claims that he did not know at that time that the captives would be killed.

457. By his car "Lada" and together with Mišo Pelemiš, the witness went to the Branjevo Farming Cooperative which they reached before the arrival of members of the Detachment. Then the members of the Detachment arrived and put an M-84 machinegun on the meadow, while the captives were taken to the execution site by Z-1, Zijad Žigić, Velimir Popović and Aleksandar Cvetković. The captives were then executed by the machinegun and everything was video recorded.

458. Evaluating the testimony of this witness, the Panel found that, in terms of facts, it was inconsistent with any part of other presented evidence, particularly with regard to those who were present at the Branjevo Farming Cooperative at the relevant time, because not one piece of evidence presented during the proceedings has corroborated the claims of the witness that Zijad Žigić and Velimir Popović, also members of the 10<sup>th</sup> Sabotage Detachment, participated in the executions, nor has his claim that Mišo Pelemiš, Detachment Commander, was present during the executions in Branjevo been corroborated to that effect. Besides, the Accused Franc Kos, Stanko Kojić and Vlastimir Golijan, who did not deny in their respective statements that they had been present at the Farming Cooperative in Branjevo, categorically deny the presence of witness Petar Cvjetinović, and the Panel concludes that, during the confrontation of the witness and witness Zijad Žigić and protected witness Z-1 who did participate in the executions in Branjevo, witness Cvjetinović did not make a convincing impression.

459. Also, during the proceeding, not a single piece of evidence was presented to corroborate the arguments of this witness concerning video recording of the overall executions wherein a camera hidden in a loaf of bread was used to that end, so this presentation by the defense for the First-Accused is ungrounded in its entirety.

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<sup>128</sup> Witness for the defense, Petar Cvjetinović, testified at the hearing of 29 November 2011. Transcript of his statement given to Attorney Dušan Tomić was admitted as first-accused defense exhibit OI-12.

460. In its final evaluation of the testimony, the Panel took into account that the witness was convicted for a criminal offence of fraud by a binding verdict, which largely sheds light on his credibility, and some witnesses who know him were also examined about that circumstance, such as witness Srđan Brezo who has a very low opinion of the witness, because he „*falsely introduced himself as the President of the Government and State*“, which witness Cvjetinović confirmed himself when confronted with witness Zijad Žigić.

461. Furthermore, the Panel observes that witness Cvjetinović does not clearly state in his testimony the capacity in which he acted at that time and what his relationship with the VRS military security service was, and he therefore cannot explain the reasons for his presence at the Branjevo Farming Cooperative at the time of execution of the captives. Therefore, being mindful of all referenced deficiencies, the Panel could not evaluate his testimony even as being corroborative.

### **1. Mass executions at other locations**

462. Having carried out the executions at Branjevo, the accused went to the “Ljubo’s Coffee-House” across from the Dom, where Ljubiša Beara congratulated them for the job done, saying that „*the State will be grateful*“<sup>129</sup>. When Erdemović reached the Coffee-bar across from the Dom he saw several dead bodies<sup>130</sup>. He also heard shooting and explosions from the direction of the Dom.<sup>131</sup> Shortly after that, a soldier from Bratunac entered and told the Lieutenant Colonel that everything was done<sup>132</sup>.

463. During the proceedings, ample evidence about the executions in the Dom was presented. Thus, witness Milovan Đokić confirmed in his testimony that he, as a Bratunac Brigade police officer, had escorted the buses transporting the Srebrenica captives to the Home on 15 July 1995. He saw soldiers and civilian police officers in front of the building. Witness Juroš Jurošević also testified that 3-4 buses with the captives had gone towards the Dom. Savo Stević, Radivoje Lakić, Jakov Stevanović, Zoran Gajić, Zoran Bojić, Jevto Bogdanović also confirmed that the captives had been in the Dom and that they had been killed in the afternoon hours, and some of the referenced witnesses, such as Juroš Jurošević and Jevto Bogdanović, loaded the bodies of those killed in the Dom on 16 July. Nobody survived these executions by firing squad and one girl, who was captured together with her brother, was also among those killed.

464. In 1996, the Investigators of the American Naval Criminal Investigative Service and ICTY carried out investigative activities in the Pilica Dom and found evidence that corroborated the detailed testimony of the witnesses about the executions that took place there, including: traces of many hits of bullets; remains of explosive; fired bullets and

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<sup>129</sup> Franc Kos, 11 November 2011.

<sup>130</sup> T- 70 Dražen Erdemović; Franc Kos.

<sup>131</sup> T-70 and Franc Kos.

<sup>132</sup> *Ibid.*

cartridge cases; as well as samples of human blood, hair and tissue plastered onto the walls and floors<sup>133</sup>.

## **6. Documentary evidence about the executions at the Farming Cooperative in Branjevo**

465. Also, there is ample corroborative documentary evidence about the executions at the Farming Cooperative in Branjevo, including: *Entry* into the Zvornik Brigade Duty Officer Logbook for 15 July 1995, recording a request of the 1st Battalion of Zvornik Brigade for “50 liters of oil – 20 liters of petrol – for transportation of its forces to Kula. 10 ammunition boxes, caliber 7.62mm.” This request was repeated on 16 July 1995<sup>134</sup>.

466. A coded entry of 16 July 1995 into the Zvornik Brigade Duty Officer Logbook read as follows: “At 11:15 hrs. Reported from Zlatar (the Drina Corps) that a triage of those wounded and captured must be carried out. (reported to Beara)”<sup>135</sup>. The captives in Orahovac, Petkovci and Ročevići had already been executed by that time.

467. There is an entry into the Zvornik Brigade Duty Officer Logbook and an intercepted telephone conversation recorded in the afternoon of 16 July 1995, which referred to the request of Lieutenant Colonel Popović for a bus with full tank of fuel and 500 liters of D2 for driving to the village of Pilica. The recorded conversation also indicated that the fuel was urgently needed and that, without it, Popović’s activities would stop.<sup>136</sup>

468. The intercepted conversations reflect the role of the Zvornik Brigade in the coordination of the executions.

469. Thus, two intercepted conversations of 16 July, at 16:02 and at 16:15 hrs., indicate that Trbić was supposed to contact Lieutenant Colonel Pandurević because General Mladić asked for him urgently. This is consistent with the entry into the Duty Officer Logbook in which it was stated: “At 16:20 hrs., they asked from Zlatar that one commanding officer from the Command should be sent to the Commander and provide a written report on the current situation and agreement and the arrangement with the opposing party. Sent to Mijatović immediately.”<sup>137</sup>

470. At 16:43 hrs., Trbić confirmed to Zlatar that he had sent Mijatović in the field to contact Pandurević. He was asked if „my Popović” was there and asked for Popović or

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<sup>133</sup> T-74 Narrative of Dean Manning; Kos confirmed that explosions were heard from the Dom.

<sup>134</sup> Evidence T-63, Zvornik Brigade Duty Officer Logbook.

<sup>135</sup> Evidence T-63, Zvornik Brigade Duty Officer Logbook.

<sup>136</sup> Exhibit T-63 Zvornik Brigade Duty Officer Logbook, Exhibit T-55: intercepted communication of 16 July 1995 at 13.58 hrs. “500 liters of D2 for Lieutenant Colonel Popović”, “Lieutenant Colonel Popović is here “Palma”, do you know that? Popović is in “Palma.” “500 liters of D2 is urgently required for him, or the job he is doing will stop....he has just called me from the field asking to pass this on you.” Then he referred to Golić “Golić, Pop has just asked me to give you a call. 500 l to be urgently sent to him or his job will cease. “A bus with its tank to go to the village of Pilica. That’s it.....do it, please.”

<sup>137</sup> Exhibit T-63, Zvornik Brigade Duty Officer Logbook.

Drago Nikolić to go to Pandurević in the field. The Zvornik Brigade Logbook also contains an entry from that period of time, “*reported from Zlatar (the Drina Corps) for Lieutenant Colonel Popović to go to Vinko Pandurević in the field at 16:40 hrs., communicated through the 1<sup>st</sup> Infantry Brigade for Popović to inform the duty officer that Zlatar (the Drina Corps) could send him away to do a task*”<sup>138</sup>.

471. Around 5.30 a.m., on 17 July, the Drina Corps Command (in Vlasenica) contacted by phone the Zvornik Brigade to check: “*if everything was completed there, all of the coordinated action?*” That day’s Assistant Duty Officer, Jovičić, replied to them that Trbić, the Duty Officer, would call them to offer the report. This call was intercepted and was also mentioned in the Zvornik Brigade Duty Officer Logbook<sup>139</sup>. The corridor for the passage of the Bosniak column was opened through the first line in the area of Baljkovica and the ceasefire was agreed during 16 July 1995.

472. There exists an intercepted phone communication recorded on 17 July at 6.15 a.m. in which Trbić, General Krstić and Lieutenant Colonel Pandurević participated. During the conversation, there was a mention of the report from the day before and Krstić asked a question: “*Did you kill the Turks up there?*” Trbić responds, “*In most part, yes*”. Pandurević confirms to Krstić, “*Anyhow, we shall probably complete this today*”<sup>140</sup>. This conversation could only relate to the operation of ongoing summary executions in Pilica and the Farming Cooperative in Branjevo.

#### **F. ORDER FOR KILLING MEN AT THE FARMING COOPERATIVE IN BRANJEVO**

473. Based on the presented evidence, the Panel concluded that the members of the 10<sup>th</sup> Sabotage Detachment received an order to execute men when they came to the Farming Cooperative in Branjevo. The foregoing was described in detail in the statements of the Accused Franc Kos and Dražen Erdemović.

474. Regarding the understanding of the task to kill men at the Farming Cooperative in Branjevo, the Accused Franc Kos explained that he and other members of the Detachment were commandos, bound by a professional contract, therefore, when they received the task, nobody dared to object. They had also signed a professional contract regulating their relations with their superiors and the status in the unit.

475. During cross-examination, he explained that the order to execute the captives in Branjevo by firing squad was issued by Vujadin Popović, who clearly stated that all captives should be killed.

476. The Chief of the Main Staff Intelligence, Colonel Petar Salapura, was examined as a witness and he stated he did not know who ordered the Detachment to take part in the

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<sup>138</sup> Exhibit T-63, Zvornik Brigade Duty Officer Logbook. Also see Exhibit T-55 Folder with intercepted communications, intercepted communication of 16 July 1995 at 21.15 hrs. Popović stated that he had just seen the chief and asked if his interim report had been received.

<sup>139</sup> Exhibit T-55 A folder with intercepted conversations of 17 July 1995 at 05.38 hours. Exhibit T-63, Zvornik Brigade Duty Officer Logbook.

killings of the captives, because those were not the typical tasks of a commando detachment. In his opinion, the aforementioned could happen because the detachment commander was on a sick-leave and a great number of soldiers took days-off, so only a few soldiers remained at the Dragaševac base.

477. Witness Salapura categorically claimed that his position at that time was such that he had neither a commanding role in these tasks, nor had he been informed on performing them. The chain of command started with the Drina Corps Chief of Staff and possibly to Colonel Beara, with regard to the captives. The witness further claimed that he had learned about the killings in Branjevo much later from Pelemiš, who told him that volunteers came forward to perform this task.

478. However, according to the testimony of other witnesses, Colonel Petar Salapura did have a relevant role in organizing and carrying out the activities of the 10<sup>th</sup> Sabotage Detachment, starting with their mobilization, providing false identities,<sup>141</sup> and finally in thinking-out the tasks.

479. Thus, witness Dragan Todorović, a member of the Detachment, confirms that he had seen Petar Salapura on two or three occasions at the Dragaševac base, and explained the following: *“he was in charge of providing us with uniforms and stuff...the Main Staff usually provided us with MTS”*, which was confirmed by Slobodan Kosovac, expert witness for the defense.

480. The Panel finds that, by this vague testimony, witness Salapura attempts to exculpate himself for the events in Srebrenica and at the Farming Cooperative in Branjevo, therefore his testimony is deemed to be neither relevant, nor truthful, due to its being inconsistent with the testimonies of other witnesses and the Accused Franc Kos and Stanko Kojić, who identified him in their testimonies as a significant officer of the Main Staff, who did have a relevant role in VRS, regardless of his personal claims to the contrary. Thus, the protected witness for the defense O-1<sup>142</sup> asked him directly to remove him from his position in the Detachment, which was done in February 1996, and which additionally indicates that witness Salapura was an influential person even after the war.

481. Witness Zoran Manojlović also claims that only a person from the Main Staff could issue an order for the execution of men in Branjevo and that, at a meeting held at the Intelligence Sub-Centre, he personally heard from Salapura or Knežević that the execution had happened and that the 10<sup>th</sup> Sabotage Detachment was involved. Furthermore, he describes that it was exactly Petar Salapura who ordered for false documents to be issued to the Detachment members who participated in the sabotage operations, for which they were put on the AID's wanted list. The Panel finds that the present case concerns the persons who participated in some unlawful actions,

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<sup>140</sup> Exhibit T-55 - A folder with intercepted conversations, 17 July 1995, 06.15 hours.

<sup>141</sup> Documentary evidence for the defense OI-21: Information on the necessity to provide false identities to the members of the 10<sup>th</sup> Sabotage Detachment made by Petar Salapura.

<sup>142</sup> Protected witness for the defense O-1 testified at the hearing of 6 December 2011.

considering that the commando operations are not punishable per se, and the foregoing only supports the conclusion of the Panel that members of VRS MS endeavored to cover all traces of the committed crimes and to also hide the perpetrators thereof, which shall be further discussed in the part of the verdict elaborating on the mass burial of bodies and their dislocation into secondary graves.<sup>143</sup>

482. Witness Velimir Popović confirmed that the orders to leave for the actions were received only from the Commander Mišo Pelemiš, who received them directly from the members of intelligence service of VRS GS, which planned the actions, but did not directly contact the unit members. Witness Zijad Žigić<sup>144</sup> was more specific to this end stating that “we received orders from Zoran, and when Pelemiš became the Commander, we received orders from him. He received orders from Popović, Salapura, Beara, Tolimir and Pećanac.”

483. The foregoing was also confirmed by the Detachment Commander, witness Mićo Milanović, who clearly stated that “*the tasks were assigned by those in the intelligence centre, they knew the goals.*” According to witness Zoran Manojlović, it was some of the leaders in the VRS GS who informed him of the executions of the captives in Branjevo, some 7-10 days later.

484. Considering that witness Petar Salapura was not charged with the events in Branjevo, the Panel did not evaluate in detail his responsibility on any ground, but it did take into consideration the referenced facts when making a final assessment of his testimony.

### **1. Could the accused have refused the order to execute the captives**

485. During the proceeding, the defense tried to prove the thesis that the accused were forced to shoot at the captives in Branjevo, because a refusal was punishable by death, which the defense witnesses Dalibor Đukić and Srđan Brezo, former members of the Detachment, stressed during the proceedings. However, the Accused Franc Kos claims in his testimony that “*If I had refused the order, maybe nothing would have happened*”, therefore, he himself is not certain about the theory of the defense that the punishment for disobeying the order was death.

486. Furthermore, he explains that every soldier was bound by a professional contract in which it was stated that the enemy must not catch them alive, and a fellow-fighter was entitled to execute another fellow-fighter if he “*panics or puts others at risk*” during an action, as stated by the Detachment members, witnesses Zijad Žigić and Srđan Brezo, while Sara Manojlović<sup>145</sup>, a common law wife of the Accused Franc Kos, also testified about the referenced circumstance, stating that on one occasion, the Accused returned from an action and found a bullet in the rucksack he had on his back, so he concluded

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<sup>143</sup> Establish facts under number 15 and 16 of the Panel’s decision dated 12 January 2011.

<sup>144</sup> Defense witness, Zijad Žigić, testified at the hearing of 14 October 2011. The Record of Statement he made to the attorney Milan Romanić was tendered into evidence as defense evidence OII-1.

<sup>145</sup> Witness Sara Manojlović testified at the hearing of 20 September 2011.

that some of his fellow-fighters was probably tasked with executing him during the operation. Allegedly, on one occasion, he himself received an order to kill three of his fellow-fighters in the action, but the task was postponed.

487. However, the presented evidence, and various situations the witnesses described in their testimony, do not indicate that such an order truly existed, thus witness Mićo Milovanić, the original Commander of the group that later on developed into the 10<sup>th</sup> Sabotage Detachment, also expressed his doubt in the foregoing. He claims that *“I could not believe that Kos was given a task to execute his colleague, there was no reason for that while I was in charge. This came up as a story, maybe it was fabricated, I do not know which of the officers was involved in this game, who gave orders.”*

488. Before leaving for Branjevo, witness Velimir Popović was also in the base, and he knew that, on that day, some commanding officers came in a *Golf* car, and later on they told him that Pećanac had also come to the base. He also saw some Detachment members leaving in a van. This witness also stated that he was not present at that time, otherwise he would not have been able to refuse the order to go with them, because, according to the Contract they were bound by, an order must not be refused. which was also confirmed by witnesses Dalibor Đukić and Srđan Brezo.

489. However, witness Popović further states that *“To refuse an order in the unit does not mean that somebody is going to kill you, but the next action would be more difficult for you, meaning that you can get killed and similar.”* In the same manner, witness Srđan Brezo describes that *“the punishment for refusing an order was death. Maybe not immediately...at the spot...but when the first opportunity offers itself.”* The foregoing is also supported by the claim of witness Jugoslav Petrušić who states that, on one occasion after the war, Detachment Commander Mišo Pelemiš told him in an informal conversation that *“anyone who disobeys me shall disappear.”*

490. Although many of the examined witnesses claim that members of the 10<sup>th</sup> Sabotage Detachment had to carry out orders unquestioningly, which was clearly entered in their professional Contracts signed with the VRS GS, the Panel could not find in the presented evidence any ground for the defense’s argument that the refusal of the order was punishable by death. These arguments were not even confirmed by the expert witness for the defense, Slobodan Kosovac, who stated the following to this effect: *“I did not find any rules of the sabotage unit, there were only JNA rules, but I still believe that commandos should not have more rights than members of the Armed Forces. According to the first rule of the Armed Forces, not acting in compliance with or disobeying orders definitely results in certain consequences, however, an order implying perpetration of a criminal offense does not have to be carried out. If you receive such an order, you should inform your superior accordingly.”*

491. The expert witness for the defense further states: *“I have not seen anywhere that a person can be killed for not performing a task, because no one is above the Law.”*

492. Having been clearly asked by the President of the Panel as to where the document regulating the obligations of the Detachment members and indicating that



disobeying an order would be punishable by death was, the defense witness Srđan Brezo replied: *“Those were discussions between the Detachment members, it was known what followed should the task be refused, and prior to any setting off, we were told what would happen if we start panicking.”* However, the witness could not confirm that any of the commanders at any time said this directly to the Detachment members, repeating that this was only a word spread within the unit. Expert witness Kosovac has never heard of such a rule as well, but he did hear about the rule that every soldier was obliged to do his best to save the lives of his fellow-fighters in the unit.

493. The original Unit Commander, Mićo Milanović<sup>146</sup> categorically claims:

“At the time when I was there, we had great cooperation. I would never allow the things that had happened to happen. I would be careful not to issue orders for something like that. They could refuse my orders.”

494. Witness Zoran Manojlović remembers that Mićo Milanović exactly left the Detachment because there were some disputes with a part of the leadership structure, which is consistent with his claims that he would never issue an unlawful order.

495. The Panel provided the foregoing analysis upon descriptions of the accused persons’ participation in the executions in Branjevo, because the defense emphasized the referenced fact throughout the trial, thus annulling the voluntary nature of participation in the killings in Branjevo, and diminishing the state of mind and willingness of the accused at the time of the crime.

496. During the trial, no evidence was presented to indicate that the accused were under the influence of alcohol or any other substance during the perpetration of the executions at the Farming Cooperative in Branjevo. Therefore, the Panel concludes that they participated in the perpetration of these offenses quite knowingly and willingly. Thus, the Accused Franc Kos himself claimed that he considered the shooting at the survivors as *“an act of mercy, so they would not suffer”* although, according to the previous description of a professional army member, he had to know that the execution of captives was unlawful and that in such situations, according to the military rules, he could refuse the issued order.

497. This conclusion of the Panel was also supported by the argument of the expert witness for the defense Slobodan Kosovac who claimed that *“every member of the army, first rule of training, prior to his first shooting, has to learn about the basic elements of international law.”*

498. Thus, the same expert witness does not allow for the possibility that, at the time of the executions in Branjevo, the Detachment members were in delusion regarding the permissibility of the execution of the captives brought there, stating to this effect that *“If*

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<sup>146</sup> The defense witness, Mićo Milanović, testified at the hearing of 18 October 2012. The Record of Statement he gave to the attorney Dušan Tomić has been tendered in the evidence as OI-2.

*the enemy army has no arms and is not offering resistance, and somebody issues an order to destroy such enemy military force, then the order is unlawful.*“

499. During cross-examination, the expert witness repeated that *“in my opinion, treating the captives in such a manner is a criminal offense and there is no doubt that the treatment of the prisoners of war had to be humane.”*

500. Besides, the mass execution of about 800 people in Branjevo would seem to be an unlawful action to any reasonable person, therefore, the accused, as persons accountable at the time of the perpetration of the offense, were absolutely capable of understanding the importance of what had been done. The fact that the accused Stanko Kojić even boasted about killing between 200 and 300 persons in Branjevo on his own, supports this as well.

501. Witness Jugoslav Petrušić says the following about him: *“Stanko and others told me that they were shooting at the wounded in Branjevo, when needed. So Stanko said he had a gun type TT 762, and he shot at every wounded persons several times, tortured them, shot at their elbows and knees, he did this for his personal reasons. All the others told me the same, and Stanko personally showed me how he was shooting from the TT pistol.”* This witness believes that the Detachment members in Branjevo could have refused the order.

502. The killing of the captives in Branjevo was not a one-time act, instead, it was done over a relatively longer period of time, five hours at least. During the executions of the captives in Branjevo, apart from being directly involved in the executions, the accused also conducted several other actions from which it clearly follows that their awareness and willingness to participate in these actions and prohibited consequences result.

503. Thus, the “finishing off” of the survivors manifests such dedication to accomplishing the task that no person could survive the execution. Had they not been so dedicated to the finishing off, that is, killing the wounded captives, there would definitely have been more survived witnesses who would nowadays testify on the mass killings. Therefore, having heard that one prisoner was singled out, one of the accused stated that he did not want any living witness, and it is well known what the fate of those persons was.

504. Also, seizing money from the captives prior to killing them is particularly bizarre, and so is the consumption of food and drink in a situation where there was a pile of the executed captives on one side and a group of the captives waiting to be executed on the other.

505. Witness Mićo Milanović explained that the Detachment membership was voluntary, that is, nobody was forced to be a member of the Unit. To support this, he stated the fact that some of the original members of the Unit left the unit shortly after the action in Ozren, so Pavlović left immediately after the first task, Ivica Pranjić left in March, and one month later, Mrkonjić, Josić and Ranko Pranjić as well. Therefore, of the original members, only Stjepo, “Žiga” and the Accused Franc Kos remained. During

cross-examination, the witness categorically rejected the allegations of the Defense Counsel that the Accused and Zijad Žigić were prevented by anyone at any point in time to leave the Detachment.

506. The referenced was also confirmed by witness Zoran Manojlović<sup>147</sup> who recruited the accused into the Detachment. He claims that the members of the Detachment could leave it at any time and, like witness Milanović, he had never heard that anyone banned only the Accused Franc Kos and Zijad Žigić from leaving it, nor was there a distinction made between the Detachment members to this effect. He explained that, at that time, the “turncoats” were questioned as to whether they wanted to become members of the VRS, because, in military terms, they were not considered to be prisoners of war. Of all persons the witness interviewed, one half of them immediately expressed their wish to leave for the third countries.

507. During the trial, the Defense pointed out various reasons on which it based its conclusion that the members of the 10<sup>th</sup> Sabotage Detachment were professional commandos and that, being a unit of that kind, they were only “carrying out orders of their superiors” in Branjevo, and emphasized that disobeying the orders would result in death, as a consequence. However, the Panel cannot but observe that the Unit in Branjevo did not have a classic sabotage task that would imply the performance of an activity in the territory of the adversary side, considering that the executions were committed in the VRS zone of responsibility.

508. Anyhow, the defense’s arguments that the refusal of orders was punishable by death is unsustainable, since this could not be confirmed even by the expert witness Slobodan Kosovac. Although some of the examined witnesses claim that this was the Detachment’s internal rule, based on other presented evidence, the Panel concluded that the accused, as well as other Unit members could have refused an unlawful order, as they did in Pilica, where they refused to execute people in the Dom. Therefore, they cannot be released from responsibility for the executions in which they participated at the Farming Cooperative in Branjevo.

## **2. Behavior of the accused following the execution of the captives in Branjevo**

509. As already stated, the defense tried to prove during the trial that the accused unwillingly participated in the executions of the captives in the Farming Cooperative in Branjevo, in a manner that they carried out the order for execution under penalty of death.

510. As already reasoned, the presented evidence does not show that such a rule truly existed in the unit.

511. Furthermore, through the testimony of some witnesses, the defense attempted to show a disagreement of the accused with the executions, indicating that the referenced

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<sup>147</sup> Defense witness Zoran Manojlović testified at the hearing of 18 October 2011.

event was extremely stressful and disturbing to them. Thus the defense witness Dalibor Đukić<sup>148</sup> claims that *“those who shared my dormitory were quite weird and unusual after returning from Branjevo. I personally ordered their weapons to be seized from them for they were not all there. That was not the way a normal person behaved. Specifically, Mr Goronja, we had to tie him to his bed, and I asked to be separated from him because it was impossible to sleep there.”*

512. Defense witness Sara Manojlović also tried to confirm the foregoing, claiming that the accused Kos was “upset and depressed” after returning from the Srebrenica area.

513. However, a Detachment member, Velimir Popović, does not remember that these people who went to Branjevo were “nervous” or “depressed” but said that they looked *“normal, we received some bonuses, had fun at the coffee-house, happy to be alive.”*

514. Having no doubts that such a mass execution, as the one that happened at the Farming Cooperative in Branjevo, can have extremely traumatic consequences to people, the Panel does not find the testimony of the defense witnesses convincing, because the accused, during the execution, did not express their disagreement with what they were doing and they were killing people in Branjevo using various methods, even the weapons that had such tragic consequences to people that after that, the execution by a bullet in the back of their heads was considered by the Accused Kos to be an *“act of humanity”*.

515. The mere act of the execution, systematic and tactical manner of taking the men out of the buses, leading them to the execution site, asking for money from them and insulting them verbally, additionally show that the accused quite consistently, knowingly and willingly participated in the executions, and when they came to the last bus, these men started giving up only because they were, as the accused Kos put it, *“hungry and thirsty”* which, objectively, was the only reason for their refusal to kill the captives in the Pilica Dom. Therefore, no moral or ethical reasons were involved there.

516. The fact that at one point in time they stopped the execution so as to have lunch, indicates how insignificant the execution of about 800 people was to the accused and their “coldblooded relation” to the victims, next to whose massacred bodies they were sitting, eating and drinking, as they did in the “Ljubo’s Coffee-House” across from the Dom in Pilica at the time when about 500 captured men were being executed, wherein the Accused Franc Kos at one point in time went there to watch the ongoing executions.

517. Besides, witness Dalibor Đukić further testified that the referenced “weird” behavior of the accused was mainly manifested in their dreams, therefore, none of them was consciously expressing his shock over the horrifying events that took place, and such insensitivity of the perpetrators over the mass crimes can only come from persons completely lacking empathy for human beings, for which the Panel cannot trust the

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<sup>148</sup> The defense witness Dalibor Đukić testified at the hearing of 25 October 2011. The Record of the statement he gave to the attorney Dušan Tomić was tendered into evidence as OI-4.

witnesses who claim that the accused, after the events in Branjevo, were “upset” and “affected” by what they had seen and experienced.

