

BOSNA I HERCEGOVINA



БОСНА И ХЕРЦЕГОВИНА

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СУД БОСНЕ И ХЕРЦЕГОВИНЕ

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Case no.: S1 1 K 017213 14 Kri

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Before the Trial Panel composed of Judges: Mira Smajlović, Presiding  
Mediha Pašić, member  
Zoran Božić, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

SLAVKO SAVIĆ

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TRIAL VERDICT

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**Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:**

Mr. Vladimir Simović

**Counsel for the accused Slavko Savić:**

Ms. Nevenka Vitomir, Attorney

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## IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel composed of Judge Mira Smajlović, as the President, and Judges Mediha Pašić and Zoran Božić, as members of the Panel, with the participation of the Legal Advisor-Assistant Sanja Salčić-Sabljića, as the minutes-taker, in the criminal case conducted against the accused Slavko Savić, pursuant to the Indictment of the BiH Prosecutor's Office No. T20 0 KT RZ 0009378 14, brought on 5 November 2014 and confirmed on 7 November 2014, charging the Accused with the commission of the criminal offense of War Crimes against Civilians in violation of Article 173(1)(e) of the Criminal Code of BiH (CC BiH), as read with Article 180(1) of the same Code, having held a public trial, from which the public was excluded, in part, in the presence of Mr. Vladimir Simović, Prosecutor of the BiH Prosecutor's Office, the accused Slavko Savić and his Defense Attorney, Ms. Nevenka Vitomir, on 29 June 2015, handed down and publicly announced, in the presence of the parties and in the absence of the Accused's Counsel, the following:

### VERDICT

#### **The Accused:**

Slavko Savić, son of Branko and mother Dana, née Milovanović, born on 21 March 1963 in the place of Kremeš, Vogošća municipality, with permanent residence in ....., St. ...., Personal Identification Number (PIN): ....., ethnicity ....., citizenship ....., married, father of three children, car-body mechanic by occupation, unemployed, indigent, compulsory military service completed in 1982/1983, no prior convictions, no other criminal proceedings pending against him

I

### IS GUILTY

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

During the wartime in Bosnia and Herzegovina and the armed conflict between the Army of the Republic of Bosnia and Herzegovina, on the one side, and the Republika Srpska

Army, on the other side, in the territory of the Vogošća municipality, as a member of the Vogoščanska Light Infantry Brigade of the Republika Srpska Army, in violation of Article 3 of the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949, in as much as:

1. On an unidentified day in May 1993, in the afternoon hours, in the place of Semizovac, Vogošća municipality, he arrived at the front of the family house of the injured party A, who was standing there with her minor daughter, approached the injured party A, took out his pistol and put it under the injured party's chin, and holding the pistol in that manner forced her into his white vehicle, make VW "Golf II", parked in the close vicinity, and after the injured party A sat on the seat next to the driver, he sat on the driver's seat, drove the vehicle away, pulled it over to the bus stop in the place of Krivoglavci; thereupon he ordered the injured party A to strip off her clothing, and after taking off his trousers, grabbed her fiercely by her hair, pushed her head down between his legs, and forced her into oral sex, holding her head pressed down all the time, whereupon he put down the co-driver's seat, lied above the injured party A and raped her;

2. On an unidentified day in June 1993, in the afternoon hours, in the place of Semizovac, Vogošća municipality, armed with a pistol, he arrived at the injured party A's family house, where she was present with her minor daughter, ordered the injured party A to enter his vehicle, which she did, and sat on the codriver's seat, whereupon the Accused drove the vehicle away and pulled it over to the bus stop in the place of Krivoglavci, ordered the injured party A to undress while taking off his trousers, grabbed the injured party A by her hair, pulled her head down between his legs and forced her into oral sex, whereupon he put down the codriver's seat, lied above the injured party A and raped her;

Whereby he committed the criminal offense of War Crimes against Civilians under Article 142(1) of the Criminal Code of the Socialistic Federative Republic of Yugoslavia<sup>1</sup> (CC SFRY).

Wherefore, applying Article 142(1) of the CC SFRY and Article 285 of the CPC BiH, as well as Articles 33, 38 and 41 of the CC SFRY, the Court imposes on him a

## **S E N T E N C E**

### **of imprisonment for a term of 8 (eight) years**

#### **II**

Pursuant to Article 198(2) of the CPC BiH, as read with Articles 200 and 202 of the Law on Obligations<sup>2</sup>, the Court hereby grants the claim under property law filed by the injured party A, and orders the Accused to pay to the injured party A the total amount of KM 30,000.00 by way of compensation for the non-pecuniary damages comprising the following:

- KM 16,000.00 for mental pains caused by violation of liberty or personal rights, and;
- KM 14,000.00 for mental pains due to the diminished quality of life,

all within the 90 (ninety)-day deadline following the finality of the Verdict, under the threat of forcible enforcement.

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<sup>1</sup> Decree with the Force of Law of 11 April 1991 relating to the take-over of the Criminal Code of the Socialistic Federative Republic of Yugoslavia under which the Criminal Code of SFRY ("*Official Gazette of the SFRY*", nos. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90 and 45/90), is adopted as a Republic law.

<sup>2</sup> *Official Gazette of the SFRY*", nos. 29/78, 39/85, 45/89 and 57/89 and *Official Gazette of the Republic BiH* nos. 2/92, 13/93 and 13/94, and *Official Gazette of the Federation of BiH*, no. 29/03.

### III

Pursuant to Article 188(4) of the CPC BiH, the Accused shall be relieved of the duty to reimburse the costs of the criminal proceedings, which will be paid from within the budget appropriations.

## REASONING

### I. INTRODUCTION AND CASE HISTORY

1. The Indictment of the BiH Prosecutor's Office (Prosecution), No. T20 0 KT RZ 0009378 14 of 5 November 2014, that was confirmed on 7 November 2014, charged Slavko Savić with the commission of the criminal offense of War Crimes against Civilians under Article 173(1)(e) of the CC BiH, as read with Article 180(1) of the same Code.

2. At the plea hearing held on 8 December 2014, the Accused pled not guilty of any Counts of the Indictment, whereupon the case was transferred to the Trial Panel.

3. The main trial in this case commenced on 4 February 2015 by reading the Prosecution's Indictment No. T20 0 KT RZ 0009378 14 of 5 November 2014.

4. In the course of the main trial, tendered was the evidence by the Prosecution, the Defense and the evidence of the injured party, as listed in Annex to the Verdict, which forms its integral part. The main trial was completed on 8 June 2015 by the presentation of closing arguments of the parties, the injured party's Attorney and the Accused's Counsel.

### II. CLOSING ARGUMENTS

#### A. PROSECUTION'S CLOSING ARGUMENT

5. Mr. Vladimir Simović, Prosecutor of the BiH Prosecutor's Office, who acted in the case, referred in his closing argument to both the course of the criminal proceeding and

the tendered evidence evaluated both individually and in combination.

6. With regard to the general elements of the criminal offense at issue, the Prosecutor argued that it was proven that there was an armed conflict between the Army BiH (ARBiH) and the Republika Srpska Army (VRS), specifically in the territory of the Vogošća municipality. This is a common fact the Defense did not dispute either. In addition, it was proved that the criminal acts charged against the Accused were categorized as grave breaches of common Article 3 of the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949. As to the victim's status, the Prosecutor submitted that, at the time when the offense was committed, witness A-the injured party was a civilian, which the Defense also did not contest.

7. As to the Accused's status, the Prosecutor argued that it was proven that the Accused committed the criminal act charged against him as a member of the VRS. The Prosecutor particularly pointed to the Vob-8 records and the fact that the witnesses for both the Prosecution and the Defense confirmed the Accused's status. In addition, the Prosecutor concluded that the tendered evidence supported the Indictment allegations relating to the individual charges. Along this line, the Prosecutor argued that the injured party had identified the Accused during the investigation, that she stated she had seen the Accused frequently and that she clearly indicated the Accused's full name. Witness E also clearly identified the Accused. Therefore, there was no dispute during the proceedings in relation to the Accused's identity.

8. The Prosecutor further argued that the witnesses confirmed that, during the war, the injured party had lived with her daughter as a single parent. The injured party testified about the events she had experienced, which was confirmed by the other Prosecution witnesses examined. As to the chronology of the events, witness A testified that the first incriminating act was committed in May and the latter in June 1993; that the Accused drove her away by his vehicle make *Golf*, as also confirmed by the witnesses E and Razija Sejdić, to whom witness E subsequently came running. The Defense did not challenge any of the above mentioned facts. As to witness E's statements and the fact that she was present when her mother was abducted, the Prosecutor argued that this was a deeply traumatic event for her which she did not forget, and that she confirmed



that the incriminating incident had occurred in 1993.

9. Witness A.S. also confirmed that the criminal act at issue indeed occurred, and that the injured party confided in her in relation to the rape. Also, witness B confirmed that, after the war, the injured party confided in her in relation to the rape. Along this line, witness C also testified that the injured party told her she had been raped. In addition, the injured party also confided in witness Razija Sejdić. All the foregoing shows that the testimonies of the Prosecution witnesses are mutually consistent. The Prosecutor concluded that the Defense witnesses did not bring into question the finding of facts ensuing from the testimony of the Prosecution witnesses.

10. The Prosecutor argued that the Accused's defense was based on presenting the injured party as a promiscuous person engaged in various activities, and that the Defense provided a false impression of the facility in which the injured party used to work, which is contrary to the provisions of the CPC BiH. Thus, witness D testified that (entertaining) parties were organized in the catering facility where the injured party worked (in the rooms on the upper floor), where "all sorts of activities" were performed. This Defense's theory was refuted by the examination of the Prosecution witness Miloš Jovanović (the then owner of the catering facility), who denied any such possibility. Also, Defense witness Milorad Rajić testified that no parties whatsoever were organized. Witness D further testified that, during the war, the injured party was (engaged in intimate relations) with other persons too, but mentioned no names. Considering her claims, that she was on friendly terms with the injured party, witness D should have (personally) known the persons in question. Therefore, witness D is not considered as a credible witness, and the essential part of her testimony remained unsupported. Also, witness D testified that the injured party was not pregnant. This indicates that their relationship was not that confidential, which is contrary to what witness D tried to present.

11. Therefore, the Prosecutor ultimately concluded that the quality of the Prosecution evidence is stronger and more credible than that of the Defense's evidence, and that the Accused's acts satisfied the elements of the criminal offense charged against him. The Prosecutor therefore moved the Court to find the Accused guilty and impose on him an appropriate prison sentence, consistent with the Court of BiH's case law established in

similar cases.

**B. CLOSING ARGUMENT OF THE INJURED PARTY'S ATTORNEY**

12. In her closing argument, the injured party's Attorney, Ms. Nedžla Šehić, specified a claim under property law in the amount of KM 30,000.00, the footing of which is in the Finding and Opinion of the expert witness in neuropsychiatry, the provisions of the CPC BiH and the Law on Obligations (LoO). According to the injured party's Attorney, the injured party developed many symptoms diagnosed as ..., resulting from the torture to which the injured party was subjected during the period 1992-1995, wherein the rape by the Accused was the most traumatic experience for the injured party.

13. Pursuant to the psychiatric evaluation findings, the injured party's quality of life has been diminished by 25% as a result of the traumatic event, which is why the injured party moved the Court to pay to her, by way of compensation of non-pecuniary damages, the amount indicated in the specified claim under property law. The injured party's Attorney referred to the Orientation Criteria adopted by the Supreme Court of the FBiH, adding that there are no criteria when it comes to the victims of torture, bearing in mind that the act of rape in time of war is more severe than the rape in time of peace. The Attorney underlined that the injured party is entitled to reparation.

14. In addition, the injured party's Attorney ultimately submitted that, due to her status of a protected witness, it is almost impossible for the injured party to pursue her claim under property law in a civil action, which is why she moved the Court to grant the injured party's claim under property law in the above referenced manner.

**C. CLOSING ARGUMENT OF THE ACCUSED'S DEFENSE**

15. In her closing argument, Ms. Nevenka Vitomir, Defense Attorney for the accused Slavko Savić, primarily contested the legal qualification of the criminal offense charged against her client, pointing to the time when the offense was committed and to the fact that at the time of its commission, the CC SFRY, as the law more lenient to the Accused, was in effect.

16. According to the Defense, the Prosecution failed to prove, during the proceedings, that the Accused indeed committed the criminal acts charged against him.

17. Also, in its closing argument, the Defense pointed to the contradictions in the injured party's testimony, and concluded that it is unclear why the injured party had waited for 15 years to report this incident. In addition, the Defense Attorney pointed to the statements that the injured party gave to both the Women Victims of War Association (the Association) and the Prosecutor's Office, and their inconsistencies in relation to her testimony at the hearing.

18. According to the Defense, witness Dušan Čadžo's testimony also shows that the allegation that the injured party was raped is false. Witness Čadžo described the encounter between the Accused and the injured party after the war, which occurred in 2000 or 2001. In addition, the Defense Attorney submitted that it is obvious from the Accused's employment record card that he was not employed with the "Pretis" Company but rather with the "TAS" Company, which indicates that the injured party's claims are untrue.

19. The Defense Attorney further emphasized that the injured party returned to Semizovac voluntarily during the war; that Miloš Jovanović and Velo Antić protected her, which is why her statements that she had no one to seek help from or report the incident to are illogical. In its closing argument, the Defense also contested the testimonies of the Prosecution witnesses A, S and C, having concluded that their testimonies contradicted the injured party's testimony. Also, the Defense Attorney argued that the testimonies of witnesses B and E were calculated to support the injured party, which is why they cannot be credited.

20. The Defense also contested the testimony of witness Razija Sejdić. The Defense argued that the documentary evidence showed that the Accused did not work at the military police check-point in 1993, and that therefore the witness's husband could not have pointed to him at this site. Contrary to the foregoing, the Defense Attorney emphasized the testimony of the Defense witness Milorad Rajić. This witness testified that the injured party had a love affair with Velo Antić throughout the entire war period, which is also consistent with witness D's statement. In addition, the Defense contested

the injured party's statement that she was under the compulsory work obligation, working in an inn. The Defense submitted that witnesses Miloš Jovanović and D confirmed that the person known as Špiro had not ran any inn, and that the Defense's exhibit (the letter from the Višegrad municipality) confirms that the injured party was not under the compulsory work obligation. Furthermore, Counsel emphasized the fact that witness D's testimony shows that she was the injured party's good friend, and that they were on good terms also even after the war, which is why it is unclear why the injured party told her nothing about the referenced incident after the war.