#### **G. BURIAL OF DEAD BODIES AT THE FARMING COOPERATIVE IN BRANJEVO**

518. At the relevant time, witness Milivoje Nikolić<sup>149</sup> was in a labor detail of the 1<sup>st</sup> Battalion commanded by Radivoje Lakić. He cannot remember the date, he believes that the civilians were initially bused to the school around 15 or 16 July. After that he was on duty in Branjevo when, in the morning, some soldiers in camouflage uniforms came in a van. They were followed by a bus with civilians whom they took out to a wheat field and began to execute. Later on, buses continued coming and going back. A soldier came to the witness in a barn and was standing at the door throughout the executions. He does not remember who the soldier was, nor could he recognize him today.

519. While he was in the barn, bursts of fire that lasted approximately from 9 a.m. to 5 p.m. or 6 p.m. were heard. The witness had never seen those soldiers before and afterwards people talked that the soldiers were not from that area. He did not count them, but they were many. When the soldiers left, he headed back home and saw a large number of dead bodies. He knows that on the following day they were buried by an excavator 300 m from the execution site within the Farming Cooperative in Branjevo. He also heard about the killings in the Dom in Pilica and that the following day the bodies were transported by trucks from that place to be buried at the Farming Cooperative in Branjevo.

520. The Panel was also satisfied that there were traces of the killings in the Dom in Pilica when they visited the site.<sup>150</sup>

521. Witness Cvijetin Ristanović<sup>151</sup>, who was mobilized in the Zvornik Brigade engineering unit, was directly engaged in the burial of dead bodies. He explained that the Commander of his Detachment was Damjan Lazarević, and the Commander of the Company was Dragan Jevtić. Dragan Jokić was a Chief of the Engineering Company and a Major by military rank.

522. The witness was on leave on 13 July, and on 14 July he was in the unit waiting to be deployed when the Chief Jokić gave him a task to prepare an excavator G-700 for loading. This is how the witness participated in loading dead bodies in Orahovac. After that, on 17 July, he received an order from the platoon Commander to use that machine and go to the Farming Cooperative in Branjevo. He reached the place in the morning where he was told to unload the machine and take a turn at a workshop. He was accompanied by the platoon Commander Damjan Lazarević. The task was to dig a pit

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<sup>149</sup> Witness Milivoje Nikolić was examined at the hearing of 12 April 2011.

<sup>150</sup> S-4 Video recording of the site visit.

<sup>151</sup> Witness Cvijetin Ristanović was examined at the hearing of 26 April 2011.

and the place was again marked with stakes. The pit was 10-12m long and 3 m wide. While he was working, he saw dead bodies at the distance of 20m.

523. In the vicinity, he also noticed an ULT machine – loader which was not in use while he was at the location. Upon completing the task, the witness left the place and did not know what happened to the bodies. In this period he did not fill in the forms on using the machines, although that was a regular procedure.

524. The referenced was also confirmed by witnesses who, being the members of the Engineering Battalion, were engaged in the burial of dead bodies at various locations. Thus the witness Z-8<sup>152</sup> claims that he was engaged in loading dead bodies at the Petkovci dam, and was thereafter mobilized to bury dead bodies in Kozluk, and he was also engaged at the Farming Cooperative in Branjevo.

525. Upon arrival at Branjevo, witness Z-8 saw three great piles of dead bodies. He saw that the dead bodies were brought there in trucks and, as far as he remembers, the greatest pit relative to all other locations at which he had been, was dug there. The location for burial of civilians was probably decided on by the commanding officers he saw at the Farming Cooperative in Branjevo when he got there, but he cannot identify them. He did not know the soldiers he used to see on such occasions, and he only saw those who were, like him, engaged in loading. He cannot state with certainty the total number of dead bodies buried on that day.

526. Protected witness Z-4, who was also mobilized in the Engineering Company of the Zvornik Brigade, was also engaged in the burial of dead bodies. At that time, he was driving BGH<sup>153</sup> ULT<sup>154</sup> and SKIP<sup>155</sup> machines, so he explains that BHG is a machine that digs towards itself, while ULT loads and digs by itself. He remembers the executions in Orahovac on 15 July 1995, after which he returned home, and the next day he was told to go to Kozluk to load dead bodies as well. When he got there, he saw two locations at which gravel used to be dug up, so executions were carried out in those pits, which were then to be covered.

527. Upon his return from Kozluk, they were informed that they should leave for Branjevo the following day and that the BGH and ULT machines would be needed. They went there at around 08:00 a.m. The workers were transported by a TAM truck, and the machines by a tow truck – so-called “heavy duty transporter” attached to a truck. The BGH machine was operated by witness Ristanović and ULT by Rade Bošković. The Branjevo grave was the biggest one the witness visited<sup>156</sup>. They were loading dead bodies from 09:00 a.m. until evening hours. More than one hundred bodies were buried there for sure. He remembers that he could not stay at that place for a long time because

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<sup>152</sup> Witness Z-8 testified at trial of 11 February 2011.

<sup>153</sup> BGH- excavator - loader.

<sup>154</sup> ULT- loader.

<sup>155</sup> SKIP- combined machine (loader - excavator).

<sup>156</sup> T-73 The witness marked the location of buried bodies on the photo presented to him.

the smell was unbearable, so he left earlier, and the rest of them remained to finish the burial.

528. Two or three months later, the witness was ordered again by the Command to go to the same locations, dig the bodies out and transfer them to the planned locations. He remembers that the bodies were loaded on trucks and taken somewhere to the location of Crni vrh. The excavation of dead bodies in Branjevo lasted for two nights, and in Kozluk and Orahovica for one night. The drivers did not talk about the locations to which the bodies were taken, which only supports the conclusion of the Panel that the stated activities were conducted secretly, at night, and were highly organized, in order to cover the mass-scale and brutality of the committed crimes. Witness Z-4 states: *“We worked during the night, we did not use lights, we only had headlights of the working machines.”*

529. According to the finally adjudicated facts accepted by this Panel, the reburial operation carried out sometime during September and October 1995 was ordered by the GS of VRS.<sup>157</sup>

530. The engagement of witness Velimir Popović in finding Dražen Erdemović after he had decided to appear before the Tribunal and present all information on the referenced events and his participation in the executions in Branjevo, speaks for itself about the extent of the attempts to conceal the killings committed. Thus, the witness remembers: *“Pelemiš ordered me to arrest him and take him in. I took in the witnesses who knew how he had run away and then I was arrested and imprisoned for three months, charged with kidnapping.”*

531. Upon an order of Petar Salapura and Dragomir Pećanac, the defense witness O-1 was also engaged in arresting the witnesses who knew how Erdemović had run away, and the idea was to catch Erdemović and kill him in order not to speak about the executions by firing squad in Branjevo.

#### **H. THE NUMBER OF THOSE KILLED AT THE FARMING COOPERATIVE IN BRANJEVO**

532. During the trial, the Panel undoubtedly found that about 800 people were killed at the Farming Cooperative in Branjevo on 16 July.

533. The ICTY Trial Chamber found that on 17 July members of the Zvornik Brigade Engineering Company participated in the excavation of the mass graves in Branjevo, which was also confirmed by the witnesses examined during these proceedings. Thus, witness “Z-4”, a member of the Zvornik Brigade Engineering Company, testified that, at that time, he used an ULT-220 loader to dig out several pits at several locations near Zvornik and at the Farming Cooperative in Branjevo, among other locations, where he was sent by Major Dragan Jokić, Chief of the Engineering Company of the Zvornik Brigade. This witness claims that the grave he dug out in Branjevo was bigger than those in Orahovac and Kozluk, where mass executions also took place. For the sake of

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<sup>157</sup> The established fact under referenced number 18 of the Decision of the Panel of 12 January 2011.

comparison, he states that the excavation in Branjevo lasted for two days and at other locations for one day. According to his assessment, the grave in Branjevo was 10-15m long, 2-2.5 m wide and 1.5-2m deep. After a few months, he participated in transferring dead bodies from that pit to other locations, which was also ordered by Major Jokić.

534. Cvjetin Ristanović, a member of the same Company who was digging graves in Branjevo using an excavator G 700 (bucket size 700 cubic meters), participated in the aforementioned activities together with him. This witness claims that, on 17 July, he received an order from his platoon commander to go to Branjevo with his machine, where he got a task to dig a pit (the area was already marked with stakes). The pits were 10-12 m long and 3 m wide. Nearby, he saw an ULT machine operated by witness "Z-4".

535. In his report and testimony, Dean Manning<sup>158</sup>, an ICTY Investigator, states that many mass graves can be seen on the aerial satellite photographs at the time of their excavation or shortly afterwards. The photographs of the Farming Cooperative in Branjevo of 17 July 1995 show a large number of dead bodies on the field near the Farming Cooperative, while the photographs of 27 September show the signs of digging up the mass grave all over, and an excavator and a loader. Furthermore, an analysis of the primary mass grave in Branjevo and an analysis of the grave on the Čančari Road 12 (CR12) indicate that CR12 is a secondary grave which contains the bodies removed from the mass grave at the Branjevo Farming Cooperative. Evidence proving the connection includes archaeological and anthropological features, samples of soil and pollen, similar blindfolds and ligatures, as well as the dates of an unauthorized re-digging of graves, obtained through the photographs that show that the CR 12 was dug for the first time after 27 September and covered before 2 October 1995.

536. The exhumation of the Branjevo grave was done during the period between 10 and 24 September 1996, and the remains of 132 persons were found there while in the mass grave CR 12 which was exhumed in 1998 the remains of 174 persons (only 43 almost complete bodies) were found and, based on the anthropological analysis of bones and body parts, the smallest number of persons in these two graves was 283 at the time of the report, and this figure keeps increasing. He also stated that CR 12 was not the only secondary grave connected with the grave in Branjevo, that is, that evidence suggests the existence of other graves along the Čančari road as well.

537. During the exhumation, identity documents and items obviously related to the Islamic religion, and a prosthetic left leg (a part below the knee) were also found, which indicates that disabled persons were also among the victims. According to this witness's testimony, the autopsy results (as Erdemović also confirmed in his testimony) indicate that, among the executed men, there were boys who did not turn 18 (eighteen) at that time.

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<sup>158</sup> T – 74 Report of Dean Manning (5 reports in total) dated November 2007, June 2007, 2003, 2001, and May 2001, as well as two transcripts of examination of witness Dean Manning in the Popović case.



538. In his findings and opinion<sup>159</sup>, expert witness Rifat Kešetović<sup>160</sup>, the manager of the Podrinje Identification Project (PIP) of the International Commission on Missing Persons, whose task is to identify the exhumed mortal remains, states that his analysis refers to identified persons found in the primary mass grave in Pilica (Branjevo Farming Cooperative), and the related secondary mass graves.

539. The primary mass grave at the Branjevo Farming Cooperative (Pilica), marked as PLC, was exhumed by a joint team of the organization of Physicians for Human Rights (PHR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). The forensic and criminal-technical processing was done by the ICTY experts, and the autopsy reports were taken over by the then Federation Commission for Tracing Missing Persons.

540. The expert witness analyzed the DNA reports received by PIP by 13 April 2010, for all graves exhumed on the “Čančari Road” (13 in total) of which, according to physical evidence which is not the subject matter of this analysis, eight are connected with the events in Pilice, marked as: CR12, CR11, KAM10ZVO, KAM09ZVO, KAM08ZVO, KAM 06 ZVO, CR 05 , KAM 04 ZVO.

541. Upon the order of the Prosecutor’s Office, the same expert witness made a corrigendum to the Report with data updated by 25 May 2011. He stresses that the process of identification is continuous and still ongoing, and that data on the referenced date inclusive are subject to changes.

542. At the hearing of 14 June 2012, the expert witness noted that there was an error in the diagram in his report, because it stated that there was a connection between graves KAM 04 ZVO and KAM 09 ZVO, but it should be deleted because there is no connection. Therefore, when discussing the connections between the grave KAM 04 and other graves, its connection with the grave KAM 09 ZVO should be deleted wherever mentioned, specifically on pages 3, 14 and 15 of the Report.

543. During the analysis of the findings and opinion, the Panel was mindful of the referenced alteration, which the expert witness explained orally.

### **1. Officially identified persons per individual graves**

544. Thus, according to the findings and opinion of the expert witness, Rifat Kašetović, the number of officially identified dead bodies exhumed from the primary mass grave PLC Pilica (Branjevo) is 127. All identified persons are men, whose age structure is presented in the table of the report, but the Panel observes that two youngest persons were born in 1980 (one of them is Admir, son of Ramo, Avdić), while the oldest one was born on 1925, Nazif (son of Ibrahim) Vilić. In 99 of 127 persons, the death was caused by bullet wounds.

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<sup>159</sup> Material evidence of the Prosecutor’s Office T-72.

<sup>160</sup> Expert witness Rifat Kešetović was examined at the hearing of 3 June and 14 June 2011.

545. The DNA analysis revealed direct connections with five secondary graves along the Čančari road, that is: KAM04 ZVO, KAM 08ZVO, KAM 09ZVO, CR11 and CR12, wherein the mortal remains of two persons (on the PIP's list they are listed under numbers 127 and 327) were found in three different graves – the primary grave in Branjevo (PLC) and two secondary graves along the Čančari road (CR11 and CR12).

546. The expert witness Rifat Kašetović in his findings further explains that in the secondary grave along the Čančari road mortal remains of persons who were initially buried at the Farming Cooperative in Branjevo were discovered, which was, apart from the findings of the expert witness, also supported by the accepted facts, established in other cases before the ICTY.<sup>161</sup>

547. It was stated in one report that the smallest number of persons found in the secondary grave in Čančari was 283 victims. For three of them it was found that they were at the age between 8 and 12, for 49 that they were at the age between 13 and 24, and for 231 that they were older than 24. At least 269 victims were men.<sup>162</sup>

(a) DNA analysis of eight secondary graves

548. According to the findings and opinion of the expert witness Rifat Kešetović, from the secondary grave in Čančari, marked as CR12, a total of 152 cases have been opened, and 117 persons have been identified and 10 of them were younger than 18. The DNA analysis established the connection with the primary mass grave in Branjevo (PLC) as well as with other secondary graves along the Čančari road - CR 11, KAM10ZVO and KAM06ZVO. Two youngest persons were born in 1980, one of them was Mujo (son of Smajo) Nukić, and the oldest one was born in 1923, Jusuf (son of Alija) Memić.

549. From the mass grave in Čančari, marked as CR11, a total of 135 cases have been opened based on the provided samples and, prior to updating the data, 101 persons were identified and 7 of them were younger than 18. The DNA analysis established the connection with the primary grave in Branjevo (PLC) and the secondary graves CR12 and KAM10 ZVO. The two youngest persons were born in 1979, one of them being Esed (son of Alija) Klempić and the oldest one was born in 1923, Mehmedalija (son of Hakija) Čakanović.

550. From the mass grave in Čančari, marked with KAM10ZVO, a total of 415 cases have been opened based on the provided samples, and 296 persons were formally identified by that time and 16 of them were younger than 18. The DNA analysis established connections with the mass graves CR11, CR12, KAM06ZVO, KAM08ZVO and KAM09ZVO. The youngest identified person was born in 1980, Ahmedin (son of Munib) Osmanović, and the oldest was born in 1919, Nurif (son of Ramo) Sinanović.

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<sup>161</sup> Established fact under number 19 in the Decision of the Chamber dated 12 January 2011.

<sup>162</sup> Established fact under number 20 in the Decision of the Chamber dated 12 January 2011.

551. From the mass grave KAM09ZVO, a total of 208 DNA cases have been opened, and 141 persons identified, of whom 13 were younger than 18, and the connections have been established with the primary grave (PLC) and the secondary graves KAM08ZVO and KAM10 ZVO. The youngest identified person was born in 1980, Sulejman (son of Abdulah) Osmanović, and the oldest was born in 1920, Safet (son of Osman) Osmanović.

552. From the mass grave KAM08ZVO a total of 49 DNA cases have been opened, and 29 persons identified. The youngest identified person was born in 1971, Mešo (son of Memiš) Kadrić, and the oldest was born in 1917, Hakija (son of Hašim) Isaković.

553. From the mass grave KAM06 ZVO, a total of 179 DNA cases have been opened and 65 persons identified and 4 of them were younger than 18. The DNA connection was established with graves CR05, CR12 and KAM10ZVO. The youngest identified person was born in 1979, Admir (son of Salko) Malagić, and the oldest in 1918, Šaćir (son of Hakija) Begić.

554. The mass grave KAM 04 ZVO, a total of 174 DNA cases have been opened and 152 persons identified by that time, of which 12 persons were younger than 18. The DNA connection was established with the primary grave PLC and secondary grave CR05. The youngest identified person was born in 1979, Džemal (son of Ibro) Hasanović and in 1917, Rifet (son of Safet) Omerović.

555. From the mass grave CR05, a total of 278 DNA cases have been opened and 219 persons identified, of which 10 persons were younger than 18. The DNA connection was established with graves KAM04 ZVO and KAM 06 ZVO.

556. In cases where the cause of death was established with a greater or lesser probability, bullet wounds dominate, multiple in most cases, while in graves KAM 04Zv0, KAM 06Zvo, CR 05 and CR 11, there is a possibility that the injuries were inflicted by explosives.

557. Direct connections between the primary grave in Pilica (PLC) and the secondary graves KAM04ZVO, KAM08ZVO, KAM09ZVO, CR11 and CR12 have been established. Many individual connections between the secondary graves CR 05, KAM06ZVO and KAM10ZVO have also been established, indicating that these graves are certainly connected, which can also be confirmed by the artifacts found in the graves.

558. The Court accepted the referenced findings, opinion and conclusion of the expert witness according to which, until the time of updating the findings and opinion by this expert witness on 25 May 2010, the number of officially identified persons was 1435. According to the expert witness, this number is not final, considering that the process of identification of victims is ongoing and the relevant data change. The Court observes that, when findings and opinion were provided by this expert witness in a case tried before this Court (*Pelemiš and Perić number: S1 1 K 003379 09 Krl*), the number of identified persons was 1052, therefore it is evident that, by updating the data prior to producing the findings in this case, the number increased significantly, which only

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supports a conclusion that this could only be a smallest and not the final number of victims.

559. The findings and opinion of the expert witness, Rifat Kešetović, was challenged by the defense, primarily stating that the bodies of those killed in the Dom in Pilica were brought to the mass grave in Branjevo, and that the bodies of killed persons were transferred from the primary grave in Kozluk to the secondary grave along the Čančari road. However, the Panel does not accept the claims of the defense that the bodies of those killed were transported from the primary grave in Kozluk to the secondary grave the Čančari Road 12, which is connected with the primary grave PLC Pilica (Branjevo), because, in the final Verdict against Milorad Trbić who was tried before this Court, the Court found that the prisoners had been transported from the school in Ročević to the garbage dump in Kozluk where they were executed.<sup>163</sup>

560. The referenced Verdict notes the following to this effect:

“Forensic evidence shows that these bodies were later exhumed and some of the bodies they contained were moved to secondary mass graves, at least one of which was located along the Čančari Road and was identified as Čančari Road 3. Soil samples, shell cases, blindfolds and ligatures and thousands of broken green glass bottles, bottles with the cap still attached to the bottle with the rest of the bottle broken, and unused labels, some in stacks, allowed matching this secondary mass gravesite to the Kozluk gravesite. These bottles and labels were proven to originate from the dump of a bottling factory located in the Kozluk area. That green glass and labels were moved with the bodies to the secondary mass gravesite.

It was possible to identify the name and address of the factory on some labels. Aerial images indicate that this primary mass gravesite of Kozluk was created between 5 and 17 July 1995 and was further disturbed prior to or on 27 September 1995. Further aerial images indicate that the secondary mass gravesite Čančari Road 3 was first excavated after 27 September 1995 and then back filled prior to 2 October 1995.<sup>536</sup> Archeological examination of Čančari Road 3 indicates that this mass grave was excavated using heavy machinery; that it was by a wheel front loader with a toothed bucket.”<sup>164</sup>

561. Therefore, it clearly follows from the foregoing that the bodies of killed persons were transferred from the primary grave in Kozluk to the secondary graves along the Čančari Road, however, the secondary grave Čančari Road 3 to which the quoted paragraph refers, was not included in the expert witness’s findings and opinion referring to the primary grave PLC Pilica (Branjevo).

562. Therefore, the presented arguments of the defense did not challenge the findings and opinion of expert witness Kešetović, to whom the Panel entirely gave credence, because they were produced in compliance with the rules of profession, and the Panel did not have any reason whatsoever to doubt the objectivity and expertise of this expert

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<sup>163</sup> Verdict against M. Trbić number: X-KR-07/386 dated 16 October 2009, para. 555.

<sup>164</sup> Verdict against M. Trbić number: X-KR-07/386 dated 16 October 2009, para 410 and 411.

witness. This is particularly so as the findings and opinion are consistent with the other presented evidence.

563. The evidence presented during these proceedings undoubtedly indicates that not only victims executed by automatic weapons in Branjevo, but also victims from the Dom in Pilica, were buried in Branjevo, in relation to which the evidence presented and the results of the criminal investigation conducted on the scene and the testimony of witnesses who loaded the victims onto the truck and who noticed that some of the bodies were completely destroyed, also indicate that, among other things, the victims in the Pilica Dom were killed by explosives, which is completely consistent with the fact stated by expert witness Kešetović and many witnesses who claim that at least 500 men from Srebrenica and one woman were killed in the Pilica Dom.

564. The referenced was confirmed in the testimonies of the participants in the killings in Branjevo, Dražen Erdemović, the Accused Franc Kos and Stanko Kojić, whom Beara himself told, while they were at the “Ljubo’s Coffee-House” across from the Pilica Dom, that there were 500 captives in the Dom. Zoran Gajić<sup>165</sup>, member of the 1<sup>st</sup> Battalion of the Zvornik Brigade, who was guarding the Pilica Dom, also testified about this.

565. It undoubtedly follows from the testimony of the examined witnesses that the dead bodies of those killed in the Dom were buried in the primary grave in Branjevo, about which Milivoje Nikolić testified, claiming that the bodies of the those killed in Pilica were transported the following day by trucks to the Farming Cooperative in Branjevo where they were buried, which was also confirmed by witnesses Radivoje Lalić and Jakov Stevanović<sup>166</sup>, all members of the work detail of the 1<sup>st</sup> Battalion, who loaded the dead bodies near the Pilica Dom.

566. If it is taken into account that most witnesses claim that the number of those killed in Pilica was 500 and that, according to the findings of Rifat Kešetović, the total number of identified persons until the date of updating the data (25 May 2010) was 1,435, then the number of 935 persons suspected to be killed at the Farming Cooperative in Branjevo is reached.

567. However, based on the testimony of the examined witnesses, the Panel could not conclude if this was the exact number of persons executed at the Farming Cooperative in Branjevo but, based on the presented evidence, the Panel found that, on 16 July, about 800 Muslim captives were executed at the Farming Cooperative in Branjevo,.

568. The Court reached this conclusion after a thorough and comprehensive analysis of all testimonies.

569. Some witnesses testified about the number of killed persons which was considerably larger than the number reached by the Panel. Thus, witness Dražen

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<sup>165</sup> Witness Zoran Gajić testified at the hearing dated 22 February 2011.

<sup>166</sup> Witness Jakov Stevanović was examined at the hearing on 19 April 2011.

Erdemović, who entered into the plea agreement for the crimes in Branjevo with the ICTY, claims that about 1000-2000 people were executed there and he bases this assessment on the number of buses which transported the captives to the execution site and, according to him, there were 15-20 buses. Witness Juroš Jurošević<sup>167</sup> also claims that he heard from local people that 15 buses with captives left from the school “Kula” in Pilica for Branjevo.

570. This number is evidently different from the number provided in most other testimonies, however, some witnesses in their testimonies also referred to the number close to 1000 killed persons, as stated in the testimony of Zoran Gajić, member of the 1<sup>st</sup> Battalion of Zvornik Brigade, who took the last bus that transported the captives to the Farming Cooperative in Branjevo where he himself saw killed people on an open field. The same number is referred to by witness “Z-2” who believes that the total number of those killed in the Pilica Dom and in the Farming Cooperative in Branjevo ranged between 1000-1500 persons.

571. Although these are personal assessments of the witnesses, the fact is that this number is closest to the number of 1435 persons identified hitherto, according to the findings of the expert witness R. Kašetović. When establishing the final number of identified persons, the Panel was mindful of the direct connection between the primary grave PLC Pilica (Branjevo) and 5 secondary graves, and the connections between the secondary graves themselves.

572. The Panel was also mindful of the expert witness’s remark that this is variable data subject to constant changes, because identification is a time-consuming and continual process. In support of his claim he also refers to the fact that from the time of his findings and opinion in *Pelemiš* and *Perić*, until the time of offering findings in the present case, additional 200 persons were identified.

573. A slightly smaller number of the killed captives was mentioned by witness Slobodan Džajić, former driver with the company “Drina trans“, who was ordered to transport the people from Bratunac to the primary school “Kula” in Pilica, and who claims that, on that occasion, there were 12 buses in total and that 40-50 persons could board on one bus (that is, 500-600 individuals), adding that, apart from the “Drina trans” buses, there were other companies, trucks and trailer-trucks that transported the people as well.

574. Witness Bogoljub Gavrić<sup>168</sup>, teacher at the Pilica school, also claims that about 10-12 buses arrived in front of the school and that about 600 persons were detained in the school. This is also claimed by witness Dragan Jovanović, a communications officer of the 1<sup>st</sup> Battalion of Zvornik Brigade, who eye-witnessed the arrival of 10 buses carrying about 500-600 people. The protected witness “Z-1“, who personally participated in the execution of the captives, also mentioned this number, stating that there were 600-700

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<sup>167</sup> Witness Juroš Jurošević was examined at the hearing on 26 April 2011.

<sup>168</sup> Witness Bogoljub Gavrić testified at the hearing of 25 February 2011.

persons. However, the Panel was particularly mindful of the fact that the same witness increased the number of those killed to 800 during cross-examination.

575. The Accused Franc Kos,<sup>169</sup> who also participated in the killings, referred to a differed number of buses and killed captives during his testimony so that, at the end of his testimony, he stated that the captives on the total of 8 buses, the last of which was half empty, were executed in Branjevo. In his Statement of Facts, the Accused Vlastimir Golijan, claims that the captives on 10 buses, that is, 600-700 persons, were executed.

576. The Panel did not accept the allegations of witness Slobodan Džajić according to which one bus could receive 40-50 persons, considering that this is so in normal circumstances. In this specific case, the captives were kept in inhumane conditions at the school in order to be guarded before their execution, and they certainly did not take separate seats on the bus. The fact that they tied one another's hands when entering the bus because, as witness Rajka Babić stated<sup>170</sup>, "*they stank too much for anybody to come closer to them*", is sufficient proof of the way the soldiers treated the captives.

577. Therefore, the Panel concludes that the operation of killing the captives was supposed to be carried out in the most organized manner and as quickly as possible, which proved to be true when, as stated by Dražen Erdemović and Franc Kos, an order came during the execution that they should work faster thus not giving the time to the remaining captives in the school to rise in revolt.

578. Thus, the Panel finds that the captives on the buses did not take the seats in the manner in which they would probably have been transported to Tuzla and Kladanj, were they indeed to be exchanged, instead, the aim was to transport them to the execution site as soon as possible and in the largest possible number.

579. Witness Z-3 describes this as follows: "*On the morning of 16 July, a Serb soldier entered the gym and asked all younger men to get out, saying that they all would be exchanged*". The witness was sitting next to the entrance and joined the group that left the gym. They were ordered to stand against the exterior school wall with their hands behind their backs. There, they tied their hands and made them enter the 3 parked buses. The witness entered the second bus. The men were sitting by 3 in one line of seats. Considering the fact that they would face the inevitable death once they reached the Branjevo Farming Cooperative, it would not be justified to claim that they were anyhow treated in a humane manner at the school or that they all had a separate seat on the buses, because it would be absurdity to expect something like that.

580. Therefore, considering that every bus transporting the captives from the school "Kula" was packed so that several persons were taking a single seat, it is justifiable to conclude that one bus could receive at least 50 or 60 persons. If this is correlated with the number of buses the witnesses testified had reached Branjevo, ranging between 12

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<sup>169</sup> The Accused Franc Kos testified at the hearing of 8, 11 and 22 November 2011.

<sup>170</sup> Witness Rajko Babić testified at the hearing of 11 January 2011 and 28 January 2011.

and 15, it is a foregone conclusion that at least 12 buses packed with captives reached Branjevo, that is, that about 800 persons were killed there, as also stated in the testimony of witness “Z-1”.

581. A slightly smaller and, in the Panel’s view, unconvincing number of the captives who were detained in the Pilica school and subsequently executed at the Branjevo Farming Cooperative was stated by the member of the 1<sup>st</sup> Battalion of Zvornik Brigade, Rajko Babić, who heard from the local people that the captives packed in 6 buses arrived at the school “Kula” in Pilica, and by witness Mićo Manojlović, who heard that “approximately one hundred people” were killed at the Branjevo Farming Cooperative. It is clear to the Panel that these witnesses intentionally decreased the number of those killed because they were directly involved in guarding them in the school prior to their being taken to the execution site. Therefore, considering that this number is by no means consistent with other witness statements, the Panel did not give credence to this part of their testimony.

582. The Panel also refused the defense’s theory according to which the bodies of those killed during the combat with the column in the Baljkovice region were buried in the primary grave in Branjevo, considering that the ligatures used for tying the hands behind their backs and the blindfolds were found on the mortal remains in the graves, which is also evident on the photographs tendered into the case file, which the Panel reviewed, which in no way or context whatsoever may be correlated with the persons killed in combat. These arguments are also corroborated by the testimony of Dragan Obrenović<sup>171</sup> who stated that he supposed that during the fight with the column in Baljkovica, a large number of Muslims were killed and wounded, but their bodies were likely pulled away through the corridor in the night between 16 and 17 July, considering that not a large number of bodies were found in that region later on, and about 15 to 20 found bodies were later buried near Motovska Kosa.

583. According to the evidence presented in the present case to which the Panel gave credence, at least 500 people were killed in the Pilica Dom, and about 800 people at the Farming Cooperative in Branjevo. If the referenced is considered in the context of the number of individuals identified hitherto in the primary grave Branjevo (1,435) the fate of a larger number of identified persons remains unclear. However, the Panel could not find beyond any reasonable doubt if the dead bodies of that number of those killed were transported to the Branjevo grave from other locations, or the number of actually killed persons was much larger than the one established by this Panel which made its conclusion based on the number of buses transporting the captives who were detained in the school “Kula” and who were subsequently brought to the Branjevo Farming Cooperative.

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<sup>171</sup> Transcript of testimony of Dragan Obrenović (*transcripts in Blagojević of 1 October, 2 October, 6 October, 7 October, 8 October, 9 October and 10 October 2003*), and the statements made to the ICTY Investigators in his capacity as witness (*of 2 April 2000, 4 June 2003 and 5 February 2004*) admitted by the Decision of this Panel, number: S1 1 K 003372 10 Krl of 14 October 2010.



584. During cross examination, Dean Manning<sup>172</sup> stated that, jointly with the team of ICTY Investigators, he was engaged in excavations in Srebrenica and so he also had the opportunity to go to the execution site in Branjevo. Upon arrival at that location, they found residential buildings already built there, however, they managed to carry out certain analysis nevertheless. The Military Farming Cooperative is connected with the Čančari Road grave. According to the autopsy reports and DNA analysis, several boys who had not turned 18 at that time were also found in the Branjevo grave.

585. Dean Manning categorically claims that he did not enter into his reports the bodies they found in the excavations near the surface and adds that it is not possible to have a situation where one body is found in several graves and added as such to the total number of those identified, because the reassembling of human remains is carried out with the assistance of DNA analysis and a body is identified as a whole.

586. Witness Manning also denied the possibility that the bodies of those killed in the column were buried in the mass-graves, explaining that the bodies were found by the “Médecins Sans Frontières“ and the Commission on Missing Persons and, upon their identification, handed over to their families. These were the bodies of those found on the surface, at the sites at which people were killed, and they were not buried in the mass graves.

587. During the proceedings, the defense also contested the total number of those killed in the attack on Srebrenica and, in that context, Janko Velimirović<sup>173</sup> who, as a member of the Support Committee, prepared lists of identified and missing persons required by the Tribunal, was examined as a witness.

588. The witness explains that the primary task was to conduct an investigation and make a list of missing persons while, at a later point in time, the aim was to only conduct an investigation concerning the persons that had gone missing and then to provide an answer about the ambience in which the events took place. Thus, upon proposal by the OHR, the Committee’s mandate was expanded so as to include the events in and around Srebrenica during the period from 10 to 19 July 1995.

589. Within the expanded mandate, the Committee was supposed to collect information on the mass graves, because there was the possibility that some of the individuals who were registered as missing, were identified in any of the mass graves. The work of the Committee was supervised by the OSCE and the OHR.

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<sup>172</sup> T – 74 On 11 October 2011, the witness was cross examined about the reports (5 reports in total) dated November 2007, June 2007, 2003, 2001 and May 2001, including two transcripts of examinations of the witness Dean Manning in *Popović* which have been tendered into evidence in the present case.

<sup>173</sup> Witness Janko Velimirović was examined at the hearing on 24 February 2012. During his testimony, the witness used a cartographic map at which he made some markings. The map was tendered into evidence as defense exhibit OII-7. The Summary of Events in and around Srebrenica per hour (a document taken from the Republic Centre for Investigation of War Crimes) was also tendered into evidence as OII-6.

590. For a comprehensive list to be made, it was necessary to analyze all of the relevant existing lists. About a dozen organizations from all domains were involved, and there was a statistical list and a list by names provided by the Federation Bureau for Statistics. The witness further explains that the Committee had a database in which names and family names were entered and it included about 13,500 persons for the period between 1992 and 1995.

591. Members of the Committee were of the view that the databases were extensive, therefore every working group reviewed 150,000 names. The witness further explains that the names of some persons appeared on several lists because their families repeatedly reported that they had been missing while, according to the provided data, some persons got killed before July 1995. They also found some individuals who had already been entered into the Death Registers, but it was not stated there if the death was natural or violent. Many of them were killed in the fights or minefields, but that number was not separated from the total sum. According to some information, the Civil Protection Services in Bratunac and Zvornik were engaged in burying those bodies, however, the locations at which they were buried are unknown.

592. The witness claims that they did not have accurate data on the number of those killed in the column breaking through, and there were also significant mistakes in the Committee's assessment relative to the cases tried before the ICTY. Finally, the Committee's List included about 8,000 names, however, a certain number of these names appeared repeatedly, that is, one person's name even appeared at 5 lists). Finally, the witness explains that the Committee's Reports are based on the data provided by the families, and he therefore states: "*No institution has checked the truthfulness of this data and we have taken it over without checking if it was truthful or not, except for the dates on which their disappearance was reported.*"

593. The total number of the executed men in Srebrenica was determined in a number of the Appellate Panel Verdicts of the Court of BiH, as well as in Appeals Chamber Judgments of the Tribunal, and it ranges between 7,000 and 8,000<sup>174</sup>, which is also the number to which the witness eventually referred.

594. The Panel finds that the above piece of information is not disputed by the testimony of this witness, who at the end of the testimony, when describing the Commission's job, did not provide any new piece of information that would change the fact on the total number of the executed.

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<sup>174</sup> „In July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number is likely to be within the range of 7,000-8,000 men.“ Paragraph 84 from the Appeals Chamber Judgment in the case Prosecutor v. Krstić, No. IT-98-33-T.

#### IV. SUMMARY OF CASES BEFORE THE ICTY, INTERNATIONAL COURT OF JUSTICE AND COURT OF BIH ON THE EXISTENCE OF GENOCIDE IN SREBRENICA

595. Although the Panel found the Accused guilty of the criminal offence of Crimes against Humanity, set forth in Article 172 of the CC of BiH, it finds useful to summarize the conclusions made in the final judgments of the ICTY and the Court of BiH on the existence of Genocide in Srebrenica, given that the Defense also challenged this issue during the proceedings.

596. Hence, the Panel notes again that it is not disputable that Genocide was committed in Srebrenica in July 1995, but the Prosecution failed to prove during the proceedings that the Accused, as members of the 10th Sabotage Detachment, acted with the genocidal intent in their acts for which they were found guilty, that is, they knew about the genocidal intent of the principal perpetrators of genocide.

597. The International Court of Justice has concluded that the acts committed at Srebrenica were committed with a specific intent to destroy in part the group of Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide committed by members of the VRS in and around Srebrenica from about 13 July 1995.<sup>175</sup>

598. The ICTY Trial Chamber in *Krstić* concluded that “the intent to kill all the Bosnian Muslim men of military age in Srebrenica constitutes an intent to destroy in part the Bosnian Muslim group within the meaning of Article 4 and therefore must be qualified as genocide.”<sup>176</sup> The Appeals Chamber of the ICTY confirmed these findings and stated unequivocally that the Srebrenica massacre should be called by its proper name: genocide.<sup>177</sup>

599. In *Blagojević and Jokić* the ICTY Trial Chamber came to a similar conclusion finding that genocide was committed given that over 7,000 Bosnian Muslim men from Srebrenica were massacred. The Trial Chamber found that the Bosnian Serb forces not only knew that the combination of the killings of the men with the forcible transfer of the women, children and elderly, would inevitably result in the physical disappearance of the Bosnian Muslim population of Srebrenica, but clearly intended through these acts to physically destroy this group.<sup>178</sup>

600. Furthermore, the separation of the men from the rest of the Bosnian Muslim population shows the intent to segregate the community and ultimately to bring about the destruction of the Bosnian Muslims of Srebrenica. The Bosnian Muslim men were stripped of their personal belongings and identification, detained, and finally taken to

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<sup>175</sup> The Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, paragraph 297.

<sup>176</sup> *Krstić*, Trial Judgment, paragraph 598.

<sup>177</sup> *Krstić*, Appeals Chamber Judgment, paragraph 37.

<sup>178</sup> *Blagojević and Jokić*, Trial Judgment, paragraphs 671-677.

execution sites, where the Bosnian Serb forces deliberately and systematically killed them, solely on the basis of their ethnicity.<sup>179</sup>

601. The ICTY Appeals Chamber Judgment in the same case did not revoke the finding that the crimes executed by the Bosnian Serb forces constituted genocide.

602. Finally, the Court of Bosnia and Herzegovina in the case of the Prosecutor's Office of BiH v. Miloš Stupar et al.<sup>180</sup> and the Prosecutor v. Milorad Trbić found that genocide was committed in Srebrenica, which was also upheld by the Appellate Panel in the above referenced cases.

## V. ELEMENTS OF THE CRIMINAL OFFENCE OF GENOCIDE

603. Taking into account that the Indictment charged the Accused with the criminal offence of Genocide set forth in Article 171 of the CC of BiH, the Panel finds it useful to elaborate on the essential elements of the criminal offence that must be satisfied in order for a person to be found guilty of its perpetration.

604. Article 171 of the CC of BiH qualifies the criminal offence of Genocide as follows:

Whoever, with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group, orders perpetration or perpetrates any of the following acts:

- a. killing members of the group;
- b. causing serious bodily or mental harm to members of the group;
- c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. imposing measures intended to prevent births within the group;
- e. forcibly transferring children of the group to another group,

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

### (a) Mens Rea

605. According to the definition of Genocide, apart from the general elements, a specific intent is required, which is the distinguishing characteristic of this crime under

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<sup>179</sup> *Blagojević and Jokić*, Trial Judgment, paragraph 674.

<sup>180</sup> *Miloš Stupar et al*, First Instance Verdict, pg. 103.

international law."<sup>181</sup> Therefore, every underlying act must be undertaken with the intent defined under Article 171 of the CC of BiH by segments:

- 1) aim;
- 2) to exterminate;
- 3) in whole or in part;
- 4) national, ethnic, racial or religious group of people.

606. As clearly follows from the aforementioned, the criminal offence of Genocide differs from many other criminal offences because it includes a specific intent or *dolus specialis*. Special intent to commit a crime is a specific intent, which, in this case, constitutes an essential element of the criminal offence and demands that the perpetrator clearly sought to produce the act charged.

607. Special intent in the crime of Genocide therefore lies in "*the intent to destroy in whole or in part a national, ethnic, racial or religious group of people.*"<sup>182</sup> This results in the consequence that a person may be convicted of Genocide only if he/she committed one of the acts underlying the crime with a specific intent.

**1. The Accused did not have genocidal intent and they were not aware of genocidal intent of principal perpetrators**

608. That genocide was committed in Srebrenica in July 1995 was established in a number of judgments of the ICTY and the Court of BiH. The Prosecutor's Office however, during the proceedings, failed to prove beyond a reasonable doubt one of the essential elements of this criminal offence, this being genocidal intent on the part of the Accused.

609. In the absence of direct and explicit evidence on genocidal intent, the Court may examine other circumstances in the case, and therefore tribunals indicated a number of factors that may be relevant for establishing the required genocidal intent on the part of the Accused, including, among others: (1) general context in which the acts were committed; (2) the perpetration of other culpable acts systematically directed against the same group; (3) the scale of atrocities committed; (4) the systematic targeting of victims on account of their membership of a particular group; (5) the repetition of destructive and discriminatory acts; (6) number of victims; (7) means and methods used for the perpetration of crimes; (8) the area where the perpetrator acted and (9) the perpetrator's demonstrated intention to kill his/her victims.<sup>183</sup>

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<sup>181</sup> The Report of the International Law Commission on the Work of its 48th Session, 6 May - 26 July 1996 („the Report of the International Law Commission from 1996“), UN Doc. A/51/10. See also Trial Judgement in *Akayesu*, paragraph 498 („Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*.“).

<sup>182</sup> Trial Judgement in *Akayesu*, paragraphs 498, 517-522; see *Musema*, Judgement, paragraph 164.

<sup>183</sup> See inter alia, Appeals Chamber Judgement in *Jelisić*, paragraph 47; Trial Judgement in *Akayesu*, paragraph 523; Trial Judgment in *Jelisić*, paragraphs 73-77; Decision in accordance with Rule 61 in *Karadžić*

610. Similarly, statements or testimony of the Accused showing their attitude towards the fate of a group or victims may also be taken into account when examining their mental state at the moment of perpetration of the criminal offence.<sup>184</sup>

611. The aforementioned problems in establishing genocidal intent arise because intent is a “mental factor which is difficult, even impossible, to determine, and it can be, on a case-by-case basis, inferred from the material evidence submitted to the Chamber”<sup>185</sup> In practice, finding that the Accused had genocidal intent often appears only as a conclusion based on the compelling evidence of participation in a criminal offence, with the awareness that members of the group are subjected to mass killings and abuses. Accordingly, the Accused knowingly decided to take part in the criminal enterprise, aware of what was going on (an enemy group being destroyed or labeled as a group for destruction), and based thereon a conclusion is made that the Accused who participated in this must have had the intention to destroy the group.

612. This Panel is of the view that the knowledge of the Accused about the genocidal intent of other people is relevant in terms that he himself possessed a certain genocidal state of mind, in which case he would be held responsible as an accessory in genocide; however genocidal intent or satisfaction of the element of the offence set forth in Article 171 of the CC of BiH must be the only reasonable conclusion that may be drawn from the presented evidence and it must be established beyond a reasonable doubt.<sup>186</sup>

613. The intent of the Accused should be determined, above all, from his words and deeds, and should be evident from patterns of purposeful action.<sup>187</sup> The Court may also determine the intent from some other acts which in themselves were not included in the list.<sup>188</sup>

614. The level of knowledge about the details of the plan or policy for the perpetration of genocide depends on the position of the perpetrator in the civilian hierarchy or military chain of command, and it is understandable that the Main Staff of the VRS and the Accused who, as members of the 10th Sabotage Detachment, implemented the orders of

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and *Mladić*, paragraphs 94-95; Appeals Chamber Judgement in *Krstić*, paragraphs 12-14 and 21; Decision in accordance with Rule 98bis in *Milošević*, paragraphs 246 and 288; Trial Judgement in *Kayishema and Ruzindana*, paragraph 93; Trial Panel in *Kajelijeli*, paragraph 806 and the cases quoted therein.

<sup>184</sup> See for example Trial Judgment in *Jelisić*, paragraph 73.

<sup>185</sup> *Rutaganda* Trial Judgement, paragraphs 61-63; see also *Musema*, paragraph 167; Trial of Joseph Altstotter and others (“Justice case”), The USA Military Court, Nurnberg, 17 February-4 December 1947., Law reports, Vol. VI, str. 62-64.

<sup>186</sup> See, among others, Trial Judgment in *Kayishema and Ruzindana*, paragraphs 531-545.

<sup>187</sup> Trial Judgement in the *Bagilishema* case, paragraph 63.

<sup>188</sup> *Prosecutor v. Karadžić & Mladić*, Review of indictments pursuant to Rule 61, case numbers IT-9S-S-R61 & IT-95-18-R61 (11 July 1996) (“*Karadžić and Mladić Indictment*”) pg. 52, paragraph 94; see also *Prosecutor v. Nikolić*, Review of indictment pursuant to Rule 61, case number IT-94-2-R61, 20 October 1995, paragraph 34 (“the constitutive intent for the crime of genocide may be inferred from the very gravity of those discriminatory acts of extreme seriousness” such as mass murders committed in the region); Trial of *Bruno Tesch and two others* (“case Zyklon B”), Law Reports, Vol. I, pg. 102 (holding that the conclusion of knowledge may be inferred from “general atmosphere and conditions of the firm itself.”).

the main officers of the Main Staff of the VRS on the ground, could not have had the same level of knowledge.

615. The Defense presented many pieces of evidence about this circumstance, arguing that the Accused, given their status and personal characteristics, were not familiar with any genocidal plan nor did they share any genocidal intent with its creators.

616. The Defense for the Accused Franc Kos argued that the Accused, as a citizen of ...<sup>189</sup>, and a member of the Croatian Defense Council (HVO) and for some time a member of the Army of BiH, could not have acted with genocidal intent or any discriminatory intent against the Bosniak population.

617. In this context, numerous pieces of evidence were presented by the Defense for the Third Accused, Vlastimir Golijan,<sup>190</sup> pointing out at his deprived childhood and growing up without parental care, his irregular and incomplete education, his joining the war as a minor, which must have been a confusing situation beyond his comprehension.

618. It is important to note that there is no rule which, in terms of quality, prescribes the required level of knowledge on the part of the Accused during the incriminated time period. In other words, the Defense's argument that the Accused should be exculpated of the perpetrated crime only because they did not have the same level of knowledge about the general plan or policy as their superiors is unacceptable.

619. During the proceedings it was proven beyond any doubt that members of the 10th Sabotage Detachment gave their contribution to the Srebrenica conquest during its culmination and general Mladić himself congratulated them for that. However, this fact *per se* is not sufficient to conclude that at the time the Accused knew of the genocidal intent of the principal participants (RS military and civilian leadership) or that they themselves shared that genocidal intent. This finding of the Panel is also corroborated by the fact that after the operation the Detachment withdrew to the base and remained there all along until 16 July when they received their next assignment.

620. The assignment given to a few members of the 10th Sabotage Detachment on the 16 July included unlawful acts directed at the killings of a large number of people selected only on their ethnic, national and religious background, so the Accused cannot fully avoid their responsibility for those actions. However, at the same time it is undisputed that after their assignment in Branjevo they refused to participate in the execution of men in the Pilica Dom, which also shows that they did not have the intent to destroy, in whole or in part, the Muslim population as a group, because if they had had such a motive, they would have certainly continued with the execution of those men.

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<sup>189</sup> OI-47 Birth certificate, Celje, Slovenia.

<sup>190</sup> OIII-21 Certificate issued by the High School Center „Milorad Vlačić“ Vlasenica on incomplete secondary education of the Accused, OIII-20 Marriage certificate issued by the Municipality of Han Pijesak, local office Pjenovac, in which a note was made on the divorced marriage of the parents of the Accused Vlastimir Golijan.

621. Therefore, based on the presented evidence the Panel failed to establish beyond a reasonable doubt that the Accused acted with genocidal intent when executing detainees in the Branjevo farm, that is, one of the essential elements of the criminal offence of Genocide set forth in Article 171 of the CC of BiH has not been proven.

622. The Accused could not have been found guilty of aiding and abetting genocide, because the Prosecution failed to prove that at the time of the execution of men in Branjevo they knew of the mass executions of Bosniak men from Srebrenica in other locations in the area of responsibility of the Bratunac and Zvornik Brigade, that is, that at the time of perpetration they knew of the genocidal intent of principal perpetrators from the VRS military and civilian leadership, who have not been named under the Indictment.

623. In *Krstić*, when determining whether Radoslav Krstić knew of the genocidal intent of principal perpetrators, the Appeals Chamber gave a great importance to the fact that he knew about the mass executions.<sup>191</sup>

624. Hence, in the instant case it was important to determine whether the Accused knew about the genocidal intent of the participants in the JCE, and this can be determined, according to the aforementioned criteria, by examining their knowledge of and participation in a great number of incriminating actions, such as their participation in the attack against Srebrenica, which preceded and enabled the forcible transfer of Bosniak civilian population, as well as the knowledge of the executions of Bosniak men who were separated in Potočari and captured in the column of the 28th Division.

625. Both the Blaškić Appeals Chamber Judgment and the Vasiljević Appeals Chamber Judgment noted *„aiding and abetting does not require the aider and abettor to share the required Mens rea of the criminal offence; it suffices that the aider and abettor knew that his own acts assisted in the commission of the specific crime in question by the principal offender. Aider and abettor must also be aware of „essential elements“ of the crime committed by the principal offender, including the principal offender’s state of mind.“*

626. According to the position stated in the ICTY's Trial Judgment and Appeals Chamber Judgment in *Blagojević and Jokić*<sup>192</sup> the Trial Chamber based its finding on the knowledge of the Accused of the genocidal intent on the part of principal perpetrators, on the following facts: (1) his knowledge that the purpose of the „Krivaja 95“ operation was to create conditions for the elimination of the Srebrenica enclave, (2) his knowledge that the Bosnian Muslim population was entirely driven out of Srebrenica town to Potočari, (3) his knowledge that Bosnian Muslim men were separated from the rest of the population, (4) his knowledge that Bosnian Muslim women, children and elderly were forcibly transferred to the non-Serb held territory, (5) his knowledge that Bosnian Muslim men were detained in inhumane conditions in temporary detention centers pending further transport, (6) his knowledge that the Bratunac Brigade contributed to the murder of

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<sup>191</sup> Krstić Appeals Chamber Judgement, par. 26.

<sup>192</sup> Vidoje Blagojević and Dragan Jokić Appeals Chamber Judgement, Number: IT-02-60-A, dated 9 May 2007, paragraphs 121 and 122.



Bosnian Muslim men detained in Bratunac, and (7) his knowledge of and participation in the operation to search the terrain with the purpose of capturing and detaining Bosnian Muslim men from the column so as to prevent them from reaching territory under Bosnian Muslim control.

627. As mentioned before, in the *Blagojević* Trial Judgment the Trial Chamber identified several facts such as „offering practical assistance“ in the „execution operation“, in order to precisely define what the aiding and abetting actions consisted of, and in that context the Panel, based on the presented evidence, concluded that members of the 10th Sabotage Detachment, upon the order of officers of the Main Staff of VRS, participated in the attack against Srebrenica, but they did not participate in (1) the transport of Muslim civilians to Potočari, (2) separation of Bosnian Muslim men from the rest of the population in Potočari, (3) holding under guard the captured men in „White house“, (4) search of the terrain and capturing Muslim men who moved in the column along the Bratunac - Konjević polje road and (5) holding them in temporary detention centers.

628. It has not been proven that the Accused knew of the Order issued by the Drina Corps Command, dated 13 July 1995<sup>193</sup>, ordering the deployment of all available manpower in subordinated commands, to work on detecting, blocking, disarming and capturing of the observed Muslim groups, and preventing them from reaching territory under the control of Muslims.

629. During the proceedings the Prosecution failed to prove that the Accused, while they were in the base in Dragasevac, knew of the executions of men from Srebrenica in the execution sites at Petkovci Dam, Ročevići, Kozluk and other locations.

630. During the proceedings the Panel could not beyond any reasonable doubt establish when the plan of executions had been made, however it existed, beyond any doubt, during the operation, as determined in numerous judgments of the ICTY and the Court of BiH and the Command structures of the RS VRS and MUP knew about it.

631. The ICTY Trial Chamber found and the Appeals Chamber upheld the finding that the killing was engineered and supervised by some members of the Main Staff of VRS<sup>194</sup>.

632. The aspirations and the actual intentions of the VRS top command structures concerning Srebrenica were also documented in a video which was filed as evidence<sup>195</sup> and it shows the celebration of the family patron-saint's day on 13<sup>th</sup> of July in the house of witness Zvonko Bajagić<sup>196</sup>, in the presence of Bishop Kačavenda, general Živanović and other participants in the attack against Srebrenica. In this video the officers address people who are present: „*Srebrenica must fall into Serb hands. From there we shall*

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<sup>193</sup> OII-12 Order of the Drina Corps Command, strictly confidential, No. 03/156-11, dated 13 July 1995.

<sup>194</sup> Krstić Appeals Chamber Verdict, par. 35.

<sup>195</sup> Defense exhibit OI-10. Record of the statement given to attorney Dušan Tomić was tendered under the same number.

*expand our territory all the way to the shore of Drina River at Romanija. Last night any form of the organized life of Muslims on the left side of Jadar terminated. We shall not stop! This is nonnegotiable! As soon as we finish with Srebrenica, we shall proceed to Žepa and Goražde, and beyond to create a small enclave Tuzla, and we should also reach Žitomislići. We avenged St Peter's Day at Sasi in 1992."*

633. In this context, witness Kingori stated that at the very beginning there were some indications from Colonel Vuković „that he will make sure that the enclave is cleansed of Muslims“, while witness Momir Nikolić claimed that during the separation of around 600-650 able-bodied men in Potočari he asked General Popović what would happen to them and general Popović replied „all *Balijas* will be executed!“ In his testimony this witness claims that on 13 July the SDS held a meeting, where the killing of the captured men was openly discussed.

634. The systematic killing of the captured men and endeavors made by the top people in the Main Staff of VRS to prevent anyone in the column from reaching the free territory, clearly revealed the existence of a detailed plan of killing all men from Srebrenica, with the view to destroying Bosniaks from Srebrenica as a group.

635. Consequently, the plan that was implemented at the time included all sorts of different activities reflected in the forcible transfer of women and children, separation of men from women and children, forcing men from the column to surrender, shelling the column, setting up ambushes, gathering men and transferring them to certain execution sites and finally, the executions that were conducted through systematic killings followed by mass burials of the killed.

636. During the proceedings, however, it was not proven that the Accused were aware of the existence of such a plan or that they shared the genocidal intent with the principal perpetrators of genocide.