21. Counsel further contested this evidence by an expert evaluation carried out by an expert witness in neuropsychiatry. Counsel argued that this was an unlawful piece of evidence on which the court cannot base its decision, pursuant to Article 10 of the CPC BiH. Counsel also referred to Article 96 of the CPC BiH, as well as to Article 20(1)(f) of the same Code. Counsel concluded that the fact is that neither the Accused with his Counsel, nor the injured party with her Attorney can issue any order for the conduct of an expert evaluation. Also, Counsel submitted that Article 197 of the CPC BiH was violated during the proceeding given the fact that the Court did not examine the Accused about the facts relating to the request filed by an authorized person.

22. Finalizing her closing argument, Counsel moved the Court to acquit the Accused of the charges and dismiss the claim under property law as ill-founded. Out of caution, Counsel pointed to the existing extenuating circumstances on the part of the Accused (as ensues from the status in the case record), and moved the Court to relieve the Accused of the duty to reimburse the costs of the criminal proceedings.

23. The accused Slavko Savić stood by his Counsel's closing argument. The Accused added that he is not guilty, that he was not present in the Semizovac territory, and that he moved to the Semizovac territory no sooner than his reassignment to the military police.

### **III. PROCEDURAL DECISIONS**

#### **A. EXCLUSION OF THE PUBLIC**

24. At the (resumed) hearing held on 16 February 2015, following the examination of the parties and the Accused's Counsel, the public was excluded while the injured party testified, in order to protect her personal and intimate life pursuant to Article 235 of the CPC BiH. The Court took into account that the witness is actually the victim of the criminal offense of rape.

25. The public was also excluded from the hearing held on 23 February 2015, after the examination of the parties and the Accused's Counsel, and also during the examination of the Prosecution witnesses B and C, in order to protect the injured party's private life as well as in the witnesses' interest.

26. In addition, the public was again excluded, in part, from the hearing held on 30 March 2015 during the examination of the Defense witness D in relation to the proposed protective measures. This witness was thereupon granted protective measures, primarily relating to the protection of her identity.

27. For the same reasons (also existent at the hearing held on 16 February 2015), the public was further excluded from the hearing as well as from that held on 4 May 2015, when the injured party was re-examined following the examination of the parties and the Accused's Counsel.

28. Also, the public was excluded from the hearing during the examination of the Prosecution witnesses E and Razija Sejdić, following the examination of the parties and the Accused's Counsel. The Court found that this was necessary in order to protect the injured party's intimate life since the witnesses were the injured party's daughter (witness E), and the neighbor (Razija Sejdić, who is illiterate and thus could not read the names of the witnesses who were granted protective measures).

## **B. GRANTING PROTECTIVE MEASURES TO WITNESSES**

29. Deciding upon the Prosecution's Motion No. T20 0 KTRZ 0009378 14 of 14 January 2015 to grant protective measures to the witness-injured party pursuant to Article 91 of the CPC BiH and Article 12 and Article 3(1) and (2) of the Law on the Protection of Vulnerable Witnesses and Witnesses under Threat<sup>3</sup> (Law on the Protection of Witnesses), on 19 January 2015 the Panel issued a decision declaring confidential all personal details of the witnesses for whom the protective measures were sought, which will not be disclosed in public. In addition to this protective measure, the other measures include: protection of the witness's face and ban on the public disclosure of the information relating to her physical appearance, through the media or any other public information media. At the same time, the Decision granted to the referenced witness the pseudonym A in the proceedings before the Court of BiH.

30. In rendering its decision, the Panel also took into account the procedural guarantees to which the Accused is entitled, on the one hand, and the need to protect the witness, on the other. Having considered the circumstances under which the offense was committed, the Panel concluded that the statutory requirements set forth in Article 3(2) of the Law on the Protection of Witnesses were satisfied, and that the witness in the concrete case is a traumatized witness. The reasonability of imposing such measures is supported with the reasons stipulated in both the Motion and the attachments enclosed with it, considering that the witness's statement shows her expressed readiness to testify in this case, and that her testimony is very important in relation to the circumstances charged against the Accused. The Panel therefore found it justified to protect the witness's personal details in the above referenced manner.

31. Further deciding on the Prosecution's Motion No. T20 0 KTRZ 0009378 14 of 17 February 2015 to grant protective measures to witness B, as specified at the hearing held on 23 February 2015, when the motion to grant the same protective measures to witness C was orally submitted, and by applying the above referenced provisions, the Panel issued a decision, on 23 February 2015, declaring that all personal details

pertaining to the witnesses for whom protective measures were sought are confidential and will not be publicly disclosed. An integral part of this measure is also the protection of the witnesses' physical appearance, namely the ban on disclosure of information on their physical appearance through the media, or any other means of public information. At the same time, the witnesses, whose personal details are contained in the confidential part of the Motion, or the case record, were under the referenced Decision granted the pseudonyms B and C in the proceedings before the Court of BiH.

32. In addition, having acted upon the proposal of the Accused's Counsel of 5 March 2013 to grant protective measures to witness D by applying the above referenced protective measures, the Panel issued, on 30 March 2015, a decision declaring confidential all the personal details of the witness in relation to whom protective measures were sought under the referenced proposal, and prohibiting their disclosure in the public. An integral part of the measure is also the protection of the witness's face, that is, ban on disclosure of any information pertaining to the witness's physical appearance in the media, or any other means of public information. Also, the witness, whose personal details are contained in the confidential part of the motion, was under the Decision granted the pseudonym D in the proceedings before the Court of BiH.

33. Ultimately, deciding on the Prosecution's Motion of 28 April 2015 to grant protective measures by applying the above referenced provisions, the Panel issued, on 4 May 2015, a decision declaring confidential all the personal details of the witness for whom protective measures were sought, and prohibiting their public disclosure. An integral part of the measure is also the protection of the witness's face, that is, ban on disclosure of any information pertaining to the witness's physical appearance in the media, or any other means of public information. Also, the witness whose personal details are contained in the confidential part of the motion was under the Decision granted the pseudonym E in the proceedings before the Court of BiH.

34. In issuing the foregoing decisions of 23 February 2015 and 4 May 2015, the Panel took into account the fact that the witnesses have significant circumstantial information

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<sup>3</sup> The Law on the Protection of Witnesses under Threat and Vulnerable Witnesses (*Official Gazette* of BiH, No. 03/03, 21/03, 61/04 and 55/05).

pertaining to the circumstances charged against the Accused, which is why the Panel found it justified to protect their personal details, as specified under the referenced Decisions. This is also because the complete functionality of the protective measures granted to the direct victim-the injured party is *de facto* effectuated by the protection of the personal details of witnesses B and E (the injured party's close relatives to whom the Court had earlier granted protective measure of personal details protection under its Decision No. S1 1 K 017213 14 Krl of 19 January 2015), and by the protection of witness C's personal details. The conditions should be secured in which the referenced witnesses will testify about the indirect information passed on them by the injured party, which also includes the injured party's intimate life, given the very nature of the offense. In rendering its decision in relation to witness E, the Panel took into account the circumstances under which the offense was committed, as reasonably suspected, which is why it found that that the requirements set forth in Article 3(2) of the Law on the Protection of Witnesses were satisfied, considering that the concrete case pertains to a traumatized witness.

35. In deciding to grant protective measures to witness D, the Panel was mindful of the fact that the contents of her statement point to the existent reasonable fear that her testimony will probably pose a risk to both her safety and her family's safety. Therefore, the Panel finds that the statutory prerequisites set forth in Article 3(1) of the Law on the Protection of Witnesses were satisfied. Also, the Panel was mindful that the witness's statements show her readiness to testify in the case, but that it is justified, given the contents of her testimony, to protect her personal details, as specified in the Decision itself.

**C. DISMISSAL OF THE PROSECUTION'S EVIDENTIARY PROPOSAL – EXPERT EXAMINATION OF THE INJURED PARTY IN THE PHASE OF THE PROSECUTION'S PRESENTATION OF EVIDENCE**

36. The hearing resumed on 23 February 2015 when the Panel dismissed the Prosecution's evidentiary proposal to subject the injured party to an expert analysis in relation to her claim under property law, also considering the objection the Accused's Defense had along this line.



37. In rendering its Decision, the Panel was mindful of the stage of the proceedings (the Prosecution's evidence presentation). The Panel dismissed the referenced evidentiary proposal given the fact that the proposed expert evaluation was not proposed under the Prosecution's Indictment. As the Panel President orally announced at the hearing, such a decision was exclusively rendered in connection with the stage of the criminal proceeding at issue.

**D. DEPARTURE FROM THE PRESENTATION OF EVIDENCE AND ADMISSION OF PROSECUTION'S ADDITIONAL EVIDENTIARY PROPOSALS**

38. Article 261(2) of the CPC BiH provides that, unless the judge or the Panel, in the interest of the justice, decides otherwise, the evidence at the main trial shall be presented in a certain order.

39. During the main trial, the Panel president allowed certain digressions in the sequence of evidence presentation, pursuant to the powers vested in her under Article 240 of the CPC BiH<sup>4</sup>. Pursuant to the referenced provisions, these procedural situations were entered in the main trial records.

40. At the hearing held on 20 April 2015, Counsel for the Accused stood by her earlier proposal to examine S.L. in the capacity of a Defense witness. At the time, this witness was ill, that is, she underwent a surgery. Considering that the examination of the Defense witness S.L was uncertain (due to her illness), a digression in the evidence presentation was made.

41. Even though the presentation of the Defense evidence was not completed at that moment, given the referenced objective obstacles in its ensuring, the Panel President asked the Prosecutor, pursuant to her duty to ensure that the subject matter is fully examined under Article 239 of the CPC BiH, to comment on the option to propose

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<sup>4</sup> Article 240 of the CPC BiH: "The main trial shall proceed in the order set forth in this Code, but the judge or the presiding judge may order a departure from the regular order of the proceedings due to special circumstances and especially if it concerns the number of accused, the number of criminal offenses and the amount of evidence. The reasons why the main trial is not conducted in the order prescribed by the law shall be entered in the main trial record".

evidence at that particular stage of the proceedings. Along this line, the Prosecutor proposed at the hearing that certain evidence of subjective nature be presented as rebuttal evidence, that is, the Prosecution evidence contesting the Defense arguments by examining the following witnesses: Miloš Jovanović, Nenad Grujić, witness A and the injured party's daughter (witness E). The proposed witnesses were to be examined with regard to the circumstances transpired from the examination of the Defense witness D, given the fact that the Defense previously challenged, through the presentation of its evidence, the nature of the act, and the offense charged against the Accused, as well as the injured party's credibility.

42. Considering that the proposed evidence ensued from the Defense evidence, wherefore it could not be presented during the presentation of the Prosecution evidence, the Panel found that the referenced Prosecutor's proposal was well-founded and therefore granted it.

43. Even though the Accused's Counsel objected to the presentation of additional evidence by the Prosecution, submitting that it was premature considering the fact that the presentation of the Defense evidence had not yet been completed, the Panel decided in the above stated manner. In the process, the Panel relied on the interests of justice and the judicial economy, particularly bearing in mind that the examination of the proposed Defense witness S.L. remained, due to her illness, in the sphere of possibility and uncertainty, as it was unknown whether and when the witness will indeed appear before the Court. Therefore, the Panel found it was justified, in the interests of justice, to alter the sequence of the evidence presentation in the concrete case.

44. Further in the proceedings, on 27 April 2015, the Prosecutor submitted to the Court the altered proposal of the rebuttal evidence, proposing the examination of witness Razija Sejdić instead of witness Nenad Grujić. The Panel granted this evidentiary proposal out of trial, having found that this was a piece of evidence that ensued from the Defense's evidence. The Panel also notified the Accused's Defense that the referenced evidentiary proposal was granted, so that the Accused and his Counsel may make preparations for the examination of the referenced witness scheduled for the hearing to be held on 4 May 2015.

45. In addition, the Panel finds that the Accused's right to a defense was in no way violated by this decision, considering that 15 (fifteen) days lapsed between the hearing held on 20 April 2015 (when the presentation of rebuttal evidence was proposed by the Prosecutor) and the hearing held on 4 May 2015 (when the same witnesses were examined, except witness Razija Sejdić, whose examination was proposed subsequently).

#### **E. PRESENTATION OF EVIDENCE BY THE INJURED PARTY**

46. On 5 February 2015, the Court received the injured party's petition to satisfy a claim under property law, submitted through her authorized representative, Attorney Nedžla Šehić. The reasoning of the petition indicated that, pursuant to Article 193 and Article 194 of the CPC BiH, the injured party files her claim under property law for compensation of non-pecuniary damages resulting from the commission of the criminal offense at issue. To this end, also specified in the referenced injured party's claim was the cumulative amount of the requested single amount of non-pecuniary damages, including mental and physical pains, fear and diminished quality of life, as compensation for the following types of damages: the amount of KM 6,000.00 for the suffered fear; the amount of KM 60,000.00 for mental and physical pains, violation of rights of personality, dignity or morale by torture, inhumane and humiliating treatment; and the amount of KM 14,000.00 for mental pains due to diminished quality of life. Further indicated in the referenced claim was that the claim would be finally specified upon the completion of the forensic expert evaluation of the injured party.

47. In this regard, on 30 March 2015, the authorized representative of the injured party A, Attorney Nedžla Šehić, tendered in the case record the Findings and Opinion of the forensic-psychiatric expert witness conducted in relation to the injured party, drafted by Prof. Dr. Alma Bravo Mehmedbašić.

48. The referenced expert findings and the injured party's claim under property law were forwarded to the parties and the Accused's Counsel, as noted for the record at the hearing held on 20 April 2015. Considering the duty to examine the Accused in relation to the facts pertaining to the petition of the authorized person to satisfy the claim under

property law, the Panel President announced, at the referenced hearing, that both the Accused and his Counsel would comment on the claim at the next hearing.