637. At the time, the VRS command staff maintained contacts through radio communication, and according to the protected witness Z-6<sup>197</sup> they used codes „Panorama“, „Zlata“, „Uran“, „Bran“ and „Brijač“. Witness Z-6 further explained that the participants in the conversation were identified in a way that some would introduce themselves, so that later on they would recognize who the person in question was by the person's voice. The witness also explained that they would write down the time, frequency and channel, as well as the content of the intercepted conversations. All the conversations were documented while those the Command considered as irrelevant would be crossed out.

638. However, witness Z-6 does not remember anyone mentioning the 10th Sabotage Detachment in their conversation, which the Panel considered important from the point of view of the existence of the agreement among the principal participants in the JCE to

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<sup>196</sup> Witness Zvonko Bajagić gave evidence at the trial, 29 November 2011.

<sup>197</sup> The protected witness Z-6 testified during a trial hearing on 1 July 2011.

execute men and perpetrate genocide, and the position of the 10th Sabotage Detachment in the system, because the aforementioned supports the Panel's finding that the Accused were not aware of the scale or nature of the crimes which took place in the territory of Srebrenica.

639. The Accused Franc Kos<sup>198</sup> and witness Z-1, together with Commander Pelemiš had an opportunity only to briefly stay in front of the Kravica Farming Cooperative on 13 July while the killing was ongoing, on which occasion Pelemiš told them that somebody grabbed a rifle from a police officer/soldier, which resulted in the killing of 2-3 policemen/soldiers.

640. Without examining what the Accused Kos and witness Z-1 were doing in front of the Kravica warehouse, because it was not the subject of this Indictment, the Panel must conclude that the mere presence of the Accused Franc Kos in front of the warehouse does not prove that at any point he became aware of the actual intentions and plans of the leaders of the Main Staff of the VRS after the Srebrenica fall, which was reflected in the execution of all men of Bosniak ethnicity from Srebrenica, whether they were separated in Potočari, or subsequently captured in the column.

641. The explanation the Accused Franc Kos received from the Commander was that it was an „incident“, and at the same time there is no evidence that the Accused Kos and other members of the 10th Detachment knew at all about the other mass executions of Muslims from Srebrenica in the area of responsibility of the Zvornik Brigade. The argument of witness Z-1, that Commander Pelemiš told them before his departure for Branjevo that there were mass executions in other locations in the area of responsibility of the Zvornik Brigade, was not corroborated by any other evidence.

642. The Panel has already provided an assessment of the evidence given by witness Z-1, but it finds useful to note again that some parts of his testimony were aimed at proving the genocidal intent and knowledge on the part of the Accused, which were not established during the proceedings beyond a reasonable doubt, that is, the testimony of the witness Z-1 in that context was not corroborated by the other presented evidence.

643. Therefore, at the time of the mass killings in the area of responsibility of the Zvornik Brigade, members of the Detachment had no specific assignments, because their commander was wounded and one member got killed when the APC turned over; consequently some members left to attend the funeral on 13 July and returned to the base no sooner than on 15 July, while others were on their leave of absence.

644. All the aforementioned indicates a certain time gap in the activities of the unit, or more precisely, it is obvious that members of the 10th Sabotage Detachment were not engaged nor were they kept informed of the mass killings in the area of responsibility of the Zvornik Brigade.

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<sup>198</sup> Main trial hearing, 11 November 2011.

645. Moreover, one should not neglect the fact that the operations of killing, burial of bodies and their subsequent transfer to the secondary mass graves were carried out with the highest degree of organization and secrecy, and the details thereof were known only to the top VRS officers and civilian leadership of the Republika Srpska.

646. Consequently, without knowledge of the mass killings, forcible transfer of population and other segments of genocidal plan, one cannot infer that there existed genocidal intent on the part of the Accused or awareness of the genocidal intent of other perpetrators.

## VI. CONCLUSION

647. Based on the presented evidence the Panel found that the Accused as co-perpetrators committed the criminal offence of Crimes against Humanity, in violation of Article 172(1)h) of the CC of BiH, in conjunction with paragraph (1) a), all as read with Article 29 of the CC of BiH.

648. One of the first elements in the context of sustainability of this criminal offence is the existence of a widespread and systematic attack directed against the civilian population.

649. The existence of a widespread or systematic attack does not exclusively imply the use of armed force, rather this attack may include any other form of abuse of the population. In this case, the scale and systematic nature arise from the Directive of the Main Staff of the VRS, dated 8 March 1995, and Order dated 2 July 1995, ordering the physical separation of Srebrenica and Žepa in order to prevent communication between those enclaves, and conducting planned combat operations on a daily basis with the aim of creating a total absence of safety, intolerability and hopelessness for further stay in those enclaves and eventually reducing Srebrenica to its urban area. Even before that, under the Directive, dated 19 November 1992, the Main Staff of the VRS ordered that the increased losses should be inflicted and Muslim population forced to leave the areas of Birač, Žepa and Goražde, while offering them to lay down their weapons.

650. According to the aforementioned Directives, the attack against the Srebrenica enclave officially began on 6 July 1995. During the attack the Bosniak population from that area began fleeing the area en masse, so that up to 40,000 of them left to Potočari, seeking protection in the abandoned factories and the UN base, while the rest of up to 15,000 of them (mostly men) set out breaking through the woods in order to reach the free territory. In addition to being widespread, the attack was evidently systematic, because, apart from shelling, it included other forms of abuses over civilians in Potočari, holding them in inhumane conditions, without food or water, at very high temperatures. Civilians in Potočari were subjected to verbal and physical abuses, and there were some murders too.

651. The developments in Potočari at the time reveal a high level of organization in the activities of the military, police and civilian structures, which only corroborated the

Panel's conclusion on the systematic nature of the attack.

652. The Crimes against Humanity require that the attack is directed against any civilian population. In this context, population implies a particular and sufficient number of individuals.

653. Although the aforementioned does not include the entire population of a region, it must be noted that this does not imply only a limited and randomly selected number of individuals. Finally, civilian population is required to be primary not a secondary target of the attack.

654. During the proceedings, the evidence was presented, which, beyond any doubt, shows that the subject of the attack were civilians, women, children and elderly who fled their homes due to the shelling, and, after living in unbearable conditions in factories and the UN base in Potočari, they were forcibly transferred, while men were subjected to abuses and shelling while they moved in the column; they fell into ambushes and finally they were executed. Hence, the subject of the attack were civilians who did not participate in hostilities and who were the subject of protection referred to in common Article 3 of Geneva Conventions.

655. The unit of the Army of BiH that remained in the enclave - 28 Division, according to the presented evidence, was not well organized and equipped. It lacked a firm command structure and communication system. Therefore, the assessed number of the members of the Army of the RBiH in the enclave and column was not as high as to affect the civilian character of the population, given that the majority of population in the enclave and later in the column were civilians.<sup>199</sup>

656. As to the *nexus* (connection) between the actions of the Accused and the attack, the Panel finds that, within the attack, members of the Sabotage Detachment summarily executed a group of around eight hundred of detained Bosniak civilian men, who had been previously brought by buses to the execution site, some of them with their hands tied and blindfolded. These men were lined up and killed from firearms, specifically from automatic rifles, light machineguns and pistols, and it is a logical conclusion that these offences, given their nature and consequences, objectively constitute part of the attack.

657. With respect to the knowledge of the attack on the part of the Accused, and that their actions constituted part of the attack, the Panel noted that the Accused, as members of the 10th Sabotage Detachment, participated in the attack against Srebrenica on two occasions. The first time in late June in the preparation for the final capturing of the UN safe area of Srebrenica. On that occasion, under the leadership of the Detachment Commander Pelemiš, they randomly fired from hand-held rocket launchers and automatic weapons in the direction of the town, so as to, according to the witness „intimidate the population and create chaos“. The Second time on 11 July 1995, when

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<sup>199</sup> *Blaškić*, (Appeals Chamber Judgment) par. 112-113.

together with the Detachment Commander Pelemiš and General Ratko Mladić, including the other high-ranking VRS officers, after the days-long shelling and after the majority of the population left the town fleeing towards the UN base in Potočari, they were among the first ones to enter the town of Srebrenica, after which they searched houses and directed the population to Potočari, on which occasion one of the members of the Detachment, at the order of Commander Pelemiš, killed one Bosniak man.

658. During the proceedings the Accused did not dispute the presence in the Branjevo farm during the executions of men who were brought by bus from the elementary school in Pilica. Therefore, the Accused knew that there was an attack against the civilian population and that their acts constituted an integral part of such an attack.

659. During the proceedings, the Defense disputed the number of the killed men in Branjevo and the legal qualification of the criminal offence charged against them, while some Accused in their testimony intended to diminish the significance of their participation in the perpetration of the offence, so Franc Kos thought that his «finishing off» of those who had been subjected to execution represented «a humane act», while the Accused Stanko Kojić claimed that he was in fact shooting above the heads of those killed.

660. However, the presented evidence clearly shows that the Accused participated in the executions in Branjevo as co-perpetrators. The Accused would take men out of the bus and bring them to one part of a meadow, where they would order them to turn their backs to the members of the Detachment and then killed them by firing bursts from automatic weapons, while the Accused Franc Kos and Stanko Kojić «finished off» those who were still showing some signs of life by shooting a round in their heads.

661. Cooperation among the Accused is evident from the agreement on the very method of killing. At the beginning of the execution they tried to find «the most efficient» method, following which they brought M-84 machinegun and Zoran Goronja was the first to fire from it. However, they noticed that he inflicted serious wounds to many people, which «slowed them down» in the execution of their assignment as they had to make sure that nobody stayed alive. Therefore they decided that in the further course of the execution they would take small groups of men out of the buses and take them to the execution site where they would summarily execute them.

662. Through all described actions the Accused clearly displayed the intention to execute the men that they had brought there, acting with a discriminatory intention, aware that the men they were killing were Bosniaks, that is, that they were of the same ethnicity as the other civilians against whom the attack in which they themselves participated was directed.

663. The surviving witness Z-2 said that when he was taken off the bus in Branjevo they said: *“Get out! They were cursing Alija and Haris..and then you see death...until then you had not known, and then you see it with your eyes there is no life any more... it is over...»*

664. In his statement he further claimed that one of the soldiers in Branjevo asked „*will anyone make a cross sign, so that we spare his life?*“ and the witness thought *“I will not come forward, I have my own religion, I want to keep my own religion, so if I were to die, let it be; if I am dead, let it be, my religion is mine, and I respect it; if you do not respect yours, you cannot respect somebody else’s either. So, I did not step forward, so if I were to die, let it be. Two men stepped forward....but nothing came out of that, nothing, it was only maltreatment“.*

665. It seems almost impossible to imagine a scene in which men are brought by buses to the meadow, with corpses of hundreds of men who had already been killed lying there; the abuses and insults hurled at them while being taken off the bus and while passing by the corpses, only to come to the spot where they would be killed as well. Walking to the execution site must have been a culmination of the extremely inhumane treatment of those men who had been subjected to it for days, having been kept in inhumane conditions without water and food. Hence, the described scene must have been a culmination of fear and horror due to everything that they had been through, which unfortunately ended fatally.

666. The surviving witness could have hardly described the gravity of the situation, but the Accused Franc Kos in his testimony stated the following *„People that they brought were blindfolded, some of them moaned, others mumbled, but generally all of them walked peacefully to the execution site.“* At that point the surviving witnesses knew, as well as other men, that after they left the bus there would be no way out, there would be no rescue, and that they would be executed only because they were Bosniaks.

667. Although the number of the killed was the most disputed issue during the proceedings, based on the evidence, the Panel found beyond any doubt that on 16 July between 10,00- 16,00 o’clock, around 800 men were killed at the Branjevo farm, among them elderly persons of more than 80 years of age and persons younger than 16. This conclusion is based on the testimony of witnesses and documentary forensic evidence collected from the execution sites.

668. The specific gravity of the committed crimes is reflected in the above, as well as in the fact that the Accused executed those men in cold-blood and systematically, which is best proven by the fact that of around 800 men only two survived the execution. In support of this conclusion is the fact that the Accused at one point made a «break» from the killings to «take some rest», that is, to dine and take a beer on the meadow full of corpses, while the other men were waiting in buses for their execution. The above is only an additional bizarreness in the above described scene of execution, which clearly shows the attitude of the Accused towards the things they did.

669. According to the presented evidence, only Dražen Erdemović opposed the executions in Branjevo, while the other Accused attempted in their testimony to claim the same about themselves, but these arguments were not supported by the other presented pieces of evidence.

670. During the proceedings the Defense was trying to prove that the Accused in Branjevo did not dare refuse the orders, because allegedly it would have been punished by death in the 10 Sabotage Detachment. However these arguments were not corroborated with the presented evidence. Furthermore, the Panel concludes that the killings the Accused committed in Branjevo do not fall under the scope of commando activities, which are carried out in the enemy territory and when it is obvious that the sabotage team must act in accordance with stricter rules. It was not a sabotage operation in this case, because they performed the executions in the territory under the VRS control.

671. The examined witnesses, members of the Detachment, claimed that during a sabotage operation a member of the unit had the right to execute another member of the unit in case that he starts panicking and if he brings other unit members in risk, but according to those same witnesses it had never happened in practice.

672. That the superior's order could have been rejected can be seen in the case of the Accused Franc Kos, who told Colonel Beara that the members of the Detachment would not kill the detainees in the Pilica Dom, but the Panel must note that the motive for refusing the order was not a humane act on their part or that they were sorry because of the fate of those people, rather according to the Accused Kos they were simply *«hungry, thirsty and tired and did not want to continue with the killing..»*

673. Not for a single moment during the executions in Branjevo did the Accused stand up against the execution of this assignment, save for Dražen Erdemović; rather they executed their assignment in an organized fashion and diligently, and hence within the scope of the widespread and systematic attack directed against the civilian Bosniak population of the protected enclave of Srebrenica, knowing of such an attack and aware that their actions constituted part of the attack, with the view to discriminating against the group of Bosniaks from Srebrenica, persecuted on national, ethnic and religious ground, by summarily executing around 800 Bosniaks, whereby they committed the criminal offence of Crimes against Humanity, Persecution, in violation of Article 172(1)h) of the CC of BiH, as read with Paragraph (1)a), all in conjunction with Article 29 of the CC of BiH.



## VII. DECISION ON SENTENCE

### 1. The purpose of punishment

674. The purpose of punishment is provided for in the general part of the Criminal Code of Bosnia and Herzegovina.

675. Article 2 of the CC of BiH provides for a general principle that the type and range of a criminal sanction must be „necessary“ and „proportional“ with the degree and nature of the danger against the protected objects. In case of Crimes against Humanity, it is implied that the nature and degree of danger are extremely high, that is, it was one of the most serious criminal offences under the law, which carries a long-term imprisonment sentence.

676. Apart from this general principle, the Criminal Code further describes the goals and circumstances that the Court must take into account when determining and pronouncing the sentence, which may be broken into two groups: (1) those relating to the criminal offence at issue and its affect on the community, including the victims and (2) those which specifically relate to the Accused.

677. In accordance with Article 48(2) of the CC of BiH, the punishment must be necessary and proportional with the degree of danger or injury to the protected object and value.

678. According to the same Article, the punishment must be necessary and proportional with the suffering of direct and indirect victims of the crime.

679. In the instant case, direct victims of the crimes of which the Accused were found guilty are hundreds of men who lost their lives during the execution in Branjevo farm on 16 July. Thereby, women, children and their other relatives were irreversibly aggrieved.

680. According to Article 39 of the CC of BiH, the punishment must also express the community's condemnation of a criminal offence perpetrated by the Accused. This has already been achieved through many international documents, because all international legal systems forbid the perpetration of Crimes against Humanity, which, under international law, represents a certain type of *Ius Cogens*, which must not be departed from.

681. There is a number of legal reasons that are important for the purposes of punishment, such as re-education and specific prevention, which affect the punishment of the convicted person as an individual. This includes: (1) degree of responsibility; (2) conduct of the perpetrator prior to the perpetration of the criminal offence at the time or approximately around the time of the perpetration of the offence, and after the criminal offence; (3) motive; and (4) personality of the perpetrator.

682. These circumstances may be used both as aggravating or mitigating for meting out the sentence based on the facts. The purpose of these reasons is to assist the Panel in meting out the sentence, which is not only necessary and proportional with the goals and circumstances that had already been taken into account in connection with the very offence and its effect on the community, but also in adapting the punishment to the needs of prevention and re-education of the specific perpetrator of the criminal offence.

## **2. Rules for meting out the sentence**

683. When meting out the type and duration of the sentence for the Accused, pursuant to Article 48 the Panel examined all the circumstances resulting in either higher or lower sentence.

684. The punishment for such a brutal execution of hundreds of people implies the pronouncement of the most stringent punishment that a national or international judicial system may impose.

685. Bosnia and Herzegovina has accepted the abolishment of the capital sentence for all criminal offences, which is fully in accordance with the respect for human life, but taking part in the execution of hundreds of helpless people, in the way that they apparently did in this case, even without the genocidal intent, legitimately requires the most stringent punishment according to national law.

686. No punishment can adequately reflect the gravity of the killing of hundreds of people, mental pain inflicted upon their families, which is an even more serious crime if the killings are conducted on a discriminatory ground.

687. Although the maximum sentence prescribed under the law may be fair in this case, the Panel finds that regardless of the horrible nature of this act, there are those who perpetrated the criminal offence of Genocide or killed even a larger group of people, hence this Panel finds that the maximum sentence must be reserved for those crimes, which, although not the most horrible in their nature, may exceed this crime in terms of quantity.

609. However, in this case, the Accused, extremely brutally and in cold blood killed hundreds of people, while „selecting“ the most adequate and most efficient means and methods of execution, without showing, at any moment, any disapproval of the things that were done, so the Panel finds that in this case there is no room for a less stringent punishment.

### 3. Individualization of the sentence

688. The Panel would primarily like to note that no legal system envisages adequate punishment for the perpetration of such a crime that would be commensurate to the gravity of the offence, method of its execution and its long-term consequences.

689. In this case, the Panel took into account general minimum and maximum sentence prescribed under Article 172 of the CC of BiH, which prescribes the long-term imprisonment sentence of 45 years as the maximum sentence.

690. With respect to the Accused Franc Kos, the Panel took into account the fact the Accused presented his defense through his testimony in which he disclosed a number of facts which were helpful to the Court and which had not been known prior to his testimony. On that occasion he expressed his repentance for the things he did.

691. However, the Panel also took into account that the Accused Franc Kos led the group which executed the men in Branjevo; that he actively participated in the executions and «finished off» the wounded, and hence his repentance does not diminish the gravity of the crime he committed, due to which the Panel sentenced him to a long-term imprisonment sentence of 40 years.

692. With respect to Stanko Kojić, the Panel took into account that after the killing in Branjevo, he bragged about the number of those killed, and he «finished off» the wounded in a way that represented a further torture for them.

693. On the other hand, taking into consideration the Findings and Opinion of the expert team claiming that the accountability of the Accused at the time of the perpetration of the criminal offence was diminished, but not considerably, the Panel decided to sentence the Accused to a long-term imprisonment of 43 years, instead of sentencing him to the maximum sentence.

694. With respect to the Accused Vlastimir Golijan, the Panel, apart from the gravity of the criminal offence found that the Accused in his „statement“ confirmed some facts from the Indictment, that he joined the war as a minor, and therefore instead of the maximum sentence of 20 years, he would be sentenced to 19-year imprisonment. The Panel notes that the range of culpability of young adults was applied to this Accused, because at the time of the crime the Accused Vlastimir Golijan did not yet turn 21, and a young adult pursuant to Article 42b) paragraph 3) of the CC of BiH cannot be sentenced to a long-term imprisonment.

695. According to witness Srđan Brezo, the Accused Vlastimir Golijan was a good guy, while Goronja was *„mostly quite and unobtrusive person, simply speaking, inconspicuous.“*

696. During the proceedings the Defense attempted to portray such an image of the

Accused, considering that his plea of guilt was an exculpatory factor of the utmost importance for this case.

697. However, the aforementioned does not dispute the fact that the Accused Zoran Goronja participated in the executions of detainees in Branjevo, first by shooting from the light-machine gun, which was used to inflict serious injuries on the wounded and, thereafter, together with the rest of them, he participated in the executions using automatic weapons in an equally brutal and ruthless manner.

698. This Accused, according to the testimony of witnesses, stopped shooting at one point and took a shelter in one of the prefabricated facilities in Branjevo, which the Panel took into account, and instead of imposing the maximum sentence pronounced the imprisonment-sentence of 40 years.

699. The Panel also took into account the other personal circumstances which inevitably exist on the part of the Accused, but given the specific nature and the gravity of the committed crime it does not find them to be of such quality and quantity to be significant for meting out the sentence.

#### **VIII. DECISION ON THE COSTS OF THE PROCEEDINGS**

700. Pursuant to Article 188(4) of the CPC of BiH the Court acquitted the Accused of the obligation to pay the costs of the proceedings, given that they are indigent, which clearly follows from the fact that the Defense's cost were paid from the budget appropriations of the Court.

701. Furthermore, the Accused have been held in custody all along, and hence they had no possibility to work for wages, which should also be taken into account in the context of the fact that that they were sentenced to a long-term imprisonment, and should they reimburse the costs of the proceedings it would certainly bring the sustenance of their families into question.

702. Under these circumstances the Court decided that the costs of the criminal proceedings should be paid from the budget appropriations.

## **IX. RULING ON THE CLAIMS UNDER PROPERTY LAW**

703. Pursuant to Article 198(2) of the CPC of BiH, the Court refers the injured parties to civil law suit with their property claims, considering that the information collected during these proceedings did not provide the Panel a reliable basis for a complete or partial ruling, and therefore determining the amount of property claim would cause an unnecessary delay in these proceedings.

**RECORD-TAKER:**  
**Lejla Kurtanović**

**PRESIDENT OF THE PANEL**  
**JUDGE**

**Mira Smajlović**

**LEGAL REMEDY:** The parties to the proceedings and the Panel may file an appeal from this Verdict with the Appellate Division of this Court within 15 (fifteen) days as of the day of the delivery of a written copy hereof.

Pursuant to Article 293(4) of the CPC of BiH, the injured parties may contest the verdict only with respect to the decision of the Court on costs of the criminal proceedings and with respect to the decision on the claim under property law.

\*An appeal is filed with the Court in a sufficient number of copies.

## X. ANNEX A

### A. PROCEDURAL DECISIONS

#### 1. Admission of ICTY statements

704. On 14 October 2011 the Panel passed a decision partially granting the Prosecution's Motion to admit the following exhibits into evidence based on Articles 3, 5 and 7 of the Law on the Transfer of Cases:

705. Transcripts of the testimony of Momir Nikolić (*transcripts from Blagojević case of 19 September, 22 September, 23 September, 25 September, 26 September, 29 September, 30 September and 1 October 2003*) and his statements as a witness given to the ICTY investigators (*15 December 1999 and 28 May 2005*),

706. Transcripts of the testimony of Dragan Obrenović (*transcripts in Blagojević case of 1 October, 2 October, 6 October, 7 October, 8 October, 9 October and 10 October 2003*) and his statements as a witness given to the ICTY investigators (*2 April 2000, 4 June 2003 and 5 February 2004*)

707. Transcripts of testimonies of witnesses: Joseph Kingori (*transcripts in Krstić case of 31 March and 3 April 2000*), Robert A. Franken (*transcript in Krstić case of 4 April 2000*), Leendert Cornelis van Duijn (*transcript in Popović et al. case of 27 September, 28 September and 29 September 2006*), Vicentius Egbers (*transcripts in Popović et al. case of 18, 19 and 20 October 2006*),

708. Transcript of the testimony of the deceased witness Miroslav Deronjić (*transcript in Momir Nikolić case of 28 October 2003*)

709. The Prosecution's Motion was dismissed in the part related to the admission of statements of facts and admission of guilt by the accused Dragan Obrenović and Momir Nikolić (*Statement of facts and admission of guilt of 6 May 2003 and the Statement given to the ICTY investigators of 23 June 2003*)

710. In Annex C to the Indictment no. T20 0 KTRZ 0000538 10 of 8 November 2010 the Prosecution moved for tendering and admitting the ICTY testimonies and investigative statements from the ICTY and BiH Prosecutor's Office cases. Specifically, the transcripts of testimonies given before the ICTY chambers in the following cases: *Krstić, Blagojević and Popović*, the statements they gave during the investigation in the said cases related to the ICTY cases. This motion was filed as the Prosecution Trial Motion no. 3 on 7 September 2011. In the Reasons thereof the Prosecutor referred to the relevant provisions of the Law on the Transfer of Cases (LoTC) from the ICTY referring to the use and admission of evidence obtained in ICTY proceedings.

711. To corroborate the foregoing the Prosecutor primarily invoked the purpose of the

Law mirrored in the following: (1) effectuating trials – which is in line with a trial within a reasonable time, (2) enhancing judicial economy – balanced against the right of the accused to contest inculpatory evidence and the presumption of innocence, and (3) enhancing of standardization between the ICTY and BiH courts.

712. The admission of the proffered statements would ensure that the witnesses whose testimonies have been tested in cross-examination are not repeatedly summoned, and allow that the witnesses whose evidence does not directly pertain to the acts of the accused but is still relevant for the charges are not summoned. The Prosecutor submits that the proffered testimonies of witnesses at the trial and the investigative statement have a probative value in relation to the facts and circumstances alleged in the Indictment.

713. In their responses to the Motion, the Defense objects to the admission of statements the witnesses gave to the ICTY investigators, but also of the transcripts of the testimonies in ICTY proceedings. The Defense in particular objects to the admission of statements of facts and admission of guilt by Momir Nikolić and Dragan Obrenović.

714. Pursuant to Article 5(3) of the LoTC, Defense Counsel for the accused Vlastimir Golijan filed in his Response of 31 August 2011 a motion for the cross-examination of witnesses Momir Nikolić, Joseph Kingori, Dragan Obrenović, Miroslav Deronjić, Robert A. Franken, Leendert Cornelis Van Duijn, Vicentius Egbers, detailing the reasons and circumstances the witnesses would be cross-examined about.

715. Likewise, a motion for cross-examination of these witnesses was filed in his brief by Defense Counsel for the accused Zoran Goronja, Attorney Petko Pavlović. Having analyzed the jurisprudence, Defense Counsel concluded that in these proceedings it would not be possible to ensure that Momir Nikolić and Dragan Obrenović appear, or that the former members of the Dutch Battalion appear as witnesses, whereby it could not be disregarded that the Court of BiH did not have any possibility to summon the witnesses on threat of apprehension, nor could the countries where they currently reside provide a possibility to sanction them for non-responding to the Court summons. Defense Counsel submits that the Panel should keep this in mind when making a final decision on this matter.

716. Defense Counsel for the accused Stanko Kojić, Attorney Milan Romanić, submits in his Brief dated 6 October 2011 that the LoTC is substandard, imprecise, unpredictable and non-user-friendly, and cannot be considered as a law for the purpose of the European Convention on Human Rights. Likewise, the Court's case-law moot point is if only the facts which directly incriminate the accused should not be accepted or the facts which confirm it indirectly as well. In addition, Defense Counsel submits that the purpose of the law is not legitimate, in other words it is in violation of Article II of the Constitution, whereby the Court in each case has a duty to review if the application of a law violates basic guaranteed human rights.

717. Defense Counsel also contests the nature of the LoTC as *lex specialis*, submitting that it cannot derogate the applicable statutory provisions of the CPC of BiH, referring

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further to the case law of the ECtHR. Finally, Defense Counsel submits that the admission of established facts shifts the burden of proof to the Defense. Consequently, he moves that all proffered facts indicated in the Prosecution's Motion dated 7 September 2011 should be dismissed because the Prosecutor failed to reason why the admission of this evidence would be relevant to the case.