49. At the hearing held on 4 May 2015, the Accused's Counsel objected to the presentation of the injured party's evidence, primarily to the expert evaluation conducted by the expert witness in neuropsychiatry, as unlawfully obtained evidence. Counsel referred to Article 96 of the CPC BiH, arguing that the injured party could not present such evidence. Counsel had no objections to the reading of the medical documentation pertaining to the injured party. In addition, in her closing argument, Counsel referred to the Supreme Court of the Federation of BiH's position taken in Decision No. 06 0 K 004496 13 KŽ of 24 September 2014, revoking the Judgment of the Cantonal Court in Novi Travnik and referring the case back to the Trial Court for retrial, bearing in mind that the Judgment was based on the evidence on which it should not have been based (the findings and opinion drafted upon a request of the accused's counsel).

50. At the hearing held on 4 May 2015, the Accused and his Counsel were served with the Finding and Opinion of Prof. Dr Alma Bravo-Mehmedbašić pertaining to the injured party. Thereupon, the Panel decided that Prof. Dr Alma Bravo-Mehmedbašić would be examined at the following hearing in the capacity of an expert witness.

51. Even though the Accused's Defense objected to the presentation of evidence by the injured party, concretely to the conducted expert evaluation, the Panel observes that, pursuant to the imperative provisions of Article 195(3) of the CPC BiH, the person authorized to submit the petition to pursue a claim under property law must state his claim specifically and must submit evidence, which the injured party did, having acted in accordance with the referenced provision. In addition, even though an expert evaluation shall be requested in writing by the Prosecutor or Court, pursuant to Article 96(1) of the CPC BiH, as indicated by the Accused's Defense, the Panel finds that the expert evaluation was not unlawfully conducted upon the injured party's request, considering that the expert evaluation at issue is conducted in a specific, adhesion procedure, which does not concern proving the criminal offense and the Accused's criminal responsibility, but rather deciding on the injured party's claim under property law, as the secondary subject matter of the criminal proceedings. Specifically, a claim under property law is, in fact, a civil action and the criminal court decides on the subject matter of the civil

proceedings pursuant to the rules of civil law.

52. Therefore, considering that the injured party's claim under property law aims at the damages compensation, which cannot be determined without conducting an expert evaluation, and that the claim is such that it can be pursued in a civil action, that it originates from the criminal offense, that it is directed against the Accused and that it does not significantly delays the criminal proceedings, the Panel found that the injured party's evidence pertaining to the filed claim under property law should be presented in the interest of justice.

53. Also, the Panel finds that, in this context, the Accused' right to a defense has been respected considering that the injured party's claim under property law, the specified claim under property law and the written Findings and Opinion of Prof. Dr. Alma Bravo-Mehmedbašić were delivered to the Accused's and his Counsel, and that the Defense was given sufficient time to prepare its case, since Prof. Dr. Alma Bravo-Mehmedbašić was examined at the hearing held on 11 May 2015.

54. Also, contrary to the Defense's arguments, the Accused was, pursuant to Article 197(2) of the CPC BiH, given the opportunity to comment on the facts relating to the petition of the authorized person (the injured party) to satisfy the claim under property law. Concretely, as noted above, the documentation pertaining to the referenced claim was delivered to the Accused and his Counsel earlier during the proceedings. At the hearing held on 11 May 2015, the Accused and his Counsel were given the opportunity to cross-examine Prof. Dr. Alma Bravo-Mehmedbašić, and comment on her Findings and Opinion, which the Accused's Counsel actually did.

55. At the hearing held on 11 May 2015, following the direct examination of expert witness, Prof. Dr. Alma Bravo-Mehmedbašić (both the direct and cross-examination, as well as the examination by the Trial Panel), the Panel President explicitly asked the Accused if he wanted to comment on the facts presented that day in relation to the Findings and Opinion of the examined expert witness<sup>5</sup>. This means that the Panel has

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<sup>5</sup> Transcript from the hearing held on 11 May 2015, p. 41.

fully acted in compliance with Article 197(2) of the CPC BiH, which renders ill-founded the objections advanced by the Accused's Counsel.

56. As to the Decision of the Supreme Court of the FBiH, to which the Accused's Counsel referred, the Panel observes that the referenced position of the Supreme Court of the FBiH is not at all applicable to the situation at issue, as it concerns the issue of expert evaluation related to the determination of the elements of a criminal offense. In addition, the expert witness findings submitted by the injured party as evidence concerns the adhesion procedure, rather than the issue of proving the Accused's guilt.

**F. EXPERT EVALUATION OF THE MEDICAL DOCUMENTATION PERTAINING TO WITNESS S.L.**

57. At the hearing held on 11 May 2015, the Accused's Counsel proposed that, bearing in mind the health condition of the proposed Defense's witness S.L.<sup>6</sup>, her statement be taken pursuant to Article 272 of the CPC BiH, namely that the witness be examined out of the Court, which is to say in her house.

58. Considering the information forwarded to the Panel by the Witness Support Section prior to the referenced hearing, that the witness's health condition had become even more complicated, that she was very ill, and that she lived alone, it was questionable for the Panel if the witness was at all capable to testify at the trial.

59. Further during the proceedings, the Accused's Counsel submitted the medical documentation pertaining to this witness. In this regard, on 19 May 2015, the Court received the proposal of the Accused's Counsel to order an expert evaluation of witness S.L.'s capacity to be carried out by expert witness, Mr. Žarko Savić, as well as the proposal that the witness be subsequently examined in her apartment. Having reviewed the referenced proposal, by applying Articles 96, 97 and 269 of the CPC BiH, the Court issued, on 20 May 2015, an order to conduct an expert evaluation of the health of the proposed Defense's witness and her capacity to testify in the case.

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<sup>6</sup> Only initials of the witness's name are given here considering that protective measures were sought for her.

60. Pursuant to the referenced order, expert witness in neuropsychiatry, Mr. Žarko Savić, was to conduct an expert evaluation of the medical documentation (submitted enclosed with the order in relation to the health condition of the proposed Defense's witness), and answer the following questions: is the witness capable to testify in the criminal proceedings concerned due to the established diagnosis, would her health condition be worsened as a result of her testimony should the expert witness establish that she is actually fit to give evidence, and also, is it necessary that the witness be examined at her residence address, or is she able to travel from her place of residence to the Court, in order to testify in the courtroom.

61. Justification for such an order ensues from the fact that the proposed Defense's witness, in relation to whom protective measures were sought to protect her identity, did not attend multiple hearings to which she was dully summoned, under the excuse that she was hospitalized, and that her health condition prevented her from appearing before the Court in the capacity of a witness. Under the same order, the expert witness was provided with a possibility to request direct contact with the proposed witness, in order to provide more comprehensive findings and opinion, only if he concluded that the submitted medical documentation was insufficient for drawing a conclusion on the subject matter of the expert evaluation.

62. The Finding and Opinion provided by expert witness Žarko Savić, submitted in writing on 22 May 2015, indicated that the proposed Defense's witness suffers from ....., which is in its terminal phase, wherefore she is not capable, mentally or physically, to testify in this case, neither in her place of residence nor before the Court, as such an act could worsen the witness's health condition due to the greater mental and physical exertion while giving evidence.

63. Expert witness Dr. Žarko Savić, Chief Physician, was directly examined at the hearing held on 25 May 2015, which is when he stood by his previously submitted Finding and Opinion, and concluded that the proposed witness cannot appear before the Court. In addition, the expert witness submitted that, in case that the witness is in ..... condition, going at the site would be irrelevant, wherefore he did not propose to the Court to visit her on site.

64. Having considered the foregoing state of facts and having accepted the expert witness's findings and opinion as truthful, reliable and grounded on the rules of profession, the Panel found that the Defense's proposal to hear the witness out of the Court was irrelevant. This is so considering that the expert witness clearly indicated in his findings that, due to her health condition, the proposed Defense's witness has neither mental nor physical capacity to give evidence in this case, either in her place of residence or before the Court. Therefore, the foregoing renders ill-founded the proposal advanced pursuant to Article 272 of the CPC BiH, and during the further course of the proceedings Counsel did not insist on examining the witness in the proposed manner.

**G. OBJECTIONS TO THE CONDUCT OF THE PROCEEDINGS - ALLEGED VIOLATION OF THE PRESUMPTION OF INNOCENCE**

65. In her closing argument, Ms. Nevenka Vitomir, the Accused's Defense Attorney, highlighted among other things that the presumption of innocence was violated during the proceedings since the Court absolutely took the Prosecution's side, and that this undoubtedly ensues from the manner in which the witnesses were examined by the Court, as well as from the conclusions drawn by the Panel President during the trial. Also, the way in which it was insisted on the responses of certain witnesses could not leave the impression of impartiality. Along this line, the Defense Attorney pointed to the examination of witness C by the Panel President, and to certain details relating to the examination of the injured party. The Defense Attorney also added that witness E directly insulted the Accused during the trial, and made certain ambiguous threats to him, but the Court neither cautioned her nor was mindful of the external expression of impartiality.

66. The Panel has held that, during the criminal proceedings at issue, neither the presumption of innocence nor the right to a trial before an impartial court were violated, as unreasonably argued by the Defense.

67. The principle of presumption of innocence, stipulated in Article 3(1) of the CPC BiH, was consistently applied during the criminal proceedings, that is, the Accused was considered innocent of the criminal offense charged against him until possibly found guilty under a final verdict. Along this line, the Trial Panel rendered the decision on



the existence of the criminal offense charged against the Accused under the confirmed Indictment, and on the Accused's criminal responsibility, or the decision on the merits in this criminal matter, only upon the main trial completion. The footing of the Trial Panel's decision was the facts and evidence presented at the main trial. The Trial Panel has conscientiously evaluated each item of evidence, individually and in combination, and based on such an evaluation drew the conclusion as to whether a certain fact was proved or not.

68. The proceedings against the Accused were conducted before the Trial Panel orally, directly, pursuant to all the procedural guaranties prescribed in the CPC BiH provisions, fully in compliance with the principle of the presumption of innocence and the principle of equality of arms, bearing in mind that both the Accused's Defense and the Accused himself were enabled, during the trial, to comment on the proposed evidence, pose questions to the witnesses and expert witnesses, provide reasons relating to their evidence, and present the facts and propose evidence in their favor (the Defense's evidence, both documentary and testimonial, was presented during the trial).

69. Pursuant to Article 262(3) of the CPC BiH, the Panel President appropriately controlled the manner and sequence of the witnesses' examination and the presentation of evidence. Also, it was ensured that the examination of witnesses and the evidence presentation is efficient for the purpose of determining the truth, in order to avoid unnecessary loss of time and to protect the witnesses from intimidation and confusion. In addition, during the trial, due account was taken of the fact that, during the evidence presentation, direct, cross and redirect examination are allowed, and of the fact that, pursuant to Article 261(3) of the CPC BiH, the judge or the Panel may at any stage of the examination pose questions to the witness. The referenced right was during the examination of certain witnesses and expert witnesses exercised by the members of the Trial Panel pursuant to the law.

70. In addition, it should be noted that, after the members of the Trial Panel posed certain questions to the witnesses/expert witnesses (following the completion of the direct examination and cross-examination of these persons), the parties and the Accused's Counsel were enabled to pose their questions if such questions ensued from the questions posed by the Trial Panel. It ensues from the foregoing that, during the

proceedings, due account was given to ensuring the efficient examination of witnesses and the presentation evidence in order to establish the truth. The questions posed by the Trial Panel members were aimed at clarifying certain statements given by the witnesses/expert witnesses. These questions resulted from their direct examination, cross-examination and redirect examination, and certainly not from the prejudice that the Accused is guilty, as erroneously presented by the Defense.

71. As to the objections pertaining to the alleged arbitrariness of the Trial Panel, the Panel has held that the doubts into the impression of independence and impartiality must be objectively justified to a certain extent, and that arbitrary conclusions cannot exist in the way as the Accused's Counsel unreasonably argued. Specifically, the Accused's Defense presented no grounds or arguments pointing to the subjective or objective impartiality of the Trial Panel which decided in this criminal case<sup>7</sup>.

72. In addition, the Panel has held that insulting the Accused during the hearing was not allowed, to which Counsel unreasonably indicated in her closing argument. Quite the opposite, at the hearing held on 4 May 2015, when the witness E was cross-examined, the Panel President properly cautioned the witness when she started addressing the Accused in an inappropriate manner due to the trauma she had survived, by notifying her that there is an appropriate code of conduct before the Court which must be respected, and which is also in effect during the examination<sup>8</sup>.

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<sup>7</sup> In order to prove subjective impartiality, pursuant to the ECHR's case law, the Court requires evidence for the concrete bias of the Court. Personal impartiality of a regularly appointed judge shall be assumed until proven otherwise (Judgment *Hauschildt v. Denmark*, para. 47).

<sup>8</sup> Transcript from the hearing held on 4 May 2015, p. 28: "**Witness:** He thought that all that would be forgotten. He does not know that I wake up with his image on my mind, every morning. If there were no court, believe me, I would have ended up in prison because of him. One has children. **Judge:** Witness, it is enough.....**Counsel:** This is too much, indeed....**Judge:** ... Please, I am here to intervene. Calm down. **Judge:** Pardon me. But, the emotions.... **Judge:** ... nothing, it is OK, it is OK. **Counsel:** ... (*unclear*).... how it should be.... **Judge:** Please, Counsel, you were not given the floor. **Counsel:** Pardon me. **Judge:** Calm down, calm down. Please, try to control yourself. You are here to respond to the questions. We understand your situation. **Judge:** However, you must understand... **Judge:** **We do understand. But you must also listen. You are before the Court where there is a certain code of conduct in place.** "

## **H. APPROVAL FOR THE REPRESENTATIVES OF THE “TRIAL” ORGANIZATION TO ATTEND THE TRIAL**

73. On 6 February 2015, tendered in the case record was a petition of the “TRIAL” non-governmental organization that its employees be allowed to attend the hearings in these criminal proceedings. The rationale of the petition indicated that this non-governmental organization is registered in Sarajevo, and that its primary goals are to combat the impunity of the perpetrators, participants and instigators of the criminal offenses against humanity, and the values protected under international law, and to provide support to the victims of international crimes in exercising their rights. The referenced submission further stated that this organization also provides legal and psychological support to witness A. Therefore, pursuant to Article 236(2) of the CPC BiH, they proposed that they attend the hearing as scholars should the public be excluded from the trial during this witness’s examination. They also referred to the Court’s case law under which this organization was allowed to attend the trials that were closed for the public (*Marijan Brnjčić et al.*).