718. At the hearing held on 9 September 2011, Defense Counsel for the accused Franc Kos, Attorney Dušan Tomić, joined the submissions of the other Defense Counsel, concurrently presenting his objection to the Prosecution's motion.

719. First and foremost, the Panel does not find that the objections of Defense Counsel Romanić in terms of inadmissibility of the facts established in ICTY judgments have merit since the Prosecution's motion dated 7 September 2011 does not include them.

720. In view of admissibility of the testimony of witnesses given in ICTY proceedings, the Panel was *inter alia* guided by Article 3(1) of the LoTC which reads that: "*Evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH.*"

721. The Article defines the use of evidence obtained by the ICTY in proceedings before the courts in BiH. In this regard the LoTC was conceptualized as a *lex specialis* in order to remove the risk that evidence collected by the ICTY could not be used pursuant to the CPC, and it sets forth the procedure and terms of use of such evidence in other courts.

722. In the above context the Panel acknowledges that the witnesses' testimonies sought for admission meet the requirements under Article 3(1) because it is not contended that there were any irregularities in their obtaining or use in accordance with the ICTY Statute and RoPE.

723. First and foremost, Article 3(1) of the LoTC defines that: "*Evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH.*"

724. Accordingly, the statements and transcripts the Panel decided to accept meet the requirements under Article 3(1) since it is neither contended nor evident that there were any irregularities in their obtaining or use in accordance with the ICTY Statute or RoPE.

725. Furthermore, Article 5(1) of the LoTC foresees that "*transcripts of testimony of witnesses given before the ICTY and records of depositions of witnesses made before the ICTY in accordance with Rule 71 of the ICTY RoPE, shall be admissible before the courts provided that that testimony or deposition is relevant to a fact in issue.*"

726. Pursuant to Article 5 of the LoTC, the Court may admit a statement of a witness given before the ICTY if a record of his/her testimony is made pursuant to the relevant provisions of the RoPE and if the witness was advised of his/her rights. In line with the foregoing, the Panel finds admissible the statements Momir Nikolić gave to the ICTY



investigators as a witness on 15 December 1999 and 28 May 2005 and the statements Dragan Obrenović gave to the ICTY investigators as a witness on 2 February 2000, 4 June 2003 and 5 February 2004.

727. However, inadmissible are the statements of facts and admissions of guilt of the accused Momir Nikolić (6 May 2003) and Dragan Obrenović, since these facts are one-sided accounts of the events by the accused themselves who, when giving the statements, were not sworn in and did not have a duty to tell the truth. The reason for this is that in these cases the accused gave the statements led by the motive of a milder punishment whereby he can incriminate others without any ground whatsoever in order to protect himself. In addition, these statements are not eligible for admission because the facts stated in an agreement have not been contested in cross examination and as such are unreliable for the purpose of admission.

728. The quoted Article 5 of the LoTC also includes a *viva voce* sworn testimony subjected to cross examination, thus the Panel also finds admissible the transcripts of testimonies of the witnesses: Joseph Kingori, Robert A. Franken, Leendert Cornelis van Duijn and Vicentius Egbers.

729. The Panel decided to admit into evidence the transcripts of testimony of the deceased witness Miroslav Deronjić, which is in accordance with Article 7 of the LoTC, which, just like Article 273(2) of the CPC of BiH, sets forth the exceptions from direct presentation of evidence by reading out investigative records. Though the CPC provision is explicit in this regard, the Panel does not find that the application of Article 7 of the LoTC derogates the CPC provision, because the protected witness gave his testimony before the ICTY under oath and was subjected to cross examination. Therefore, such a statement is certainly more detailed and unbiased than an investigative record which pursuant to Article 273(2) of the CPC of BiH may be read out if the interviewed person is dead or his/her presence in the Court is impossible or very difficult due to important reasons. Consequently, it is acknowledged that the requirements under this article have also been met, in other words that the admission of the transcript would not be prejudicial to the Defense.

730. Not having found that in this case the applied procedure violated any rights of the accused safeguarded by the European Convention on Human Rights, the Panel did not deal any further with the assessment of constitutionality of the LoTC since the allegations of Defense Counsel Romanić presented in his response – that the LoTC is in contravention of Article II of the Constitution, are arbitrary conclusions of Defense Counsel, where it cannot be disregarded that this Court does not have the jurisdiction to determine the (un)constitutionality of particular laws.

731. Taking into account the right to a defense as one of the basic ECHR rights, Defense Counsel in this case, pursuant to Article 5(3) of the LoTC, may file well-reasoned motions for cross examination of witnesses, which has already been done by some Defense Counsel, and the Panel will make a final decision on this matter taking into account that the cross examination of witnesses must stay within the scope of direct

examination (LoTC, Article 1(2), CPC Article 262(1)).

732. Acknowledging the objections by Defense Counsel that some witnesses cannot appear before the Court, the Panel finds it useful to note that if the cross examination of the witnesses whose statements will be admitted under this decision is organized, in the final evaluation of evidence their testimonies will be subject to Article 3(2) of the LoTC which says that the courts shall not base a conviction of a person solely or to a decisive extent on the prior statements of witnesses who did not give oral evidence at the trial, which in the Panel's opinion amounts to an adequate restriction of their probative value.

## **2. Admission of statements of the witness Dražen Erdemović**

733. On 7 September 2011 the Panel partially granted the Prosecution's Motion no. 2 (no. T20 0 KTRZ 0000538 10) dated 31 August 2011, and granted admission into evidence and reading of the statements of Dražen Erdemović given as a witness, specifically: Statement before the ICTY of 12 August 1998 (Summary of the statements dated 24, 25, 26 and 27 June 1997); Statement before the ICTY of 3 November 2001; Transcript of the testimony of Dražen Erdemović in ICTY case of *Vujadin Popović et al.* of 4 and 7 May 2007. With regard to the rest, pertaining to the admission of the drawing made by the witness Dražen Erdemović, before the ICTY on 30 May 1996, the Prosecution's Motion was dismissed as lacking merit.

734. At the main hearing held on 1 July 2011 the Prosecution moved for admission of the statements of Dražen Erdemović in the proceedings before the ICTY, submitted to the Court as the Trial Motion no. 2 dated 31 August 2011.

735. The Prosecution also sought the admission of the testimony of Dražen Erdemović at the ICTY trials and the statements of the Witness listed in Annex A under number 11 of the confirmed Indictment. The Prosecution based its motion on Article 5 of the LoTC referring to the ICTY jurisprudence in *Krstić* and *Popović*. In its submission dated 1 September 2011, the Prosecution specified that those were statements Dražen Erdemović gave to the ICTY on 24, 25, 26 and 27 June 1997 and 12 August 1998, statements of 3 and 6 November 2001, and transcript of his testimony in *Vujadin Popović et al.* of 4 and 7 May 2007, and the drawing the witness made before the ICTY on 30 May 1996. In the same submission the Prosecution waived its motion for the admission of statements Dražen Erdemović gave to the ICTY of 24 April and 25 June 1996. At the main hearing of 6 September 2011 the Prosecutor also abandoned the statement of 6 November (no year designation).

736. At the hearing of 1 July 2011, Defense Counsel for the accused Franc Kos, Attorney Dušan Tomić objected to the motion of the Prosecution, submitting that the requirements to have the statements read out have not been satisfied as defined under Article 283 of the CPC of BiH, since sufficient effort had not been made to ensure the attendance of the Witness at the trial.

737. Defense Counsel for the accused Stanko Kojić, Attorney Milan Romanić, filed his written response to the Motion, submitting that sufficient effort had not been made to ensure the attendance of Dražen Erdemović who is a crucial witness in this case, and thereby the Motion was in contravention of Article 273(2) of the CPC of BiH. The statement of Dražen Erdemović refusing to appear at trials before the Court of BiH is also unacceptable for the Defense, since when he entered the plea agreement he undertook that he would always be available not only to the Tribunal but also to the local courts, in order that the truth about the actual events from July 1995 be established. Irrespective of the foregoing, for the purpose of judicial economy the Defense does not object to the admission of trial transcripts of Dražen Erdemović's testimony in Vujadin Popović et al. case before the ICTY no. IT-05-88-T of 4 and 7 May 2007.

738. Defense Counsel for the accused Vlastimir Golijan, Attorney Rade Golić, also agreed to the foregoing, adding nevertheless that he objected to the admission of other statements of this person, because they did not indicate in which capacity they had been given.<sup>200</sup> Defense Counsel opines that the fact that Dražen Erdemović had entered a plea agreement and that some of the statements date back from the preceding time could not be neglected. In other words, some statements did not meet the requirements of Article 5 of the LoTC because they had not been made pursuant to Rule 71 of the ICTY RoPE. Defense Counsel reiterated this argument in his written brief dated 31 August 2011. In his response of 5 September 2011, in addition to the same arguments, Defense Counsel explicitly objected to the admission of the trial transcript of Dražen Erdemović in *Krstić*, since it had not been proffered in the Indictment.

739. Defense Counsel for the accused Zoran Goronja, Attorney Petko Pavlović, also did not object to the admission of trial transcripts of the witness Dražen Erdemović dated 4 and 7 May 2007 in *Popović et al.* case, but like other Defense Counsel he submitted that the admission of other statements was contrary to the law, in particular those dating back from the time prior to his entering the plea agreement or the statements which were not taken in the case of this Court since they did not meet the requirements under Article 5 of the LoTC, more precisely they had not been taken pursuant to Rule 71 of the ICTY RoPE. The statements whose admission is sought also did not meet the requirement set forth under Article 7 of the LoTC which clearly refers to Article 273 of the CPC of BiH. Consequently, Defense Counsel submits that the Prosecution's motion be dismissed as lacking merit.

740. Following a Court's letter, in his correspondence of 19 August 2011 the ICTY Registrar notified the Court that witness protection orders issued by the Tribunal were still effective, and there was no possibility to reveal the location of residence of the Witness who had been relocated to a third country (so called the relocation country) for his own safety. However, in order to enhance cooperation with the Court of BiH, the

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<sup>200</sup> In this context Defense Counsel invoked statements of 24 April 1996, 25 June 1996 24, 25, 26, 27 of June and 12 August 1998, 3 November 2001 and 6 November, no year designation. In his brief dated 5

Tribunal will forward the Letter Rogatory<sup>201</sup> of the Court to the relocation country to serve the summons on Dražen Erdemović and that the possibility to obtain a written statement of the witness based on the questions served upon him by the relevant authorities of Bosnia and Herzegovina along with a Letter Rogatory could be considered.

741. Having analyzed the Prosecution's Motion and the Defense's submission, the Panel ruled as stated in the Operative Part for the reasons that follow.

742. First and foremost, Article 3(1) of the LoTC reads: "Evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH."

743. The Article defines the use of evidence collected by the ICTY in proceedings before the courts of BiH. For this purpose the LoTC was designed as a *lex specialis* in order to remove the risk that evidence collected by the ICTY could not be used pursuant to the CPC, and it sets forth the procedure and requirements for the use of such evidence in other courts as well.

744. Statements and transcript the Panel decided to accept meet the requirements under Article 3(1) since it has not been contended or evident that there were any irregularities in their collecting or use pursuant to the ICTY Statute or Rules.

745. Furthermore, Article 5(1) of the LoTC reads that "transcripts of testimony of witnesses given before the ICTY and records of depositions of witnesses made before the ICTY in accordance with Rule 71 of the ICTY RoPE, shall be admissible before the courts provided that that testimony or deposition is relevant to a fact in issue."

746. Accordingly, pursuant to Article 5 of the LoTC, the Court may accept transcripts of testimony of witnesses given before the ICTY provided that the testimony was made in accordance with the relevant provisions of the RoPE, and provided that the witness was notified of his/her rights. In this regard the Panel finds that the ICTY Transcript of the testimony of witness Dražen Erdemović of 12 August 1998 and 3 November 2001 is admissible.

747. By analogy, the quoted provision refers to a *viva voce* sworn testimony subjected to cross examination, thus the Panel also finds admissible the trial transcripts in *Popović et al.* of 4 and 7 May 2007.

748. The Panel assessed that the admission of these statements was relevant to the fact in issue in this case, notwithstanding that it is a duty of the Court to ensure fairness of the proceedings for the accused, as safeguarded by Article 6(1) of the ECHR (right to a fair trial) and Article 6(3) (right to confrontation and calling witnesses). The foregoing

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September 2011 Defense Counsel contends that at the interviews they were advised about the rights of suspects, which makes such a statement *a priori* inadmissible.

<sup>201</sup> The ICTY would forward the Letter Rogatory to the relocation country in accordance with the provisions set forth in the European Convention on Mutual Assistance in Criminal Matters dated 20 April 1959.

actually implies that irrespective of the admission of the statements the Defense reserves the right to file a well-reasoned written motion to call the witness for cross-examination. The written brief should include specific parts of the witness's evidence to be subjected to cross-examination, which will finally be decided by the Court.

749. In this case Defense Counsel for the accused were invited to file written briefs about the questions they would ask of the witness in cross-examination, which will be, with the Court's leave, forwarded to the *country of relocation* where Dražen Erdemović currently resides.

750. In this context the Panel has been mindful of the Defense's objections challenging the admissibility of the statements dated 12 August 1998 and 6 November, which Dražen Erdemović gave as a suspect. However, at the main hearing held on 6 September 2011 the Prosecutor abandoned the statement of 6 November while, having reviewed the statement of 12 August 1998, the Panel noted that it was made following the judgment on admission of guilt, which implies that Dražen Erdemović could not have been a suspect. Furthermore, the notices given to the witness in the beginning of the interview by their contents correspond to the notices given to a witness (*right not to answer certain questions*), while the fact that the contents include a summary of earlier statements from 1997 do not change the Panel's conclusion on this issue because the witness Dražen Erdemović signed to confirm that the contents of the statement was presented to him and that he still stood by everything he had said. The Panel will not elaborate on the reasons for admission of the trial transcripts of Dražen Erdemović's testimony in *Popović et al.* since the Defense did not object to their admission.

751. However, it has also been decided that the drawing by Dražen Erdemović before the ICTY on 30 May 1996 shall not be admitted into evidence since this person back then had the status of a suspect and the drawing is not crucial for the case.

752. Since a statement of a witness is considered integral if given *viva voce* and directly or if the requirements for non-direct presentation of evidence under Article 273 of the CPC of BiH have been met, the Panel finds it useful to note that in final evaluation of the presented evidence the admitted statements of Dražen Erdemović shall be subject to Article 3(2) of the LoTC.

753. At the hearing of 1 July 2011, the Defense requested that witness Erdemović be summoned for cross-examination.

754. However, on 23 August 2011, the Panel read out the ICTY's written response that they were unable to force Erdemović to testify, since he has been relocated to a third country where orders for witness protection were effective, so the ICTY is unable to disclose information on his whereabouts. Thereafter Defense Counsel Golić abandoned the option to send written questions to Erdemović, submitting that it would violate the adversarial principle.

### **3. Admission of the statement of Witness Z-3**

755. The Panel's Decision of 9 September 2011 upheld the Prosecution's Trial Motion of 6 September 2011 and ruled that the trial transcript of the protected witness Z-3 in the ICTY case *Prosecutor vs. Radoslav Krstić* of 14 April 2000 should be admitted into evidence.

756. On 23 August 2011, the Court received an official report where the Prosecutor communicated that the possibility of summoning or appearing of the protected witness Z3 at the Court was difficult. After the Defense insisted on his summoning, the Prosecutor subsequently notified the Court that it would not be possible to secure the attendance of this witness, so pursuant to Article 273(2) of the CPC of BiH he moved for an exception from the direct presentation of evidence by way of reading out the witness' investigative statement.

757. Defense Counsel for the accused filed their responses to the motion, expressing their disagreement with the Prosecution's motion, and submitting that the admission of the trial transcripts should be done on a different legal ground than the one invoked by the Prosecutor, in other words pursuant to Article 7 of the LoTC, whereupon, at the hearing of 6 September 2011, the Prosecutor changed the legal ground on which he sought the admission of the statement of Witness Z-3 into evidence.

758. In the briefs received following the hearing, Defense Counsel indicated a peculiar capacity of a protected witness who should not be exposed to a repeated testimony which in itself is a traumatization for the witness and, taking into account the principle of judicial economy and efficiency, it is in the interest of the accused persons that the trial is brought to an end, in particular since they are in custody.

759. Taking into account the reasons stated by the Prosecutor in his motion and the Defense's consent, the Panel decided to admit into evidence the trial transcripts of the protected witness Z-3 in ICTY case *Prosecutor v. Radislav Krstić*, opining that it is in line with Article 7 of the LoTC as well as Article 273(2) of the CPC of BiH which foresees exceptions from the direct presentation of evidence.

760. Though the CPC is explicit in this regard, the Panel does not find that the Defense's contentions that the application of Article 7 of the LoTC derogates the CPC provision or that it will not be applicable in this case do not have merit. The reasoning behind this is that Article 273 of the CPC of BiH provides for the reading of investigative records in cases when the presence of the witness before the Court is impossible or very difficult due to important reasons.

761. By analogy and in conjunction with Article 7 of the LoTC, in the same case an ICTY trial transcript may be read out since, unlike an one-sided investigative interview, at the main trial the witness was advised of his rights and subjected to cross examination, which certainly makes such a testimony more detailed and objective.

762. In addition to the fact that the Defense agreed with the motion, the Panel finds it useful to note that in the final evaluation of the presented evidence the transcript of this witness will be subject to Article 3(2) of the LoTC, which says that the courts shall not base a conviction of a person solely or to a decisive extent on the prior statements of witnesses who did not give oral evidence at trial.

**4. Admission of the statement of the accused Franc Kos pursuant to Article 273(3) of the CPC of BiH**

763. When ruling whether the statement Franc Kos gave as a suspect would be used at the main trial, the Court assessed its admissibility in context of Article 273(3) of the CPC of BiH.

764. Article 273(3) of the CPC of BiH reads: *„If the accused during the main trial exercises his right not to present his defense or answer the questions asked, records of testimonies given during the investigation may, upon decision of the judge or the presiding judge, be read out and used as evidence in the main trial...”*

765. However, the use of an investigative statement of the accused is conditioned by a formal rule which pertains to the warning given to the suspect during the investigative interview. Thus the second part of the quoted Paragraph of Article 273 of the CPC of BiH explicitly says that such a statement may be used: *„...,but only if during his questioning in the investigation, the accused was instructed pursuant to Article 78(2)(c) of this Code.”*<sup>202</sup>

766. In line with the foregoing, when considering the admission of the investigative statement of the Accused, the Trial Panel analyzed the following:

- a) if the Suspect was advised that he might comment on the charges against him;
- b) if the Suspect was advised that if he wanted to comment or present his defense, he had to do that in the presence of his Defense Counsel in case of a mandatory defense,<sup>203</sup>
- c) if the Suspect was cautioned that if he gave his statement in the presence of his Defense Attorney, the statement may be used as evidence at the main trial;

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<sup>202</sup> See Article 78(2)(c) of the CPC of BiH.

<sup>203</sup> In cases where defense is not mandatory, the suspect may waive his right to the presence of a defense attorney, and in cases of mandatory defense the suspect may not waive his right to a defense attorney.

- d) if the Suspect was cautioned that if he gave his statement in the presence of his Defense Counsel, his statement may without his consent be read and used at the main trial;

767. In this case, reviewing the Record<sup>204</sup> the Panel found that the interview of the accused Franc Kos as a suspect had been done absolutely in line with the quoted article of the CPC of BiH, and since the defense had not cast any doubt on its authenticity or lawfulness the Panel decided to admit it into evidence in this case, while the final evaluation of its probative value was presented in the Verdict, evaluating it in the context of all presented evidence.

## **5. Admission of established facts**

768. On 12 January 2011, applying Article 4 of the LoTC, the Panel admitted as proven the facts established in ICTY Trial and Appeal Judgments in *Prosecutor vs. Krstić* number: IT-98-33-T, Trial Chamber Judgment 2 August 2001 and Appeals Chamber Judgment number IT-98-33-A of 19 April 2004, and in *Prosecutor vs. Blagojević and Jokić* number: IT-02-60-T, Trial Judgment 17 January 2005, Appeals Chamber Judgment number: IT-02-60-A of 9 May 2007, as follows:

1. *In March 1995, Radovan Karadžić, President of Republika Srpska ("RS"), reacting to pressure from the international community to end the war and ongoing efforts to negotiate a peace agreement issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as "Directive 7", specified that the VRS was to: complete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica /KT- 28/.*
2. *On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladic. Directive 7.1 was issued "on the basis of Directive No. 7" and directed the Drina Corps to, inter alia, conduct "active combat operations...around the enclaves" /KT- 29/*
3. *.... by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic /KT-28/*
4. *the then commander of the Drina Corps, General-Major Milenko Živanović, signed two orders, on 2 July 1995, laying out the plans for the attack on the enclave*

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<sup>204</sup> Suspect Interview Record, BiH Prosecutor's Office, no. KT-RZ-157/05, 9 August 2010.



*and ordering various units of the Drina Corps to ready themselves for combat. The operation was code-named "Krivaja 95. /KT- 30/*

*5. The VRS offensive on Srebrenica began ... on 6 July 1995. /KT- 31/*

*6. In the afternoon on 9 July 1995...President Karadžić issued a new order authorizing the VRS Drina Corps to capture the town of Srebrenica /KT- 33/*

*7. By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometers deep into the enclave, halting just one kilometer short of Srebrenica town /KT- 33/*

*8. Two independent units were directly subordinated to the Main Staff: the 65<sup>th</sup> Protective Regiment and the 10<sup>th</sup> Sabotage Detachment /BT -37/*

*9. Late in the afternoon of 11 July 1995, General Mladic, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town. /KT-36/*

*10. By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in ..... seeking protection within the UN compound, throughout the neighbouring factories and fields /KT-37/*

*11. In Potočari, in the evening of 11 July 1995, majority of the people seeking protection within the UN compound were women, children, elderly or disabled, and there were at least 300 men inside the perimeter of the UN compound and between 600 and 900 men in the crowd outside. /KT- 37/*

*12. On 14 July, Bosnian Muslim prisoners were taken by bus from Bratunac through Zvornik to Pilica, where they were detained in the sports hall of the Pilica School /BT-347/*

*13. The (Bosniak) men were held at the Pilica School for two nights /KT- 233/*

*14. On 16 July....hands of the prisoner in the Pilica School were tied behind their backs and they were then driven by buses to the Branjevo Military Farm, where where they were shot /KT- 233/*

*15. On 10 August 1995, the Security Council was briefed by the United States representative, who showed the Council aerial photographs indicating the existence of mass graves near Konjević Polje and Nova /BT-380/*

*16. In April 1996 investigators of the Office of the Prosecutor came to the mass gravesites and it became apparent from an analysis of tire tracks and soil*

composition, that the mass graves had been disturbed./BT- 381/

17. Forensic evidence showed that there were two types of mass graves, “primary graves”, in which individuals were placed soon after their deaths and “secondary graves”, into which the same individuals were later reburied /BT- 381/

18. The reburial operation, which took place some time in September and October 1995, was ordered by the VRS Main Staff. /BT- 383/

19. The bodies in the graves at Branjevo Military Farm and Kozluk were taken to secondary graves along the Čančari road. /BT- 382/

20. In a secondary grave along the Čančari road, the remains of people initially buried at the Branjevo Farm were discovered. According to one report the minimum number of individuals found in the secondary grave along the Čančari Road was 283 victims. Out of those victims, three were determined to have been between 8 and 12 years old, 49 were determined to have been between 13 and 24 years old and 231 were determined to have been older than 24. /BT- 354/

769. The remaining part of the Prosecution’s Motion no: T 20 0 KTRZ-0000538 of 13 December 2010 was dismissed as lacking merit.

770. On 13 December 2010, pursuant to Article 4 of the LoTC the Court received a Prosecution’s Motion no. T 20 0 KTRZ-0000538 for admission of the established facts, which were established in cases *Prosecutor vs. Krstić* no. IT-98-33-T and IT-98-33-A and *Prosecutor vs. Blagojević and Jokić* no. IT-02-60-T and IT-02-60-A, and the facts established in case *Prosecutor vs. Vujadin Popović et al.* Trial Judgment no. IT 05-88-T of 10 June 2010.

771. The Prosecution based its motion on the LoTC provisions, which has been conceptualized as a *lex specialis* in relation to the CPC of BiH, with the aim that evidence in the ICTY proceedings could be used in courts in BiH. The lawmaker’s purpose of Article 4 of the LoTC is judicial economy and right of the accused to a trial within a reasonable time, wherefore the Court should accept „established facts“ in order to promote judicial economy and a trial without delay. Likewise, it is noted that any established fact accepted by the Trial Panel may be contested by the presentation of evidence challenging its veracity, which safeguards the right of the accused to contest any of the established facts and the presumption of innocence. Finally, the Prosecution notes that the criteria applied by the Court to this matter ensure that no proffered fact directly incriminates the accused, or pertains to acts of the accused, their conduct, knowledge or intent.

772. All Defense teams filed their responses to the Prosecution’s Motion.

773. At the hearing held on 21 December 2010 Defense Counsel for the accused Franc Kos, Attorney Dušan Tomić, objected to the Prosecution’s Motion with the exception of

the fact concerning the armed conflict the admission of which he did not object.

774. In his submission, Defense Counsel for the accused Vlastimir Golijan, Attorney Rade Golić, commented on the Prosecution's Motion on several grounds.

775. Specifically, with regard to the admission of facts from case Prosecutor vs. Vujadin Popović et al. Defense Counsel submits that the Prosecution's motion concerning these facts does not satisfy the criteria, since the parties to the proceedings in the case of Popović et al. had filed notice of appeals to be lodged by 21 January this year. The Defense submits that only after this date and a detailed analysis of the appeals filed by the ICTY OTP and appeals filed by all defense counsel in this case could any facts be discussed, save those pertaining to Ljubomir Borovčanin, in relation to whom the ICTY Office of the Prosecutor filed no appeal. For the foregoing reasons Defense Counsel for the accused Golijan submits that the Court of BiH should dismiss the Prosecution's Motion to accept as established the facts listed in Annex 1 of the Motion as numbers 37, 38, 39, 68, 69, 79, 80, 81, 106, 113, 119, 120, 121, 122. Additionally, the facts listed as numbers 80 and 81 are not complete, and they are parts of quotations of a witness' testimony, while the fact number 120 is incomplete and constitutes a conclusion of the ICTY Trial Chamber.

776. With regard to the admission of some facts from Krstić, Blagojević and Jokić cases, Defense Counsel submits that the Prosecution's Motion for the admission of some facts should be dismissed in its entirety, or alternatively the Defense should be allowed to appeal the decision on the admission of certain facts as established. In other words, the Defense submits that a vast majority of the facts in the Prosecution's Motion do not meet the criteria established so far since they constitute legal qualifications or elements of the crime the accused have been charged with and whose burden of proof lies on the Prosecution in this case, which makes such facts inadmissible. Likewise, a part of them relate to the criminal liability of the accused in this case, and their admission would violate the principle of presumption of innocence set forth in Article 6(2) of the ECHR. Finally, the Defense for Vlastimir Golijan argued that some of the submitted facts were irrelevant to the case conducted against the accused and should be dismissed for this reason.