74. The Panel has accepted the reasons presented in the petition of 6 February 2015, and applying Article 236(2) of the CPC BiH, and allowed the representative of the TRIAL” organization to attend the hearing held on 16 February 2015, when the public was excluded from the trial. Having held that the petition was general by nature, related to the presence at all trial hearings from which the public will be excluded, the Panel found it justified to grant such petitions in the future as well.

## **I. EXPIRATION OF THE 30(THIRTY)-DAY DEADLINE**

75. Article 251(2) of the CPC BiH provides that “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, but upon the hearing of the parties and Counsel, the Panel may decide that in such case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted but the minutes of the crime scene investigation and testimony of the

witnesses and experts given at the prior main trial shall be read only”.

76. In these criminal proceedings, more than 30 (thirty) days lapsed between the hearings held on 23 February 2015 and 30 March 2015. In view of the foregoing, the Panel decided, at the hearing held on 30 March 2015, to recommence the hearing from the beginning pursuant to Article 251(2) of the CPC BiH. Considering that the parties and the Accused’s Counsel agreed not to present again the evidence already presented, the Panel decided not to summon and examine again the witnesses already examined, but rather to use the evidence they gave previously in these proceedings, or at the previous hearings.

#### **IV. GENERAL EVALUATION OF EVIDENCE**

77. Having conscientiously examined every item of evidence pursuant to Article 281 of the CPC BiH, individually and in combination with the other evidence presented at the trial, and having examined both the Prosecution’s and the Defense’s arguments, the Panel established the state of facts as stated in the Operative Part of the Verdict for the reasons that follow.

78. Article 3(1) of the CPC BiH stipulates that the accused shall be considered innocent of a crime until his/her guilt has been established. The Prosecutor therefore bears the burden of proof, and, pursuant to Article 3(2) of the CPC BiH, the Prosecution must prove the Accused’s guilt beyond a doubt.

79. The fact that the Defense did not contest certain Indictment allegations does not mean that the Panel has accepted those facts as proven. The burden of proof remains on the Prosecutor for each count of the indictment throughout the entire trial. Accordingly, in determining whether the Prosecutor has proved the subject beyond a doubt, the Panel carefully examined if there was any other reasonable interpretation of the admitted evidence other than that the Panel accepted upon finding that the elements of the criminal offense charged against the Accused were satisfied.

80. There is no legal obligation to present in a verdict all items of evidence

individually. When rendering its decision, the Court is under obligation to examine all the presented evidence. It would not be functional to impose on any trial panel the obligation to elaborate in the verdict on each item of evidence individually, that is, each testimonial or documentary evidence presented during the trial.

81. Such a position was also upheld and reasoned in detail in the case law of the International Criminal Tribunal for the Former Yugoslavia (ICTY): “The Appeals Chamber recalls that, pursuant to Article 23 of the Statute and Rule 98 ter (C) of the Rules of Evidence and Procedure, any accused is entitled to be presented with a reasoned opinion. However, this requirement pertains to a Trial Chamber judgment. The Trial Chamber is not under obligation to provide reasons for its findings in relation to all the arguments presented at the hearing”, “... the Appeals Chamber recalls that it is at the Trial Chamber’s discretion to decide which legal arguments it shall consider. As to the findings of fact, the Trial Panel shall present only the findings of fact that are essentially significant for determining one’s guilt pursuant to the Indictment. The Trial Chamber need not refer to each witness’s evidence or each item of evidence tendered in the case record”.

82. At the same time, the Panel was mindful to present in the Verdict clear and understandable reasons on which its decision is based, while not being under obligation to respond in detail to each question. However, if a fact or evidence is of essential significance for the outcome of the case, the Panel must address it in its verdict. In addition, in rendering its decision, the Panel took into account that, pursuant to the ECHR, despite being under obligation to present reasons for its decision, the Court need not address in detail each argument presented by any of the parties to the proceedings. It ensues that the Court need not address each item of evidence, but that it shall rather, pursuant to Article 15 and Article 281 of the CPC BiH, primarily address the evidence necessary to achieve the purpose of the verdict. It ensues from the foregoing that each item of evidence need not be discussed individually.

83. Therefore, it ensues from the foregoing standards established in the ECHR’s and ICTY’s judicature that, even though it renders its verdict based on a conscientious evaluation of all presented evidence, the Court shall present in its reasoning only the

evidence that was important in rendering the verdict.

84. Pursuant to Article 15 of the CPC BiH, the Panel has the right to freely evaluate the evidence. In the process, free evaluation of evidence is exempted from the legal rules that would *a priori* define the value of certain items of evidence. In terms of its quality or quantity, the value of evidence is not predefined. The evaluation of evidence involves both logical and psychological evaluation. Thus, if there are no legal or formal rules of evaluation, the evaluation is related to the rule of human perception/opinion and experience.

85. In certain situations, a witness's oral testimony was distinct from the statement he/she gave during the investigation. However, it should be taken into account that over 20 (twenty) years lapsed since the occurrence of the events indicated in the Indictment, wherefore it is justified to expect that the accuracy and authenticity of the witnesses' memories are affected by the lapsed period of time. Nevertheless, in such a situation the Panel took into account the kind of differences in question, and the explanation provided by the witnesses along this line, since not all inconsistencies have the same probative value.

86. In addition, the fact is that, due to the nature of the criminal proceedings, the witness at the main trial can be asked questions distinct from those posed to him in the previous interviews. Thus, it is justified to expect that, after concretization of certain questions, the witness will remember additional details. Of course, the Panel has carefully dealt with such situations in determining the weight to be given to such evidence.

87. In evaluating the evidence of the witnesses who testified in these proceedings, the Panel took into account their conduct and behavior during the testimony, examined the consistency of the statements they gave in the courtroom, compared the facts about which certain witness testified with the facts established by the other witnesses and the facts established based on the documentary evidence, all in order to find whether these testimonies were supported, or contested by the other evidence in the case.

88. Also, in evaluating the witnesses' evidence, the Panel took into account that the reliability of the witness's evidence depends on his/her knowledge about the facts, but

also, its reliability can be to a large extent affected by the lapsed period of time, vagaries of human perception and the traumatic nature of the very incident about which he/she gives evidence. The inconsistencies in the witnesses' testimony are not *per se* of such a character as would require a reasonable Trial Panel to reject their evidence.<sup>9</sup> Similarly, the factors such as the time elapsed between the events in question and the testimony, possible influence of third persons, the inconsistencies or stressful situations at the time of the incident do not automatically exclude the possibility that the Panel will rely on such a testimony. As stated above, the Panel shall compare the facts about which certain witnesses testify with the other evidence tendered.