777. Defense Counsel for the accused Zoran Goronja, Attorney Slavko Aščerić, submitted that only two facts from the Prosecution's Motion were acceptable for this Defense team while the remaining facts were inadmissible on several grounds. Some facts were irrelevant to the case, while others include legal qualifications. In addition, as the Defense submitted, some facts did not meet the criteria which say that a fact should not relate to the criminal liability of the accused. The instrument of admission of established facts aims at judicial economy which, as Defense Counsel submits, should not be to the prejudice of the accused's right to a fair trial enshrined in Article 6 of the ECHR or undermine the presumption of innocence under Paragraph 2 of the same ECHR Article. Defense Counsel also argued that the decision on this issue was not a procedural decision set forth in Article 318 of the CPC of BiH. Therefore the parties to the proceedings should be entitled to appeal and move for reconsideration of the Panel's

decision in view of the significance of this issue in the case.

778. Defense Counsel for the accused Stanko Kojić, Attorney Milan Romanić, noted in his response that the admission of the established facts in this case would lead to a violation of all principles of the CPC of BiH, and that it was in contravention of the BiH Constitution, specifically its Article 2(2), the Law on the Court of BiH, and the European Convention on Human Rights and Fundamental Freedoms (ECHR). Furthermore, Attorney Milan Romanić submits that the LoTC cannot be considered a substantive law, as apart from the fact that it was passed by a legislative body (BiH Parliamentary Assembly) it did not meet a series of other criteria set by the ECHR (a clear purpose for adoption of the law, precision, predictability and user-friendliness), wherefore it cannot be considered a proper law.

779. Finally, attorney Milan Romanić concluded that the application of the instrument of “established facts” would constitute a violation of the right to a fair trial of his client Stanko Kojić, and would result in a shift of the burden of proof to the accused, wherefore he moved that that the Prosecution’s Motion be dismissed in its entirety.

780. Having analyzed the Prosecution’s motion and the Defense’s submissions, the Court ruled as stated in the Operative Part for the reasons that follow.

781. Article 4 of the LoTC defines: *„At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current“.*

782. Similar is Rule 94(B) of the RoPE which reads: *“At the request of a party or proprio motu, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings”.*

783. First and foremost, by hearing the parties to the proceedings and by offering the possibility of a written response to the Prosecution’s Motion, the first formal requirement of the quoted provision concerning the admission of the established facts as proven has been met.

784. Furthermore, when examining the proffered facts as established, the Panel took into account the current ICTY standpoints and jurisprudence in its cases, applying them as impartial as the LoTC does not prescribe the criteria on whose basis a fact would be considered as “adjudicated”.

785. In this context, the criteria established by the ICTY in the Decision of 28 February 2003 in *Prosecutor vs. Momčilo Krajišnik*, were analyzed with respect of the rights of the accused safeguarded by the ECHR, as well as the CPC of BiH. In line with the foregoing, at the request of a party or proprio motu, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts if they meet the following criteria: that

they are distinct, concrete and identifiable, and that they are relevant to the case, restricted to *factual* findings and do not include *legal* characterizations, contested at trial and form part of a judgment which has either not been appealed or has been finally settled on appeal, or are contested at trial and now form part of a judgment which is under appeal, but fall within issues which are not in dispute during the appeal. Likewise they must not attest to the criminal responsibility of the Accused, may not be based on plea agreements in previous cases and must not affect the right of the Accused to a fair trial.

786. These criteria supplement Rule 94(b) (Judicial Notice) of the ICTY RoPE. In addition, these criteria have already been adopted by the Appellate Panel of the Court (Verdict in case *Samardžić Neđo* no. X-KRŽ-05/49 of 13 December 2006). Consequently, the objections of the Defense on arbitrariness in the procedure of the facts admission lack merit.

787. The responses of the Defense for the accused to the Prosecution's motion also contested the supremacy of the LoTC considered by the Panel as a *lex specialis*, having found that its provisions in no way derogate the rights and procedures set forth in the CPC of BiH. However by its nature the LoTC is to be considered as a *lex specialis*, since it foresees more detailed solutions of some issues which are only "*partially*" addressed in the CPC of BiH, specifying the requirements and method of transfer of cases to the Prosecutor's Office of BiH by the ICTY, as well as the use of evidence collected by the ICTY in proceedings before courts in BiH. In view of numerous criteria established for the purpose of protection of procedural rights of the accused, the Panel cannot accept the Defense's contentions that the application of the LoTC derogates principles and provisions of the CPC of BiH.

788. The main purpose of Article 45 of the LoTC is efficiency and judicial economy, which is in line with the right of an accused to a trial without any delay as defined by Article 13 of the CPC of BiH and Article 6(1) of the ECHR. Therefore, when applying this provision the Panel complied with the principle of fairness of the proceedings, refusing to admit any facts which would directly or indirectly incriminate the accused.

789. Likewise, the fact that any admission of an established fact must be guided by the principle of presumption of innocence was taken into account, as otherwise the evidentiary procedure might be finalized to the prejudice of the accused even before all evidence was proffered in the case. Consequently, exercising its discretion under Article 4 of the LoTC and ruling on this issue, the Panel particularly evaluated the rights of the accused against Article 6 of the ECHR and Articles 3 and 13 of the CPC of BiH. In this context, it is useful to note that the facts accepted as proven are not uncontestable presumptions */presumption iuris et de iure/* and can be subject of contention during the trial, if the parties offer valid and justified reasons for that. Thus the presumption of innocence is not violated because the accused has the right to contest all charges, including the proffered and admitted facts.

790. Additionally, for the purpose of Article 15 of the CPC the Court is not obligated to

base its verdict on any facts admitted as proven since upon the completion of the criminal proceedings all of them will be the subject of individual evaluation and evaluation in the context of all evidence presented at the main trial. Consequently, the decision to admit established facts has the weight of a procedural decision of the Panel on admissibility or non-admissibility of any other evidence offered during the trial, which ultimately falls in the domain of main trial management, thus a separate appeal is not permissible from the decision on this issue.

791. Following the consideration of the foregoing criteria in the context of argumentation of the parties to the proceedings, the Panel finds that the facts listed in the Disposition of the Decision fully meet the requirements of the criteria and admits them as proven within this scope.

792. The Panel did not accept the proffered facts from the ICTY Trial Chamber Judgment *Prosecutor vs. Vujadin Popović* no. IT 05-88-T of 10 June 2010, since the case has not been finalized and such facts cannot be admitted as “proven” on the basis of the foregoing criteria. The remaining facts which were not admitted by the Panel were assessed as irrelevant to the case, while others constitute conclusions of the ICTY Chambers or legal evaluation of elements of the crime the accused have been charged with in this case. Finally, the facts which in any way prejudice criminal liability of the accused have not been accepted either.

(a) Motion for Established Facts by Attorney Petko Pavlović

793. On 13 October 2011, applying Article 4 of the LoTC the Panel admitted as proven the facts established in *Prosecutor vs. Blagojević and Jokić* no: IT-02-60-T, Trial Chamber Verdict of 17 January 2005, as follows:

*„It is not disputed that the Srebrenica enclave was never fully demilitarised and that elements of the ABiH continued to conduct raids of neighbouring Bosnian Serb villages from within the enclave.<sup>361</sup> The 8th Operational Group of the ABiH, later renamed the 28th Division of the ABiH, operated in the enclave.” (BT-115)*

*“A large scale execution and burial operation was carried out at Kozluk between 15 and 16 July. Extensive forensic evidence exists that around 500 men were executed at the edge of the Drina River.” (BT-357)*

*“Further investigation confirmed that the bodies in the graves along the Čančari Road came from the primary graves in Kozluk.” (BT-362)*

794. The remaining part of the Motion by Defense Counsel for the accused Zoran Goronja, Attorney Petko Pavlović, of 19 September 2011, was dismissed as lacking merit.

795. Defense Counsel for the accused Zoran Goronja, Attorney Petko Pavlović, filed a Motion for Admission of the Established Facts in ICTY cases (Krstić, Blagojević and

Jokić, and Krajišnik). The Prosecution objected to the motion at the hearing held on 27 September 2011, submitting that the proffered facts were not suitable for admission since they were conclusions made by the ICTY Chambers in the listed cases, and accordingly did not meet the criteria adopted in the current Court of BiH jurisprudence.

796. Having analyzed the Prosecution's Motion, and the submission by the Defense for the accused, the Court ruled in line with Article 4 of the LoTC, which stipulates that: "At the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current."

797. Similar is Rule 94(B) of the RoPE which reads: "At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings".

798. First and foremost, hearing the parties in the proceedings and offering the possibility of a written response to the Prosecution's Motion the first formal requirement of the quoted provision for admission of the established facts as proven has been met.

799. The main purpose of Article 4 of the LoTC is efficiency and judicial economy, which is in line with the right of an accused to a trial without any delay as defined by Article 13 of the CPC of BiH and Article 6(1) of the ECHR. Therefore, when applying this provision the Panel complied with the principle of fairness of the proceedings, refusing to admit any facts which would directly or indirectly incriminate the accused.

800. Furthermore, when examining the proffered facts as established, the Panel took into account the current standpoints and jurisprudence of the ICTY in its cases, applying them as impartial as the LoTC does not prescribe the criteria on whose basis a fact would be considered as "adjudicated". In this context, the criteria established by the ICTY in the Decision of 28 February 2003 in *Prosecutor vs. Momčilo Krajišnik*, respecting the rights of the accused safeguarded by the ECHR, as well as the CPC of BiH, were analyzed.

801. In line with the foregoing, at the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts if they meet the following criteria: that they are distinct, concrete and identifiable, and that they are relevant to the case, restricted to *factual* findings and do not include *legal* characterizations, contested at trial and form part of a judgment which has either not been appealed or has been finally settled on appeal, or are contested at trial and now form part of a judgment which is under appeal, but fall within issues which are not in dispute during the appeal. Likewise they must not attest to criminal responsibility of the Accused, may not be based on plea agreements in previous cases and must not affect the right of the Accused to a fair trial.

802. These criteria supplement Rule 94(b) (Judicial Notice) of the ICTY RoPE. In addition, these criteria have already been adopted by the Appellate Panel of the Court (Verdict in case *Neđo Samardžić* no. X-KRŽ-05/49 of 13 December 2006).

803. Following the consideration of the foregoing criteria in the context of the arguments presented by the parties to the proceedings, the Panel finds that some of the facts proffered in the Motion by Defense Counsel for the accused Zoran Goronja do not satisfy the set criteria since they constitute legal conclusions made by ICTY Chambers, which this Panel is not bound by, while other proffered established facts, despite the argumentation of defense counsel, were assessed as irrelevant to this case.

(b) Motion for Established Facts by Attorney Predrag Drinić

804. On 17 April 2012 the Court passed a Decision dismissing the Motion by Defense Counsel for the accused Franc Kos, Attorney Predrag Drinić, of 26 March 2012, moving for admitting as proven the facts adjudicated in cases *Prosecutor vs. Vujadin Popović et al.* and *Prosecutor vs. Vidoje Blagojević and Dragan Jokić*, as lacking merit.

805. On 26 March 2012, pursuant to Article 4 of the Law on the Transfer of Cases and Use of Evidence Collected in ICTY proceedings before courts in BiH (LoTC), the Court received a Motion by Defense Counsel for the accused Franc Kos, Attorney Predrag Drinić, for admitting as adjudicated the facts established in ICTY cases *Prosecutor vs. Vujadin Popović et al.* no. IT 05-88-T and *Prosecutor vs. Blagojević and Jokić* no. IT-02-60-T.

806. Article 4 of the LoTC defines: „*At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current*“.

807. Similar is Rule 94(B) of the RoPE which reads: “*At the request of a party or proprio motu, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings*”.

808. First and foremost, hearing the parties in the proceedings and offering the possibility of a response to the Motion by Defense Counsel the first formal requirement of the quoted provision for ruling on admission of the established facts as proven has been met. In his Brief of 5 April 2012 the Prosecutor in the case expressed his objection to the motion, asserting that the facts from the Judgment in *Prosecutor vs. Vujadin Popović et al.* cannot be accepted as adjudicated since it had not become final, while in relation to the fact from Judgment *Prosecutor vs. Blagojević and Jokić* the Prosecutor submits that it pertains to the involvement of the accused and is inadmissible as such.

809. At the hearing of 10 April 2012 Defense Counsel for the other accused submitted that they did not object to the Motion by Attorney Drinić, while Counsel Romanić, Defense Counsel for the accused Stanko Kojić, noted that he had not received the<sup>152</sup>



Motion. However, based on the submission by Defense Counsel Drinić, the motion for the admission of established facts filed on 26 March 2012 titled as „Proposal of the Defense Evidence” had been supplied to all Defense Counsel, and in this regard the Court finds that the objection by Counsel Romanić was not justifiable.

810. The main purpose of Article 4 of the LoTC is efficiency and judicial economy, which is in line with the right of an accused to a trial without any delay as defined by Article 13 of the CPC of BiH and Article 6(1) of the ECHR. Therefore, when applying this provision the Panel complied with the principle of fairness of the proceedings refusing to admit any facts which would directly or indirectly incriminate the accused.

811. Furthermore, when examining the proffered facts as established, the Panel took into account the current standpoints and jurisprudence of the ICTY in its cases, applying them as impartial as the LoTC does not prescribe the criteria on whose basis a fact would be considered as “adjudicated”. In this context, the criteria established by the ICTY in the Decision of 28 February 2003 in case *Prosecutor vs. Momčilo Krajišnik*, respecting the rights of the accused safeguarded by the ECHR, as well as the CPC of BiH, were analyzed.

812. In line with the foregoing, at the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts if they meet the following criteria: that they are distinct, concrete and identifiable, and that they are relevant to the case, restricted to *factual* findings and do not include *legal* characterizations, contested at trial and form part of a judgment which has either not been appealed or has been finally settled on appeal, or are contested at trial and now form part of a judgment which is under appeal, but fall within issues which are not in dispute during the appeal. Likewise they must not attest to criminal responsibility of the Accused, may not be based on plea agreements in previous cases and do not affect the right of the Accused to a fair trial.

813. These criteria supplement Rule 94(b) (Judicial Notice) of the ICTY RoPE. In addition, these criteria have already been adopted by the Appellate Panel of the Court (Verdict in case *Samardžić Neđo* no. X-KRŽ-05/49 of 13 December 2006).

814. Following the consideration of the foregoing criteria in the context of the arguments presented by the parties to the proceedings, the Panel finds that some of the facts proffered in the Motion by Defense Counsel for the accused Franc Kos, Attorney Predrag Drinić, from the ICTY Judgment *Prosecutor vs. Vujadin Popović et al.* do not satisfy the foregoing criteria since they stem from an ICTY judgment which has not been final yet. Accordingly, one of the admissibility criteria has not been satisfied.

815. Defense Counsel argues in the Motion that these are facts pertaining to the accused Ljubomir Borovčanin, therewith citing specific paragraphs of the Trial Judgment. However, its analysis shows that in addition to the accused Lj. Borovčanin the Judgment also pertains to Vujadin Popović and other persons, thus it remains unclear based on which criteria Defense Counsel selected parts of the Judgment which are final in relation

to only one accused, thus declaring the Judgment partially final without any decision of the ICTY Appeals Chamber in this regard.

816. With regard to the fact from ICTY Judgment *Prosecutor vs. Blagojević and Jokić*, the Prosecution's argumentation that it pertained to the involvement of the accused and indirectly to the relevant event is not valid, but the Panel concurrently finds that the proffered fact is not relevant to the case, which, consequently, does not satisfy one of the admissibility criteria.

817. At the hearing of 7 September 2011 Defense Counsel Rade Golić abandoned his motion for the established facts filed on 1 July 2011.

## **6. Witnesses protection**

818. On 9 June 2010 a decision was passed partially granting the Prosecution's Motion no: T 20 0 KTRZ 0000 538 10 of 11 May 2011. Consequently the protective measures ordered under decisions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) pursuant to Rule 75(F)(i) of the RoPE remain effective in the criminal case against the accused *Franc Kos et al.*, specifically:

819. The protective measures granted in ICTY case no. IT-98-33-T *Prosecutor vs. Radislav Krstić (pseudonym Q, testifying with distorted image and voice)* shall remain effective in this case too, and the witness shall testify from the courtroom with distorted image for the public through electronic image distortion devices. For the purpose of identification, the witness is assigned pseudonym Z-3.

820. The protective measures granted to a witness in ICTY case no. IT-98-33-T *Prosecutor vs. Radislav Krstić* and kept effective in ICTY case no. IT-05-88-T *Prosecutor vs. Vujadin Popović et al. (pseudonym PW-132, testifying with distorted image and voice)*, shall remain effective in this case too, and the witness shall testify from the courtroom with distorted image for the public through electronic image distortion devices. For the purpose of identification, the witness is assigned pseudonym Z-6.

821. In order to ensure that the measures remain effective, no photograph or image of the witnesses shall be published in any TV broadcast, in printed media, or internet or made available to the public via printed or electronic media.

822. Redacting the previous statements of witnesses with pseudonyms Z-3 and Z-6 shall be approved where necessary for the purpose of the protection of identity and safety of these witnesses.

823. The BiH Prosecutor's Office shall not reveal information about protected witnesses to other persons, notwithstanding that pursuant to Article 12(8) of the LoTC the Prosecutor's Office has a duty to disclose to the accused and their Defense Counsel the identity of the protected witness no longer than 7 days before the witness testifies in the

court in order that they prepare for cross-examination.

824. Confidential information about these witnesses constitute an official secret pursuant to Article 24 of the Law on the Protection of Witnesses, and any unauthorized use, disclosure or other conduct aimed at revealing the protected witness' identity constitutes a criminal offense pursuant to Article 240 of the CC of BiH.

825. The measures ordered before the ICTY shall remain effective until varied or rescinded by the Tribunal.

826. The remaining part of the Prosecution's Motion was dismissed as lacking merit.

827. On 11 May 2011 the Prosecution filed with the Court a Motion to keep effective the measures granted to witnesses in proceedings before the ICTY. Thus in relation to the witness with pseudonym Z-3 it was sought to keep effective the measures he had been granted in ICTY case no. IT-98-33-T *Prosecutor vs. Radoslav Krstić* and specified in the Decision attached to the Motion.<sup>205</sup>

828. With regard to the witness with pseudonym Z-6 it was sought to keep effective the measures originally granted in ICTY case no. IT-98-33-T *Prosecutor vs. Radoslav Krstić* which had remained effective in ICTY case no. IT-05-88-T *Prosecutor vs. Vujadin Popović et al.* The listed measures were described in the Decision attached to the Motion.<sup>206</sup>

829. The decisions which the Panel reviewed also itemize the terms of disclosure of the witnesses identity to the BiH Prosecutor's Office. Accordingly:

830. The Prosecutor's Office of BiH may use the already disclosed evidential materials in the proceedings against Franc Kos, Stanko Kojić, Vlastimir Golijan and Zoran Goronja, as well as other individuals who may become accused in the same proceedings.

831. The disclosed information is confidential and available to no one except:

The BiH Prosecutor's Office and its staff as required by *Kos et al.* case;

Other parties to the proceedings in *Kos et al.*, more precisely the accused, their Defense Counsel or members of defense teams, and the Court of BiH as required by the case *Kos et al.* under the terms set forth in Item c);

The disclosed information shall not be disclosed by the Prosecutor to anyone unless the Prosecutor's Office of BiH obtains guarantees, under the penalty of criminal sections, that the parties to the proceedings shall strictly comply with the confidentiality of this information;

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<sup>205</sup> Confidential *ex parte* Decision of the Special Chamber no. IT-98-33-R75H.3 of 30 September 2010.

<sup>206</sup> Confidential *ex parte* Decision of the Appeals Chamber in the case versus the accused Vujadin Popović et al. no. IT- 05-88-R75H.5 of 16 December 2010.

The BiH Prosecutor's Office shall undertake all necessary measures, both legal and practical, to ensure the security and safety of the protected witnesses and provide them with the same level of protection which they enjoyed before the ICTY;

The BiH Government shall undertake all necessary measures, both legal and practical, to ensure the security and safety of the protected witnesses;

If the Prosecution wants to vary, rescind or augment the protective measures applied to the information disclosed in the forwarded ICTY Decision, they shall address the President of the International Tribunal seeking adequate legal tool.

832. The Defense was given the opportunity to respond, and on that occasion Defense Counsel for the accused Vlastimir Golijan, Attorney Rade Golić, expressed his objection to the motion, submitting that in this case the Prosecution invoked provisions applicable in ICTY proceedings only, rather than before the Court of BiH. Additionally, in its Motion the Prosecution does not invoke material evidence corroborating the presented contentions, nor does the Motion show that Article 5a of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses had been applied. At the main trial hearing of 7 June 2011, Attorney Rade Golić stated that he withdrew his original response in the part pertaining to the actions pursuant to Rule 75 (H) of the ICTY RoPE, while Defense Counsel for the accused Franc Kos, Stanko Kojić and Zoran Goronja, attorneys Dušan Tomić, Milan Romanić and Slavko Aščerić, respectively, did not object to the Prosecution's Motion.

833. When ruling on this matter, the Panel was guided by imperative Rule 75 (F)(i) of the ICTY RoPE, which reads as follows: "*Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures shall continue to have effect mutatis mutandis in any other proceedings before the Tribunal ("second proceedings") or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule*".

834. The interpretation of this provision clearly shows that the Court of Bosnia and Herzegovina, as another jurisdiction, must comply with and keep effective all protective measures already ordered in respect of witnesses in proceedings before the ICTY. Abiding by this, the Panel ruled that the measures the witnesses enjoyed in the proceedings before the ICTY shall remain effective *mutatis mutandis* in the case against *Franc Kos et al.*, in the manner specified in the Decision's Disposition. Consequently, the Panel finds that the objections by Defense Counsel for the accused Vlastimir Golijan invoking provisions of the Law on Protection of Witnesses lack merit.

835. The Panel finds that keeping effective the protective measures for witnesses Z-3 and Z-6 will not jeopardize the right to a defense, since Defense Counsel and the accused were given opportunity to respond to the Prosecution's motions, while the obligation of disclosure of the witnesses identity to the Defense 7 days prior to the

hearing of the witnesses at the main trial in order to prepare for their cross examination remains effective.

836. Finally, the Panel deems it useful to note that new pseudonyms assigned to the witnesses, stated in the Decision's Disposition, are not essentially a varying or augmentation of the previously ordered protective measures, but are rather a different manner of identification of the protected witnesses in this case for the purpose of their easier differentiation.

837. The protective measures the witnesses enjoyed at the Tribunal shall be effectuated during the examination of the witnesses depending on the technical possibilities of the Court.

838. Conversely, the Panel did not uphold the part of the Motion seeking to declare the particulars of the witnesses confidential within 30 years of the day the decision became final, since pursuant to Rule 75(H) of the ICTY RoPE the Trial Panel of the Court of BiH cannot modify or intensify previously ordered protective measures without an approval by the Tribunal and implementation of a separate procedure.

839. In this case before the Court of Bosnia and Herzegovina, the witnesses for whom protective measures were sought under the Prosecution's motion no. T20 0 KTRZ 0000538 10 of 8 November 2010, were assigned pseudonyms Z-1, Z-2, Z-4 and Z-5 by the Decision of 16 December 2010.

840. The ruling is that without the Court's approval no image or a photograph of witnesses Z-1, Z-2, Z-4 and Z-5 shall be published in any TV broadcast, printed media or internet or in any other way be available to the public in hard or electronic copy. Issuing an audio-recording or contents of their testimonies may be permissible only with the Court's leave.

841. Confidential information: first and last name and other particulars of the witnesses with pseudonyms Z-1, Z-2, Z-4 and Z-5 are declared confidential for 15 years from the date the verdict in this case become final.

842. The confidential information on witnesses Z-1, Z-2, Z-4 and Z-5 constitutes an official secret pursuant to Article 24 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, and its unauthorized use, disclosure or other conduct aimed at identity revealing is a criminal offense pursuant to Article 240 of the CC of BiH.

843. The Court of Bosnia and Herzegovina shall be in charge of implementation of the Decision, with the duty to undertake all measures to ensure that the foregoing particulars of the witnesses remain confidential.

844. On 8 November 2010 the Prosecutor's Office of BiH filed a Motion for protective measures of witnesses Z-1, Z-2, Z-4 and Z-5, whose evidence was offered in the Indictment against *Franc Kos et al.* no. T 20 0 KTRZ 000538 10.

845. The Motion say that Witness Z-1 is a former member of the 10<sup>th</sup> Sabotage Detachment who is afraid that any disclosure of the contents of his testimony might lead to the revealing of his identity, which might result in threats, intimidation and physical violence towards the witness and his family in BiH. This derives from the character of members of the 10<sup>th</sup> Sabotage Detachment who, following the relevant events, received orders to execute some members of the Detachment because they had “loose tongue” and had refused to execute the orders.

846. With regard to Witness Z-2, the protective measures are sought on the ground that the Witness is one of the two survivors of the Branjevo Farm executions and who had previously been detained in the elementary school in Bratunac. Because of the foregoing and traumatic events he survived, there was a fear that in case of a disclosure of the witness’ identity he and his family would be exposed to threats and intimidation.

847. Witness Z-4 has already testified under a pseudonym at a closed session in the case against Milorad Trbić. In relation to him the Court of BiH passed a decision on the disclosure of his trial transcripts to the accused in this case, while the Prosecution undertook to file a motion for protective measures for the Witness identical to those ordered by the Court in the case against Milorad Trbić.

848. Witness Z-5 is employed in a non-governmental organization working with the survivor victims of the Srebrenica events, as well as the domestic violence victims. Doing this job the witness had already received phone threats aimed at their under-age daughter.

849. Based on the Motion, the witnesses agree with the sought measures, and have informed the Prosecution that they would like to testify in the manner described in the Prosecution’s Motion.

850. At the main hearing on 14 December 2010 Defense Counsel for the accused Franc Kos, Attorney Dušan Tomić, agreed with the Prosecution’s Motion, while Defense Counsel for the accused Zoran Goronja and Vlastimir Golijan, Attorneys Slavko Aščerić and Rade Golić, respectively, gave their consent in written briefs, but Attorney Golić objected to the potential Prosecution’s position that the witnesses testify behind a screen or with the use of electronic and technical devices for image and sound broadcasting, since this prevents a direct contact of the witnesses and Defense Counsel, which brings the Defense in a substantially underprivileged position.

851. On the other hand, Defense Counsel for the accused Stanko Kojić, Attorney Milan Romanić, objected to the Prosecution’s Motion, submitting that its aim was to increase the „specific weight“ of the Indictment. Furthermore, Defense Counsel submits that the sought protective measures are aimed at drawing public attention to this case and thus put the Court under duress to find the accused guilty and punish them more severely. It is therewith disregarded that the accused Kojić in no way threatened or intimidated the witnesses or their families, nor had the Prosecution offered any evidence in this regard. On the other hand, the accused was in custody treated for mental traumatization.

852. Following the analysis of the Prosecution's Motion and submission by Defense Counsel for the accused, the Panel granted the Prosecution's Motion.

853. The witnesses were assigned pseudonyms because the Panel finds that they are subject to Article 3(1) and (2) of the Law on the Protection of Witnesses since they have relevant knowledge about the event the accused in this case have been charged with, while some of them went through extremely traumatic experience wherefore their intensified feeling of fear and risk for their own safety and the safety of their immediate family was absolutely justifiable.

854. Additionally, some witnesses had already been threatened, which speaks sufficiently about the seriousness of information the witnesses have and which causes their justified fear for their safety if they reveal the incriminating information without identity protection. The Panel finds that the arguments presented by Defense Counsel Milan Romanić that some protective measures amount to a violation of the presumption of innocence and pressure on the public are absolutely arbitrary, without any foundation, and fully dismisses them as such.

855. The Panel did not grant the motion for a closed session during the testimony of Witness Z-4, since the decision, pursuant to Article 235 of the CPC of BiH, can be passed between the beginning of the hearing and completion of the main trial, but only after hearing from parties to the proceedings and defense counsel. This provision explicitly defines the requirements for exclusion of the public. The Panel will evaluate if they are met or not on the day when proffered witness Z-4 is to take the witness stand, which is when a decision on this issue will be made. Since the Panel did not rule on the Prosecution's motion for a closed session at this stage, the protective measures as specified in Item 2 of the Decision's Disposition were ordered in relation to Witness Z-4, and their justifiability may be subject of reconsideration before the Witness testifies *viva voce*.

856. At the hearing of 11 February 2011 the Witness was granted identity protection measures, pseudonym Z-8, and it was decided that the witness' image would not be available to the public. The witness and his family reside in the territory of the municipality where the crime he testifies about took place, so he expressed his justified fear that testifying in this case without the protection of his identity would put his and the safety of his family at risk. Having heard the parties and Defense Counsel, the Court found that in this case the requirement under Article 3(1) of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses was met.

## **7. Admissibility of particular pieces of evidence**

857. At the main hearing of 10 May 2011, the statement of the deceased witness Ljubo Ivanić was read out and admitted into evidence, while tendering the original audio-recording (CD) was left for the next hearing. The Presiding Judge invited the Defense for the accused to state if there were any inconsistencies between the Witness Interview Record admitted into the case record and what the witness said during the interview, providing that those inconsistencies were relevant to the charges. The Presiding Judge

announced that the date for the crime scene visit was 30 May 2011 and that this was not a crime scene investigation as defined by the CPC of BiH. It was said that a video recording would be made during the visit which would be publicly shown at the trial.<sup>207</sup>

858. The motion to admit as defense evidence the photographs where the Witness could not identify the Branjevo Farm was dismissed at this stage of the proceedings. The Presiding Judge communicated that the statement the witnesses gave to the police and the ICRC would not be admitted into evidence, but they could be used for the purpose of putting questions to corroborate one's assertions. They have photographs and they could tender them within the defense's case. Likewise, after they obtain the statement the witness gave before the ICTY in *Krstić and Blagojević*, the Panel would rule on the motion for additional cross-examination of Witness Z-2.

859. On 17 June 2011, Attorney Romanić submitted that he deemed the principle of imminent and verbal presentation of evidence had been violated, since the wording of the evidence offered by the Prosecution was not presented in its entirety but in segments. In addition, the Prosecutor had had a duty to collect both inculpatory and exculpatory facts and circumstances, while Defense Counsel argued that he failed to consider the BiH Army side and their involvement in the Srebrenica conflict. The Presiding Judge thereafter announced that the Defense was in possession of evidence and was aware of its contents, so should the Defense insist the presented evidence could be re-presented, adding that the Defense teams for other accused had already agreed to the method of presentation, whereupon Counsel Romanić expressed his agreement too.

860. At the same hearing the Prosecution abandoned the examination of the offered witness Slavko Perić since he was accused of the same event before this Court, and in view of his right not to answer the questions that would lead to self-incrimination he could not respond to any questions of the Prosecutor, so his summoning was no longer purposeful.

861. On 6 September 2011 the Presiding Judge reminded the Defense for Franc Kos to file questions they would like to put to the accused Ratko Mladić, notifying them that the defense's summons for Radovan Karadžić as a witness was denied by the ICTY Decision of 9 August 2011 as there was an overlapping of the circumstances they were supposed to give evidence about and those they were charged with before the ICTY. On 23 December 2011, upon a motion by Defense Counsel for Stanko Kojić, the Presiding Judge announced that the motion to summon Radovan Karadžić as a witness was dismissed, while in relation to the witness Ratko Mladić there was information that his health was bad; the summoning of the witness Dragica Prodanović who was in the Netherlands was also denied since the witness Ratko Tomić had been summoned to give evidence in relation to the same circumstances, the evidence of Expert Witness

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<sup>207</sup> Upon consent of the parties and defense counsel, the recording was admitted into evidence as the Court's exhibit S-4.



Zoran Stanković, Ph.D. in relation to the killings of Serbs in the Srebrenica municipality was also denied because it was not subject of the charges, whereupon the Defense still insisted on this motion, while the hearing of the witnesses Biljana Plavšić, Milorad Pelemiš and Aleksa Buha was granted. After that, at the hearing of 16 February 2012 Defense Counsel Romanić notified the Court that he abandoned the summoning of the witnesses Luka Petrović and Aleksa Buha.

862. On 21 February 2012, Attorney Romanić notified the Court in writing that he abandoned witness Željko Vujadinović and in his stead offered Janko Velimirović, a leader of the group for the preparation of technical documentation in the RS Government Commission for Investigation of Events In and Around Srebrenica. At the hearing, Attorney Tomić confirmed that he was aware of the letter from the Tribunal that he had to specify the documents for Pećanac so he waived the motion for Pećanac's diaries admitted into evidence before the ICTY, as well as the motion to summon Huseinović and Vilić as witnesses, and moved for summoning of the editor and author of the article speaking about the Detachment.

863. At the hearing of 14 October 2011, the Presiding Judge communicated that pursuant to Article 5 of the LoTC, 5 Reports by Dean Manning and his trial transcripts in Popović case were admitted into evidence. The Defense objected that the reports were imprecise, that they do not include pictures where indicated and that they do not include the original reports by experts on whose bases Manning made the summaries. They objected to the admission of transcripts because they were not used in cross examination. Finally, the Panel ruled to admit into evidence the trial transcripts of Dean Manning, finding that the evidence meets formal requirements under Article 5 by virtue that it is a record of a sworn testimony of a witness cross-examined before the ICTY.

864. It cannot though be neglected that this is a witness who drafted an expert analysis wherefore the distinction between his status of a witness or an expert witness is not absolutely clear. Accordingly, the Panel decided to use parts of the testimony which include first-hand knowledge of facts, which implies that the testimony is not admitted pursuant to Article 6(3), but with the foregoing restrictions pursuant to Article 5 of the LoTC, and it was said that the Court would give its final evaluation of their quality in the Verdict, which means only after all evidence and arguments of the parties and defense counsel would have been presented.

865. Thus, when considering the motion, the Panel took into account that five reports by Dean Manning are a summary of all expert analyses and scientific conclusions of forensic examinations conducted in relation to mass graves. Parts of the reports also include data on DNA analysis and identification of bodies related to the re-association of the bodies whose parts were disarticulated in the reburial process.<sup>208</sup> Since the expert witness explained at the hearing the method he used in his work by bringing together analyses of experts from relevant fields and during the examination explained the

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<sup>208</sup> Established facts no. 16 and 17 in the Panel's Decision of 12 January 2011.

process of exhumation, re-association of bodies and links between primary and secondary graves, the Panel admitted these parts of the Reports of Dean Manning. The Panel did not admit those parts which include evaluations or conclusions by this witness who does not have adequate professional qualifications in forensics, anthropology or forensic medicine.

866. On 28 October 2011, the Defense abandoned witness Dragica Prodanović. The summary of the Witness' statements admitted by the Court's decision was read, whereupon the Defense contested this method of presentation of evidence, whereupon the Presiding Judge communicated that the hearing would be postponed since the Defense insisted that the statements be read in their entirety.

867. At the main trial hearing of 29 November 2011, the Defense contested the video footage of the celebration of patron-saint's day in Vlasenica showing inflammatory speech by General Živanović and Kačavenda. The authenticity was contested because the footage was found on the web-site of the Patriotic League. The Defense deemed it irrelevant, while the Prosecution submitted that this material evidence had been forwarded from the ICTY and obtained in the search of the dwellings of Major Pećanac. At the same hearing, the Panel communicated that they allowed the admission of the footage into evidence, and the evaluation of its probative value would be given in the verdict in the part where the Panel invoked this footage in the context of real intent of the VRS Main Staff leadership.

868. On 6 December 2011 a digression was made in the Defense's case because the offered witness Hakija Meholjić was ill, and he would be summoned at the end of the Defense's case, however Defense Counsel subsequently abandoned him. At the same hearing the Presiding Judge communicated which evidence of the Defense for Stanko Kojić would not be admitted. Accordingly, the evidence pertaining to the Accused's conduct in 1992 was not admitted because an expert analysis had been conducted in that regard. Two offered witnesses were supposed to give evidence about the same circumstances, and it was decided to summon only one.

869. At the hearing of 8 December 2011, a disqualification of Judge Mira Smajlović was sought, whereupon a Special 24(7) Panel of the Court of BiH passed a decision dismissing the motion as inadmissible since it exceeded the deadline under Article 32(4) of the CPC of BiH.

870. At the hearing of 27 March 2012 where expert witnesses Omer Ćemalović and Mirjana Musić were examined, Defense Counsel Romanić challenged the Report submitting that the expert witnesses had gone beyond the scope of the order, maintaining his earlier motion for confrontation of expert witnesses, which the Panel dismissed, finding that only after a super expertise a clear and unequivocal conclusion could be drawn about the capacity of the accused Stanko Kojić, both at the time of the crime commission and at the time of the trial.

871. At the same hearing a decision was made not to summon witness Zoran Mišković because he had no relevant information about the events subject of the charges, just as

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Jugoslav Petrušić had only second-hand knowledge about it. It was ruled that witness Jugoslav Petrušić would not be penalized, as sought by Defense Counsel Romanić, submitting that he evaded to answer certain questions, because the Panel found that the witness was entitled to protect himself from self-incrimination, on which he had been properly advised by the Panel before he started testifying, since pursuant to Article 86(2) of the CPC of BiH he was entitled not to answer certain incriminating questions.

872. The motion of Attorney Romanić for the admission of two CDs with recorded TV programs was dismissed because it is not a method to question their credibility. The motion by the accused to summon witnesses Srećko Kalinić and Mićo Poletan to testify about newspaper headlines was also dismissed because they were not relevant to the case.

873. The Motion by Attorney Aščerić to admit the statement of the accused Zoran Goronja into evidence was also dismissed because the analogy with the accused Vlastimir Golijan could not be applied as his statement was admitted by the Panel since he had admitted his guilt, while the accused Goronja remained silent, which makes the situation procedurally unacceptable. The Panel advised the Accused that if he wanted to present certain facts he could be heard as a Defense Witness, which is when he would be examined directly and cross-examined about the circumstances he testified about.

874. At the hearing of 10 April 2012, the Panel communicated that they would not admit statements of Stanko (Savanović) Kojić which were retold by another person, in this case it was an officer of the State Security Service of Serbia Zoran Mišković (the statements were made in the manner that Z. Mišković retold what persons who had given statements to him had told him, including the accused Stanko Kojić. It was ruled like this because the accused Stanko Kojić testified in his case presenting his knowledge of the events at Branjevo, wherefore the statements where a third person interpreted words of the accused are inadmissible as hearsay evidence. At the same hearing, the admission of evidence pertaining to the actions and recruitment of Stanko Kojić following the relevant time period was not allowed, because it pertains to the events which are not subject to the indictment.

875. At the hearing held on 17 April 2012, the Panel ruled on the admissibility of the Defense's evidence listed in the written brief by Defense Counsel Drinić. Consequently, the exhibits numbered OI-14 through OI-46 itemized in Annex B were admitted into evidence. Among the exhibits offered by the Second-Accused, the exhibit marked as OII-33 was admitted while the remaining documents were returned back to the Defense. Among the exhibits proffered by the Defense for the Third-Accused the exhibits numbered in Annex B as OIII-20 and 21 were admitted while the remaining proffered evidence was dismissed. Finally, the summoning of expert witness Dr. Zoran Stanković was dismissed because the Court could not reach him and arrange a date for his appearance, though several attempts had been made. The Witness is preoccupied with the presidential election campaign and had too many commitments.

876. On the same day the motion by Defense Counsel for the accused Zoran Goronja,

Attorney Petko Pavlović, for the admission of the Report by Expert Witness in Demography Prof. Stevo Pašalić, Ph.D., and his trial testimonies in ICTY cases *Mičo Stanišić and Stojan Župljanin*, was dismissed.

877. On 24 January 2012, the Court received a submission where Defense Counsel for the accused Zoran Goronja moved for the admission of the Report by Expert Witness Demographer Prof. Stevo Pašalić, Ph.D. into evidence pursuant to Article 6 of the LoTC.

878. Defense Counsel further submits in this brief that the Report was drafted, presented and admitted as an exhibit in the ICTY cases *Prosecutor v. Mičo Stanišić and Stojan Župljanin*. As Defense Counsel submits, the Report was admitted in ICTY cases as 1D541<sup>209</sup>.

879. The possibility to respond was given to Defense Counsel for the other accused and the Prosecutor, who objected to the admission of the Report into evidence in this case in this submission of 5 April 2012.

880. The Panel finds that the motion by Defense Counsel for the accused Zoran Goronja, Attorney Petko Pavlović, lacks merit.

881. Specifically, Article 3(1) of the LoTC stipulates the following: “*Evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH.*” This Article defines the use of evidence collected by the ICTY in proceedings before the courts in BiH. For this purpose the LoTC was conceptualized as a *lex specialis* in order to eliminate the risk that evidence collected by the ICTY could be unusable pursuant to the CPC, and it defines the procedure and requirements for the use of such evidence in other courts as well. In the foregoing context the Panel finds that the Expert Witness’ Report, sought to be admitted, does not meet the requirements under Article 3(1), since it does not include the electronic certification by the Tribunal, in other words it is not known whether it was obtained or used pursuant to the ICTY Statute and Rules.

882. With regard to the admission of verbal presentations by the Expert Witness before the Trial Chambers in ICTY cases *Mičo Stanišić and Stojan Župljanin*, the Court refers to Article 6(1) of the LoTC, which foresees that „*The statement of an expert witness entered into evidence in any proceedings before a Trial Chamber of the ICTY shall be admissible as evidence in domestic criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings*”. Paragraph 3 of this Article also foresees that “*The courts shall admit an expert witness’ testimony by using the transcript of the testimony he/she gave before a Trial Chamber in any other case, providing that he/she had been previously warned about his rights and obligations regarding his testimony, and providing the testimony relates to the existence or non-existence of facts which themselves relate to the case in question*”.

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<sup>209</sup> ICTY Decision of 10 May 2011, upheld on 17 May 2011 (on a motion for reconsideration by the ICTY Office of the Prosecutor).

883. In this case the Defense submitted to the Court the trial transcripts of oral evidence of the Expert Witness before the ICTY Trial Chambers in cases *Stanišić and Župljanin*, but in English, thus the Panel was unable to examine if when giving evidence the Expert Witness had been advised of his rights, in other words if the requirements under Article 6 of the LoTC had been met. After that, at the hearing of 17 April 2012, Defense Counsel of the accused declared that they had not had the possibility to file transcripts in BCS, the Panel could not accept or use the previously filed transcripts in English.

#### **8. Trial without attendance of the accused Stanko Kojić**

884. On 11 January 2011 the accused Stanko Kojić left the trial, indicating that his head was buzzing. Following an expert examination of the accused's health, on 25 January 2011 the Panel communicated that they admitted the Report by Expert Witness Alma Bravo-Mehmedbašić because it was given in accordance with the rules of profession, so if the accused, duly summoned, did not attend main trial hearings without any excuse, a decision would be passed to proceed without the attendance of accused Stanko Kojić (who, as the Report indicated, was malingering a mental illness).

885. On 1 February 2011 the accused Kojić left the main trial again because his ears were buzzing and he was feeling tired, thus the Presiding Judge publicly announced that the trial would be continued without his attendance whenever he refused to appear/left the hearings without any excuse though duly summoned.

886. On the same day a written decision was passed indicating that whenever he refused to appear at the scheduled hearings he was duly and timely summoned to or whenever he left the main trial without any objective reasons, the trial against the accused Stanko Kojić would be continued or held without his attendance. The Accused is entitled to appear before the Court at all times.

887. The decision was also made that the hearings held without the attendance of the Accused would be attended by his Defense Attorneys and the Court would notify the Accused on the course of the trial without any delay by serving the Accused with the recording of the entire hearing on the same day the hearing was held, as well as with the written record when prepared.

888. Throughout the trial, the Court would reconsider the decision and assess its further implementation.

889. The Indictment of the Prosecutor's Office of BiH no. T20 0 KTRZ 0000538 10 of 10 August 2010, confirmed on 12 August 2010, charges the accused Franc Kos, Stanko Kojić, Vlastimir Golijan and Zoran Goronja with the crime of Genocide in violation of Article 171 of the Criminal Code of Bosnia and Herzegovina (CC of BiH) as read with Article 180 of the CC of BiH.

890. Under the Decision of the Court of BiH, the accused Stanko Kojić was ordered into custody pursuant to Articles 123 and 131 of the CPC of BiH in order to ensure his attendance and a successful conduct of the proceedings, while he is currently detained in the Detention Unit of the Kula Correctional and Penal Facility in Istočno Sarajevo.

891. In the course of the trial thus far the accused Stanko Kojić insisted on several occasions to leave the main trial due to his health problems, specifically heavy headaches and ear buzzing. In this regard, at the motion of his Defense Counsel the Court ordered an expert examination of the Accused in order to determine his capacity to stand a criminal trial.

892. Following the order, a team of expert witnesses comprising Ass. Prof. Alma Bravo-Mehmedbašić, Ph.D, and Senadin Fadilpašić, M.Sc. drafted a Report which was verbally presented by Expert Witness Alma Bravo-Mehmedbašić at the hearing on 26 January 2011. The Report concluded that the Accused did not suffer from a temporary or permanent mental illness, but from ... which did not render him unfit to follow or actively participate in the proceedings.

893. In addition, the Expert Witnesses concluded that the accused deliberately malingered based on his own conception of a mental illness, with the aim of evading to participate in the criminal proceedings. The Court admitted the Expert Witnesses' Report and at the same hearing notified the attendees of the decision. At the hearing, the Presiding Judge also indicated the possibility to pass a procedural decision in this regard.

894. Since the Panel accepted the explanation by the Expert Witnesses that the Accused was prone to malingering and that with the same excuse as before (ear buzzing and fatigue) the accused Stanko Kojić had abandoned the main trial hearing on 1 February 2011, the Court ruled as stated in the Operative Part for the reasons that follow.

895. First and foremost, in the course of the trial so far the accused Stanko Kojić had been acquainted with the charges against him, attended the main trial hearings to which he had been duly summoned and had been cautioned about the consequences of his failure to respond, but due to malingering, as confirmed by the Reports of expert witnesses, on several occasions he refused to attend or abandoned the main trial hearings. Unjustified failure to attend by the accused Stanko Kojić on 1 February 2011 implies that deliberately and voluntarily he waived his right to attend trial.

896. Consequently, in this case the issue is raised if it is justified to proceed with the main trial without the attendance of the Accused when he does not want to appear in the Court, while his failure to appear is motivated exclusively by private, subjective reasons, whereas the accused is not objectively prevented from attending the trial.

897. The Criminal Procedure Code does not regulate such a situation, nor is there a provision preventing the Court to proceed with the trial even without the attendance of the accused in this situation. However, this procedural situation requires the

consideration of the fundamental rights and freedoms of the Accused in view of national and international legal standards and jurisprudence.

898. Thus Article 247 of the CPC of BiH defines that „*An accused shall not be tried in absentia*“. However, the analyses of this provision leads to the conclusion that the term „*in absentia*“ refers to the cases of a total absence of the accused from the proceedings either because it is impossible to secure his attendance in the proceedings, or for some reason he is unavailable to the law-enforcement agencies e.g. he is a fugitive or in hiding, his whereabouts are not known, or he is not aware that there are proceedings pending against him, or there are other difficulties to notify him about the proceedings or ensure his attendance.

899. In this case, there are evidently terminological differences between a trial in absentia and a trial without the attendance of the accused, because a trial in absence implies a situation where the attendance of the accused is frustrated for the reasons which he may not govern or are beyond his control, while a trial without the attendance of the accused implies that the accused is in a position to attend, but he does not want to.

900. Despite the Court's warning, the accused Stanko Kojić proceeded to malingering the alleged health problems, thus it is obvious that his free will is the only reason to proceed with the trial without his attendance. Accordingly, the free will and choice of the accused not to attend the trial, though he was not objectively prevented, is the only impediment, and its removal is exclusively under his control.

901. On the other hand, delaying the proceedings until the accused changes his mind would be absolutely contrary to the interest of fairness, efficiency and judicial economy, in particular since the two co-accused in this case are entitled to guarantees of a fair trial and a trial within a reasonable time pursuant to Article 6(1) of the ECHR, and they duly respond to the Court's summons and attend each hearing.

902. The Court further considered all circumstances of the case, including: the conduct of the accused in making his decision not to be in attendance of the trial, in particular if his conduct was deliberate, voluntary, whereby he clearly waived his right to attend the trial; potential length of such delay; if the accused, though absent, is or wants to be legally represented at the trial or if by his conduct he waived his right to legal counsel; if legal counsel for the accused can obtain instructions during the trial from the accused and to what extent they can present their case; while taking into account inculpatory evidence, general public interest, and specific interest of the victims and witnesses to hold the trial within a reasonable time.

903. The Court notes that Defense Counsel Milan Romanić was in attendance of the hearing held on 1 February 2011, and together with the co-counsel he can in the future also come forward on behalf of the Accused if he agrees. Thus the Court respected all the time the procedural rights of the Accused and will continue to notify him on a regular basis of the course of the proceedings against him.

904. With regard to the foregoing it should be recalled that the European Court of Human Rights on several occasions clearly stressed that the appearance of the accused at his trial is of capital importance<sup>210</sup>, but the European Court of Human Rights has never found a violation of the Convention in cases where the Accused was duly notified on the forthcoming trial, but chose not to appear on his own will and the trial was continued. The Court notes that the attendance of the accused at the trial is substantially his right, rather than his duty, so that based on the case law of the Court in Strasbourg the trial was fair in all the situations where the accused was generally notified, and the proceedings commenced or were continued in a regular manner.

905. Consequently, in cases when the accused has all the necessary guarantees to exercise his right to appear and intervene during the trial, it is unjustified to consider that a trial in his absence is a violation of a right of the accused. Therefore, practical interests of fairness are in favor of the decision to commence or continue criminal processing without the attendance of the accused. Such a decision is in line with the requirements of the “rule of law”, and basic conceptions of the Council of Europe and European Convention of Human Rights, namely fairness, democracy, respect of human rights and public interest.

906. The foregoing substantiates the contention that no criminal law system should be open for a possibility that an accused willfully obstructs his/her trial, since by complying with the principle of equality of arms the Court has a duty to ensure fairness, not only to the Defense but the Prosecution too.

907. For this reason, the Court opines that if an accused, who is of age and based on a doctor’s report mentally and physically fit to participate in the court’s proceedings, decides on his own not to appear, in principle there is no objective reason that his decision should suspend the criminal proceedings until he potentially decides to appear.

908. In view of the foregoing, the Court concludes that the accused Stanko Kojić is entitled to attend the trial. However, though duly notified and aware of the consequences of his failure to respond, or failure to appear in the Court, he waives this right deliberately, citing his general health problems/discomfort as an obstacle to his following the trial, whereas those problems were not substantiated by doctor’s reports.

909. Based on the foregoing, the Panel ruled to proceed with the trial without the attendance of the Accused, in all cases when he unjustifiably refuses to appear or abandons the main trial hearing to which he was duly summoned/appeared, which shall not be considered a trial in absentia for the purpose of Article 247 of the CPC of BiH.

910. The accused will be notified on the course of the proceedings conducted against him, and should he change his decision at any time, he will be provided with access to the Court pursuant to Article 6 of the European Convention of Human Rights.

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<sup>210</sup> See e.g. *Poitrimol vs. France*, Judgment of 23 November 1993, Par. 35; *Pelladoah vs. Netherlands*, Judgment of 22 September 1994, Par. 40; *Lala vs. Netherlands*, Judgment of 22 September 1994, Par. 33.



911. After the decision was passed, hearings were held without the attendance of the Accused on 12 March 2011, when a part of the trial without the attendance of the accused Stanko Kojić was held. The trial without the attendance of the accused was also continued on 12 April, 19 April 2011, 13 May 2011, 3 and 14 June 2011, a part of the trial on 6 September 2011. The inquiry with the prison physicians revealed that he did not report to the infirmary or complained about the problems he claimed he had at the trial. On those occasions the accused mainly claimed that his “head was buzzing”, whereupon the Panel communicated that pursuant to the earlier decision the trial should be continued and Defense Counsel would attend the trial, while the Accused would be provided with the trial transcript and audio recording.

912. In his brief of 8 November 2011, Defense Counsel for the accused notified the Court that he submitted that too frequent removal of the Accused from the courtroom violated his right to a defense as safeguarded by Article 6(1) and (3) of the ECHR.

913. At the hearing of 10 April 2012, the accused Stanko Kojić was removed from the courtroom because of his insults thrown at Defense Counsel Tomić. The decision was passed pursuant to Article 242(2) of the CPC of BiH, since during the presentation of Defense Counsel the accused made inappropriate comments to him, insulting him, and proceeded with it even after he had been warned, so he was eventually removed from the courtroom.

## **9. Exclusion of the Public**

914. The public was excluded from a part of the main trial while Defense Counsel Pavlović examined a protected witness in relation to the witness’ credibility, in order to prevent the risk of revealing witness’ identity.

915. On 29 November 2011, the public was excluded from a part of the trial while witness Petar Cvjetinović presented certain information about the threats made to him because of taking the witness stand in this case. Defense Counsel for the second-accused moved at the trial for the confrontation of witnesses Petar Cvjetinović and Zijad Žigić and Z1.

916. The Motion by Defense Counsel for the accused Vlastimir Golijan, to exclude public during the reading of the statement on admission of guilt, was dismissed since there are no circumstances stipulated by Article 235 of the CPC of BiH, because this Panel’s standpoint is that the contents of the statement will not lead to a disturbance of public law and order or infringe on the accused’s privacy. Accordingly, at the main trial hearing the statement on admission of facts by the accused Vlastimir Golijan of 4 March 2011 was read out, and was admitted as Defense Exhibit O III-1.

## **10. Exceeding the 30 day deadline**

917. Throughout the proceedings the Trial Panel sat in an unchanged composition, however pursuant to Article 251(2) of the CPC of BiH: *“The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defence attorney, the Panel may decide that in such a case the witnesses and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene investigation and the testimony of the witnesses and experts given at the prior main trial be used instead”*.

918. On 17 June 2011 the parties and defense counsel expressed their individual consent with the exceeding of the 30-day deadline in the further course of the proceedings, due to annual leaves. This consent was re-stated at the hearing of 8 July 2011.

919. Accordingly, in both cases the Panel had the consent of the parties and defense counsel that witnesses and expert witnesses would not be re-summoned, but rather their statements given at prior hearings would be used. Consequently, the Panel notes that the main trial in this case was held pursuant to the quoted Criminal Procedure Code provision, because the only exceeding of the set deadline took place with consent of the parties and defense counsel.

## **11. Crime Scene Visit**

920. In view of numerous expert analyses carried out in this case, it needs to be noted that none of them unconditionally bound the Panel in the final decision-making, nor was any opinion of an expert witness admitted if shown to be in absolute contravention of the facts established during the trial.

921. In order to acquaint themselves better with the facilities and roads the witnesses in this case gave evidence about, the Panel decided to visit the crime scene on 31 May 2011. On this occasion Defense Counsel for all accused were allowed to visit the area of Srebrenica, Potočari and the Bratunac- Konjević Polje road. The locations of elementary school in Bratunac, where members of the 1<sup>st</sup> Company were quartered, and the elementary school in Konjević Polje where members of the 2<sup>nd</sup> Company were quartered, were noted for the Record on this occasion.

922. The Panel also visited the location at the Konjević Polje junction where at the relevant time a warehouse and a hangar of the Kravica Farming Cooperative where the mass executions subject of the Amended Indictment were committed. This procedural

activity was documented for the Record of the Crime Scene Visit, and audio/video recorded<sup>211</sup>.

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<sup>211</sup> This was admitted as the Court's Exhibit S-1 at the main trial hearing of 20 February 2012, when video footage of the crime scene visit was shown.

## XI. ANNEX B

### A. PRESENTED EVIDENCE

#### 1. List of the heard Prosecution witnesses

	Name	Witness stand taken on:	Note:
1	Rajko Babić	11/01/2011	
2	Jevto Bogdanović	01/02/2011	
3	Zoran Bojić	04/02/2011	
4	Milorad Birčaković	08/02/2011	
5	Z-8	11/02/2011	Testimony from the courtroom, pseudonym. Ban on publicizing a photo or video recording.
6	Slobodan Đajić	16/02/2011	
7	Novica Đerić	16/02/2011	
8	Zoran Gajić	22/02/2011	
9	Bogoljub Gavrić	25/02/2011	
10	Milovan Đokić	15/03/2011	
11	Nebojša Jeremić	15/03/2011	
12	Dragan Jovanović	15/03/2011	
13	Mile Tejić	18/03/2011	
14	Mičo Manojlović	29/03/2011	
15	Stanko Kostić	01/04/2011	
16	Savo Stević	01/04/2011	
17	Milivoje Nikolić	12/04/2011	
18	Radivoje Lakić	19/04/2011	
19.	Jakov Stevanović	19/04/2011	
20	Saliha Đuderija	19/04/2011	
21.	Juroš Jurošević	26/04/2011	
22.	Cvijetin Ristanović	26/04/2011	
23.	Petar Salapura	13/05/2011.	
24	Z2	24/05/2011	Testimony from the courtroom, pseudonym. Ban on publicizing a photo or video recording.
25	Rifet Kešetović /expert witness/	03/06/2011 14/06/2011	
26.	Dragan Todorović	14/06/2011	
27	Z-6	01/07/2011	Testimony from the courtroom, pseudonym. Ban on publicizing a photo or video

			recording public.
28	Z-5	08/07/2011	Testimony from the courtroom, pseudonym. Ban on publicizing a photo or video recording.
29	Z-1	16/08/2011 23/08/2011 02/09/2011	Testimony from the courtroom, pseudonym. Ban on publicizing a photo or video recording.
30	Z-4	20/09/2011	Testimony from the courtroom, pseudonym. Ban on publicizing a photo or video recording.
31	Dean Mannig	11/10/2011	Video conference link
32	Joseph Kingori	01/11/2011	Summoned by the Defense to be cross-examined

## **2. List of the admitted Prosecution's documentary evidence**

**T-1 and T-1a** Compilation of video footage of Srebrenica and the footage transcript

**T-2** – UN Security Council Resolution 743, 21 February 1992

**T-3** – UN Security Council Resolution 819, 16 April 1993

**T-4** – UN Security Council Resolution 821, 28 April

**T-5** – UN Security Council Resolution 824, 6 May 1993

**T-6** - UN Security Council Resolution 836 of 4 June 1993

**T-7** - Photo documentation by the State Investigation and Protection Agency, Elementary School "Nikola Tesla"

**T-8** - Witness Interview Record of Rajko Babić, 13 and 14 September 2005

**T- 9 ( a, b, c )** – Photographs presented to witness Jevto Bogdanović in direct examination, signed and marked by the Witness

**T- 10** Vehicle Log Sheet to the name of Milorad Birčaković no. 22-1463/95

**T- 11** Witness Interview Record, witness Novica Đerić, SIPA, no. 17-04/2-04-2-511/07, 29 May 2007

**T- 12** Photograph shown to witness Zoran Gajić, marked and signed by the Witness

**T- 13** Photograph shown to witness Zoran Gajić , marked and signed by the Witness

**T- 14** Photograph shown to witness Bogoljub Gavrić, marked and signed by the Witness

**T- 15** Photograph shown to witness Bogoljub Gavrić, marked and signed by the Witness

**T-16** Record of Interview of witness Mićo Manojlović, SIPA, no. 17-04/2-04-2-692/07, 2 July 2007

**T-17** Photograph shown to witness Stanko Kostić, marked and signed by the Witness

**T-18** Photograph shown to witness Cvjetin Ristanović, marked and signed by the Witness

**T-19** Death Certificate issued to the name of Ljubo Ivanić, no. 07/1-202-1-899/2011, 10 April 2011

**T-20** Photograph shown to Witness Z-2 at the main trial on 24 May 2011

- T- 21** Witness Interview Record, Ljubo Ivanić, no. 12-04-2-417/08, 17 April 2008, read out at the hearing of 10 May 2011
- T- 22** Transcript from 8th session of Bosnian Serb Assembly of 25 February 1992
- T- 23** Report of the 1<sup>st</sup> Bratunac Light Brigade HQ, 4 July 1994, signed by Slavko Ognjenović
- T- 24** VRS Main Staff, Operational Directive 4, 02/5-210, Ratko Mladić, 19 November 1992
- T- 25** Directive to continue combat actions 7.1, no. 02/2-15, 31 March 1995, VRS Main Staff, signed by Gen Ratko Mladić
- T- 26** Daily Combat Report by the 1st Bratunac Light Brigade, 03-253-96, 4 July 1995
- T- 27** Daily Combat Report by the 1st Bratunac Light Brigade, 03-253-99, 9 July 1995 Vidoje Blagojević
- T- 28** Press Release by the UN Security Council Resolution Chairman, UN Doc. S/PRST/1995/32, 14 July 1995
- T - 29** Report of the Dutch Royal Military Police, 2 August 1995
- T- 30** UNMO Report, 10 July and 11 July 1995
- T- 31** Document of the Zvornik Public Security Center, no. 277/95, 12. July 1995, signed by Dragomir Vasić
- T- 32** Order by the RS MoD Zvornik Branch, 02-78/95, 12 July 1995, Stevan Ivanović
- T- 33** Order by the RS MoD Zvornik Branch, 02-79/95, 12 July 1995, Stevan Ivanović,
- T- 34** Order by the RS MoD Zvornik Branch, 02-21/3640/95, 13 July 1995, Momčilo Kovačević
- T- 35** Order by the VRS Main Staff to form the 10th Sabotage Detachment, 18/19-1625, 4 December 1995, signed by Ratko Mladić
- T- 36** Order by the 10<sup>th</sup> Sabotage Detachment HQ, 123-2/95, 10 July 1995
- T- 37** Order of the Zvornik Brigade HQ, no. 17/379, 10 December 1994
- T- 38** Order to appoint Milorad Pelemiš, VRS Main Staff Assistant Commander, no. 23/14-162, 4 September 1994
- T- 39** Order by the VRS Main Staff to reorganize, man, equip and train sabotage/reconnaissance units and MP units, 12/45-605, 29 May 1995
- T- 40** Questionnaire for active military personnel, Milorad Pelemiš
- T- 41** Certificate no. 153-2/95, 3 October 1995 (List of the 10<sup>th</sup> Sabotage Detachment Members entitled to firewood transportation to their homes)
- T- 42** Death Certificate issued to the name of Dragan Koljivrat, Trebinje Municipality, no. 03/1.8-202-8-14/10, 9 March 2010
- T- 43** Notebook with handwritten contents
- T- 44** Charts of military equipment issued to reserve personnel
- T- 45** Invoices for the period July 1995 - January 1996 (related to food supplies procured to the 10<sup>th</sup> Sabotage Detachment)
- T- 46** Video footage of the 10th Sabotage Detachment anniversary celebration
- T- 47** Photograph shown to Witness Z-1 in direct examination
- T -48** Contract on Admission into VRS to the name of Dražen Erdemović
- T- 49** Photograph shown to Witness Z-1 in direct examination
- T- 50** Report on Command Responsibility in VRS Main Staff, 9 June 2006 (Butler)
- T- 51** Srebrenica Military Narrative /revised/, 1 November 2006 (Butler)
- T- 52** Forensic Investigation of the Pilica (Branjevo Farm) Grave Site, 15 June 1998

(William Haglund)

- T- 53** Report on Autopsies of Human Remains from Čančari Road 12 Site (C.H. Lawrence)
- T- 54** Exhumations in Eastern Bosnia in 1998, 12 May 1999 (Richard Wright)
- T- 55** Intercepts of 13/07, 16/07, 17/07 and 22/07 1995
- T- 56** Notebooks kept during the radio intercepts
- T- 57** Interim Combat Report, Zvornik Brigade HQ, no. 06/217-1, 15 July 1995
- T- 58** Interim Combat Report, Zvornik Brigade HQ, no. 06/218, 16 July 1995
- T- 59** Table indicating location from where blindfolds and ligatures were recovered
- T- 60** Photo documentation - ligatures recovered from 1196 though 2001
- T- 61** Photographs of blindfolds and ligatures from Branjevo Farm
- T- 62** Order to evacuate Srebrenica enclave (provision of buses), no. 22/226, 12 July 1995, signed by Milenko Živanović
- T- 63** The Zvornik Brigade Duty Operations Officer Log
- T- 64** Dispatch Note, ,no. 277/95, 12 July 1995, signed by Dragomir Vasić
- T- 65** Dispatch Note, Zvornik Public Security Center, no. 283/95, 13 July 1995, signed by Dragomir Vasić
- T- 66** Order by the Drina Corps HQ, no. 03/156-11, 13 July 1995
- T- 67** Report by the Special Police Brigade, no. 284/95, 13 July 1995
- T - 68** Statements of witness Dražen Erdemović before the ICTY, 12 August 1998 (Summary of statements of 24/06, 25/06, 26/06, 27/06 1997)
- T- 69** Statement of witness Dražen Erdemović before the ICTY, 3 November 2001
- T- 70** Trial Transcript of witness Dražen Erdemović in Popović case, 4 July and 5 July 2007
- T -71** Trial Transcript of Witness Z-3, 14 April 2000
- T -72** Report by Expert Witness Rifat Kešetović
- T – 73** Photograph shown to Witness Z-4 in direct examination on 20 September 2011
- T – 74** Reports by Dean Manning (5 in total) dated November 2007, June 2007, 2003, 2001 and May 2001, and two trial transcripts of Dean Manning in Popović case
- T – 75** Trial Transcript of Joseph Kingori, 31 March 2000 and 3 April 2000, in Krstić case before the ICTY
- T – 76** Trial Transcript of Miroslav Deronjić, 28 October 2003 in Momir Nikolić case before the ICTY
- T – 77** Trial Transcript of Robert A. Franken, 4 April 2000, in Krstić case before the ICTY.
- T – 78** Trial Transcript of Leendert Cornelis van Duijn, 27 September, 28 September, 29 September 2006 in Popović et al. case before the ICTY.
- T – 79** Trial transcript of Vicentius Egbers, 18 October, 19 October and 20 October 2006, in Popović et al. case before the ICTY
- T – 80** Trial transcripts of Momir Nikolić in Blagojević case, 19/09, 22/09, 23/09, 25/09, 26/09, 29/09, 30/09, 01/10 2003, and the statements Momir Nikolić gave to ICTY investigators as a witness, 15 December 1999 and 28 May 2005
- T- 81** Trial transcripts of Dragan Obrenović in Blagojević case, 01/10, 02/10, 06/10, 07/10, 08/10, 09/10, 10/10 2003, and the statements he gave to ICTY investigators as witness 2 April 2000, 4 June 2003 and 5 February 2004
- T- 82** Record of Interview of Franc Kos as a suspect, Prosecutor's Office of Bosnia and Herzegovina, 9 August 2010 with the transcript

**T- 83** Directive for further combat operations no. 7, Supreme Command of Armed Force of Republika Srpska, no. 2/2-11, 8 March 1995,

**T- 84** ICMP Summary Report, Sarajevo, 19 February 2009

**T- 85** Final List of the Identified as on 11 April 2012, CD (PIP List)

**T- 86** Document of the Drina Corps HQ (instruction), no. 17/450, 15 April 199

### **3. List of the heard Defense witnesses**

	Name	Witness stand taken on
1	Sara Manojlović ( I )	20/09/2011
2	Velimir Popović ( I )	27/09/2011
3	Ibran Mustafić ( I )	14/10/2011
4	Zijad Žigić ( I i II )	14/10/2011
5	Miće Milanović ( I )	18/10/2011
6	Zoran Manojlović ( I )	18/10/2011
7	Dalibor Đukić ( I )	25/10/2011
8	Fikret Muslimović ( I )	04/11/2011
9	Zvonko Bajagić ( I )	04/11/2011 29/11/2011
10	Accused Franc Kos ( I )	08/11/2011 11/11/2011 22/11/2011
11	Petar Cvjetinović	29/11/2011
12	O-1	06/12/2011
13	Accused Kojić Stanko ( II )	09/12/2011 17/04/2012
14	Želimir Knežević ( II )	13/12/2011 20/12/2011
15	Srđan Brezo ( II )	16/12/2011
16	Confrontation ( II ) Z-1 and Petar Cvjetinović Žigić Zijad and Petar Cvjetinović	23/12/2011
17	Zoran Jovanović ( II )	24/01/2012
18	Šefko Hodžić ( II )	27/01/2012
19	Ratko Kovačević (expert witness II)	03/02/2012
20	Bogdan Stojaković (expert witness II)	03/02/2012
21	Slobodan Kosovac (expert witness II)	21/02/2012 28/02/2012
22	Janko Velimirović ( II )	24/02/2012
23	Jugoslav Petrušić ( I )	16/03/2012 23/03/2012

### **B. DOCUMENTARY EVIDENCE OF THE DEFENSE**



## **1. Documentary evidence of the Defense for the accused Franc Kos**

- 01-1-** Two Witness Interview Records for Zijad Žigić, 16 February 2007 and 18 September 2011, interviewed by Attorney Dušan Tomić
- 01-2-** Witness Interview Record for Mićo Milanović, 11 September 2011, interviewed by Dušan Tomić
- 01-3-** Official Report by Attorney Dušan Tomić, 22 September 2011 related to his conversation with witness Zoran Manojlović
- 01-4 –** Witness Interview Record for Daliborko Đukić, 24 October 2011, interviewed by Attorney Dušan Tomić
- 01-5** Information on the developments and actions by certain individuals processing the fall of Srebrenica
- 01-6** Special Informative Report by the Supreme Command Staff, 6 April 1993
- 01-7** Witness Interview Record for Fikret Muslimović, interviewed by Attorney Dušan Tomić, 31 October 2011
- 01-8** An excerpt from the book titled “War Arguments and Reminiscences”, Fikret Muslimović, pp. 296-304.
- 01-9** Witness Interview Record Franc Kos, 8 November 2011, interviewed by Attorney Dušan Tomić
- 01-10** Witness Interview Record for Zvonko Bajagić, interviewed by Attorney Dušan Tomić, 21 October 2011
- 01-11** Witness Interview Record for O-1, interviewed by Attorney Dušan Tomić, 27 November 2011
- 01-12** Witness Interview Records for Petar Cvjetinović, interviewed by Attorney Dušan Tomić, 1 September and 12 September 2011
- 01-13** Order, Deputy Minister of the Interior, no. 64/95, 10 July 1995
- 01-14** Dispatch Note, VRS Main Staff, Sector of Intelligence and Security Affairs, no. 12/45-94, 1 February 1995, signed by Zdravko Tolimir
- 01-15** Dispatch Note, Special Units Corps of the Yugoslav Army, no. 623-2, 2 March 1994, signed by Miodrag Panić
- 01-16** Deployment Order (entering of the 10<sup>th</sup> Sabotage Detachment in Srebrenica), VRS Main Staff, Sector of Intelligence and Security Affairs, no. 12/45-770, 21 June 1995, signed by Petar Salapura
- 01-17** Fax – Report by the UN DutchBat concerning the events in Srebrenica, 24 June 1995
- 01-18** Written Document, 13 July 1995, no. 924
- 01-19** Dispatch Note, VRS Main Staff, Intelligence Administration, no. 12/45-872, 15 July 1995, signed by Petar Salapura
- 01-20** Dispatch Note, Drina Corps, Intelligence Department, no. 17/896, 12 July 1995, signed by Radislav Krstić
- 01-21** Dispatch Note, VRS Main Staff, Sector of Intelligence and Security Affairs, no. 12/45-1524, 14 January 1996, signed by Petar Salapura
- 01-22** Photograph (satellite image) of Kozluk area, two photographs, 5 July 1995 and 17 July 1995

- 01-23** Photograph (satellite image) of Donja Pilica – Branjevo area, two photographs, 5 July 1995 and 17 July 1995
- 01-24** Photograph (satellite image) of Cerska area, the photographs, 5 July 1995 and 27 July 1995
- 01-25** Photograph (satellite image) of Potočari area, 13 July 1995
- 01-26** Photograph (satellite image) of Sandići area, 13 July 1995 at 14.00 hrs
- 01-27** Photograph (satellite image) of Kravica area, 13 July 1995 at 14.00 hrs
- 01-28** Photograph (satellite image) of Branjevo area, 17 July 1995
- 01-29** Photograph (satellite image) of Branjevo area, 17 July 1995
- 01-30** ICRC ID Card, issued to the name of Franc Kos, no. 282377
- 01-31** ID Card, Mol RS, Bijeljina, no. 318/97, issued on 4 February 1997, to the name Mitar (son of Živko) Mičić
- 01-32** Photograph of Milorad Pelemiš, Stanko Kojić and John Doe, signed by Jugoslav Petrušić ( )
- 01-33** Photograph of Jugoslav Petrušić and Stanko Kojić, signed by Jugoslav Petrušić (while at the witness stand)
- 01-34** Photograph of Stanko Kojić and John Doe, signed by Jugoslav Petrušić (while at the witness stand)
- 01-35** Photograph of Stanko Kojić and an individual nickname Grk (Greek), (signed by Jugoslav Petrušić (while at the witness stand)
- 01-36** Photograph of Stanko Kojić and an individual nicknamed Voja Amerikanac /Voja the American/, (signed by Jugoslav Petrušić (while at the witness stand)
- 01-37** Certificate on arms issued for custody of Milorad Pelemiš, Military Post no. 7403, no. 99-62/98, 22 October 1998, signed by Dragomir Pećanac
- 01-38** Documents on the 10<sup>th</sup> Sabotage Detachment, pp. 154-185, 188-191, 92-93, 96-103
- 01-39** Document sent to the Ministry of the Interior of Serbia, State Security Department, subject „Recapitulation of group 999“, Belgrade, 24 September 1999
- 01-40** Document sent to the Ministry of the Interior of Serbia, State Security Department, subject „Involvement of Quasi-state Security Service engineered provoking of 1994 Republika Srpska bombing“, Belgrade, 3 July 2000
- 01-41** Document sent to the Ministry of the Interior of Serbia, State Security Department; subject „Probable CIA Scenario in the territory of Serbia and, its operating via a Branch in Greek“, Belgrade, 1 December 1999
- 01-42** Document titled as Petar Salapura Pero, signed by Zoran Mišković, 17 March 2012
- 01-43** Document sent to the Ministry of the Interior of Serbia, State Security Department, subject „Srebrenica. Capturing and repossession of Srebrenica. Free Movement of Naser Orić in Belgrade. Arrangement of the French and Americans about the fall of Srebrenica. Massacre of civilians commissioned“, Belgrade, 8 January 2000
- 01-44** Document titled Milorad Pelemiš, Belgrade, 22 March 2000
- 01-45** Document sent to the Ministry of the Interior of Serbia, State Security Department, subject “Report on existence of documents concerning the Liberation Operation”, Belgrade 2 February 2000
- 01-46** Tape recording of the 292<sup>nd</sup> session of RBiH Presidency held on 11 August 1995
- 01-47** Birth Certificate of Franc Kos, and the Citizenship Certificate of Franc Kos.

## **2. Documentary Evidence of the accused Stanko Kojić**

- O2-1** Witness Interview Record of Zijad Žigić, 28 September 2011, interviewed by Attorney Milan Romanić
- O2-2** Witness Interview Record of Želimir Knežević, 5 December 2011, interviewed by Attorney Slobodan Perić
- O2-3** Geographical Map of the Srebrenica area, used by witness Želimir Knežević at the witness stand
- O2-4** Witness Interview Record of Srđan Brezo, 28 September 2011, interviewed by Attorney Milan Romanić
- O2-5** Decision of the Republika Srpska Government to Establish the Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995
- O2-6** Chronology of the events in Srebrenica (chart)
- O2-7** Set of maps (11 in total) graphic representation of the events
- O2-8** Individual map, movement of the column
- O2-9** Document of the 28<sup>th</sup> Division HQ, no. 04-84/95, 2 June 1995
- O2-10** Document of the 28<sup>th</sup> Division HQ, no. 01-148/95, 28 June 1995
- O2-11** Document, Mol RS, Public Security Department in Bijeljina, no. 303/95, 13 July 1995
- O2-12** Document of the Drina Corps HQ, no. 03/156-11, 13 July 1995
- O2-13** Report of the 28<sup>th</sup> Division, Commander Nijaz Mašić, 30 June 1995
- O2-14** Witness Interview Record Zoran Jovanović, interviewed by Attorney Slobodan Perić, 20 January 2012
- O2-15** Book titled „Srebrenica, what really happened“ authored by Zoran Jovanović and Alexander Dorin
- O2-16** Part of the book titled „Unsealed Envelope“ authored by Šefko Hodžić, pp. 243-282
- O2-17** Report of a team of expert witnesses (prof. Ratko Kovačević, Ph.D. and prof. Bogdan Stojaković, Ph.D.) with accompanying records concerning the health condition of the accused Stanko Kojić
- O2-18** Report of the Republika Srpska Government – Commission for Investigation of the events in and around Srebrenica between 10 and 19 July 1995, June 1994; Supplement to the Report of 11 June 2004 about the events in and around Srebrenica between 10 and 19 July 1995, 15 October 2004
- O2-19** Expert Report by Slobodan Kosovac „10<sup>th</sup> Sabotage Detachment of VRS“, 23 January 2012; Brochure titled „Sabotage Operations“, Amour Units Training Center „Petar Drapšina“, 1972
- O2-20** Decision, Presidency of the Republic of Bosnia and Herzegovina, and Order, Presidency of Bosnia and Herzegovina, declaring general public mobilization on the RBiH, Official Gazette of RBiH, 20 June 1992
- O2-21** Letter, Prosecutor’s Office of Bosnia and Herzegovina, no. T 20 0 KT-RZ 000 1145 06, 18 January 2012
- O2-22** Decision, President of Republika Srpska Radovan Karadžić, no. 01-1351/95, 11 July 1995

- O2-23** Statement of civilian authority representatives about implementation of the agreement on evacuation of the civilians from the enclave, no. 07-27/95, 17 July 1995
- O2-24** Overview of the population size per municipalities, Srebrenica Municipality, Civilian Protection HQ, no. 04-45/95, 11 January 1995
- O2-25** Overview of losses of the Republika Srpska Army, for the period 1-9 May 1992 until 25 February 1995
- O2-26** Daily Combat Report /6 in total/, 6 April 1995; 27 April 1995; 9 May 1995; 13 May 1995; 22 May 1995; 2 June 1995;
- O2-27** Document, VRS Main Staff, no. 03/4-1616, 11 July 1995
- O2-28** Theatre of War Situation Report by the VRS Main Staff to the RS President no. 03/3/193, 12 July 1995
- O2-29** Theatre of War Situation Report by the VRS Main Staff to the RS President no. 03/3/196, 15 July 1995
- O2-30** Theatre of War Situation Report by the VRS Main Staff to the RS President no. 03/3/197, 16 July 1995
- O2-31** Theatre of War Situation Report by the VRS Main Staff to the RS President no. 03/3/199, 18 July 1995
- O2-32** Theatre of War Situation Report by the VRS Main Staff to the RS President no. 03/3/201, 20 July 1995
- O2-33** UN Report (Air Force Based in Tuzla) on the number of displaced persons from Srebrenica, 4 August 1995
- O2-34** Judgment of the District Court in Bijeljina no. 012-0-K-000 007, 31 July 2007
- O2-35** Certificate issued to the name of Stanko Safanović, Federation Ministry for Defensive-Liberation War Veterans and Disabled Persons Affairs, Department for Compulsory Military Service Affairs of the Central Bosnia Canton, no. 07/26-01-03/1-9-292/12, 4 April 2012
- O2-36** Document, Federal National Defense Secretariat, no. 2794, 28 December 1973 (List of diseases, wounds, injuries, lesions, physical disabilities and handicaps serving as the basis for evaluation of fitness to serve in JNA)

### **3. Documentary evidence for the Defense of the accused Vlastimir Golijan**

- O3-1** Statement of Facts, the accused Vlastimir Golijan, 4 April 2011
- O3-2** Witness Interview Record for Z-1, Prosecutor's Office of Bosnia and Herzegovina, 29 April 2010, with the transcript
- O3-3** Contract on admission of Vlastimir Golijan in the VRS based on a short-term contract
- O3-4** Order, Supreme Command Staff of the RBiH Army Forces, no. 02/398-2, 16 March 1993
- O3-5** Notification, Supreme Command Staff of the RBiH Armed Forces, no. 02/520-2, 20 April 1993
- O3-6** Report, BiH Army General Staff, no. 1-1-/7-169, 28 May 1996
- O3-7** Order, BiH Army General Staff, no. 1/825-84, 17 June 1995
- O3-8** Document, R BiH Army, 2<sup>nd</sup> Corps HQ, no. 02/1-67/4, 28 June 1995
- O3-9** Document, R BiH Army, 28<sup>th</sup> Division HQ, no. 03-183-231, 1 July 1995
- O3-10** Document, R BiH Army, 2<sup>nd</sup> Corps HQ, no. 02/1-604/123, 2 July 1995
- O3-11** List of War Criminals known to the Command who Committed War Crimes and suspected to be in Srebrenica
- O3-12** Birth Certificated issued to the name of Vlastimir Golijan
- O3-13** Discharge Letter to the name of Vlastimir Golijan, VRS Main Staff Hospital
- O3-14** Birth Certificate to the name of Ognjen Golijan
- O3-15** Birth Certificate to the name of Jovana Golijan
- O3-16** Letter of Attorney Rade Golić to the Prosecutor's Office of BiH, 29 July 2010
- O3-17** Letter of Attorney Rade Golić to the Prosecutor's Office of BiH, 23 August 2010
- O3-18** Document, R BiH Army, 2<sup>nd</sup> Corps HQ, no. 04/1-105/603, 8 July 1995
- O3-19** Transcript of interview of Miroslav Deronjić by Jean-Rene Ruez, 4 February 1998
- O3-20** Marriage Certificate, no. 04-201-3-27/2010, 7 September 2010
- O3-21** Certificate, High School Center „Milorad Vlačić“ in Vlasenica, no. 05-529/10, 2 September 2010

### **4. Court's evidence**

- S-1** Expert Witness Alma Bravo-Mehmedbašić, heard as a Court's Expert Witness, 25 January 2011. Report by a team of expert witnesses, 24 January 2011, tendered as the Court's exhibit
- S- 2** Expert Witness Zorica Lazarević, heard as a Court's Expert Witness, 28 October 2011. Report by a team of expert witnesses, 11 July 2011, tendered as the Court's exhibit (with Supplement to the Report, 22 August 2011)
- S- 3** Expert Witnesses Senadin Ljubović and Mirjana Musić, heard as Court's expert witnesses, 27 March 2012. Report by a team of expert witnesses, 18 March 2012 tendered as the Court's exhibit into the Trial Record.