89. Therefore, it is within the Trial Panel's discretion to evaluate the inconsistencies highlighted and to consider whether the witness, when the testimony is taken as a whole, was reliable and whether the evidence was credible. Small inconsistencies cannot suffice to render the whole testimony unreliable.<sup>10</sup>

90. The Panel's final decision will be primarily based on the oral and direct testimony given at the main trial. Certain inconsistencies between different witnesses' statements are an irrelevant factor in judging their weight. At the same time, it should be noted that these inconsistencies will not necessarily discredit the entire witness's testimony. Therefore, if the witness was decisive in recounting the essence of the incidents at issue, small inconsistencies cannot suffice to render the whole testimony unreliable. In any case, the reasons for which certain evidence was accepted and the evaluation of their credibility are comprehensively explained in relation to the charged crime of rape of which the Accused was found guilty.

91. In considering the Indictment, the Panel took into account the fact that only the injured party gave evidence of the very act of rape, since she was the only person present with the Accused at the time when the rape occurred, which often occurs in relation to such incriminating incidents. Therefore, the Panel paid special attention to the evaluation of the injured party's evidence, and correlated it with the other adduced evidence. This will be addressed in more detail in reference to the injured party's

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<sup>9</sup> ICTY, Appeals Chamber Judgment in the *Čelebići* case, para. 485 and 496 – 498.

<sup>10</sup> *Ibid*, para. 498.

evidence. The non-existent forensic evidence about the crime during the armed conflict, the injured party's position about what she had suffered, and the lapsed period of time since the occurrence of the incident at issue all posed on the Panel an additional duty in determining the reliability of the injured party's evidence.

## V. APPLICABLE SUBSTANTIVE LAW

92. Having evaluated the evidence tendered during the trial, the Panel found that, in the concrete case, the Prosecution proved beyond a reasonable doubt that (the acts of) the accused Slavko Savić, described in Sections 1 and 2 of the Verdict, satisfied all the essential elements of the criminal offense of War Crimes against Civilians under Article 142(1) of the CC SFRY.

93. In this regard, the Panel will in this part present the reasons it has relied on regarding the substantive law applicable to the Accused's concrete acts, that is, the reasons for which it did not accept the legal qualification of the Accused's acts presented in the Prosecution's confirmed Indictment.

94. In rendering its decision with regard to the applicable substantive law and the legal qualification of the offense, the Panel *a priori* took into account the principle of legality and the principle of time constraints regarding applicability of the criminal code.

95. Article 3 of the CC BiH provides for the principle of legality as one of the basic principles of criminal procedure, which reads as follows:

*"1. Criminal offenses and criminal sanctions shall be prescribed only by law.*

*2. 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 or which a punishment has not been prescribed by law."*

96. Article 4 of the CC BiH, which provides for the principle of time constraints regarding applicability of the criminal code, reads as follows:

*"1. The law that has been in effect at the time when the criminal offense was perpetrated*



*shall apply to the perpetrator of the criminal offense.*

*2. 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.”*

97. Therefore, it ensues from the foregoing provisions that, as a rule, the law that has been in effect at the time when the criminal offense was perpetrated (*tempus regit actum*) shall primarily apply to the perpetrator of the criminal offense.

98. Considering that the tendered evidence shows that the incriminating acts were committed in May (Section 1), and June 1993 (Section 2 of the Operative Part of the Verdict), the Panel finds that the CC SFRY, adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of SFRY, was in effect at the time.<sup>11</sup>

99. It is, however, possible to derogate from the principle of *tempus regit actum* in the interest of the Accused if the law has been amended after the perpetration of the offense in the way that the amended law is more lenient to the Accused. This is also provided for in Article 4(2) of the CC BiH. This Article stipulates that, 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 apply.

100. The issue of which law is more lenient to the perpetrator is dealt with *in concreto*, that is, by comparing the old and the new law(s) on a case-to-case basis. This is so because the same law may be more favorable in one case, and more stringent in the other, depending on the offense charged against the accused and the provisions regulating the guilt or punishment for the offense at issue. In addition, all the circumstances of possible relevance to the evaluation also need to be established. Accordingly, it should be assessed which law would truly have a more favorable outcome

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<sup>11</sup> The SFRY Assembly adopted the Criminal Code of Bosnia and Herzegovina at the Federal (Executive) Council session held on 28 September 1976 and published it in the SFRY's Official Gazette No. 44 of 8 October 1976. Following the declaration of BiH's independence, the CC SFRY was, pursuant to the Decree with the Force of Law of 22 May 1992, adopted as the law of the Republic of Bosnia and Herzegovina (with minor amendments), and entered into force on the day it was published.

for the perpetrator, which of the laws provides for a greater possibility to render a more favorable decision in the concrete case (the principle of concreteness).<sup>12</sup>

101. Since both the CC SFRY, adopted pursuant to the Law on the Application of the Criminal Code of the Republic BiH and the Criminal Code SFRY (the adopted CC SFRY) as the law effective at the time covered by the Indictment, and the CC BiH, provides for the same criminal offense with the same legal elements (War Crimes against Civilians), the Court's duty was to assess which of the two Codes is more lenient to the perpetrator.

102. In addition, in the concrete case the Panel has primarily relied on the ECHR's position taken in the case of *Maktouf and Damjanović v. Bosnia and Herzegovina*, on whose findings the Constitutional Court of BiH subsequently based its conclusions regarding the retroactive application of the CC BiH to war crimes cases.

103. Unlike the ECtHR, in determining which law was more lenient to the perpetrator in many war crimes cases, the Constitutional Court of BiH has exclusively relied on the standard of comparing the general legal minimum and maximum prescribed sentences, by taking no account of the concrete circumstances pertaining to each case individually. In this way, the Constitutional Court of BiH has abandoned its earlier position taken in the case of *Abduladhim Maktouf*.<sup>13</sup>

104. Thus, in assessing which law is more lenient to the perpetrator, the Constitutional Court of BiH presents the following line of arguments: that the death penalty has been eliminated from the criminal sanctions system and that, therefore, pursuant to Article 38(2) of the CC SFRY ("*The Court may impose a punishment of imprisonment for a term of 20 years for criminal acts eligible for the death penalty*"), in a situation when it is

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<sup>12</sup> Commentaries on the Criminal Codes in BiH, Council of Europe, 2003, p. 66.

<sup>13</sup> *Abduladhim Maktouf*, Decision of the Constitutional Court of BiH on Admissibility and Merits, No. AP-1785/06 of 30 March 2007, para. 68. "*In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of Krstić, Galić, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime, or a 15-year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law,*" and para. 69: "*In this context, the Constitutional Court holds that it is simply not possible to "eliminate" the more severe sanction*

impossible to impose this sanction “...*a maximum punishment of imprisonment for a term of 20 years may be imposed (which pursuant to the provisions of the referenced Code could be imposed instead of the death penalty), or a prison sentence no longer than 15 years (prescribed under the same Code as a maximum prison sentence)*”.

105. Therefore, the Constitutional Court of BiH has held that the application of the more lenient law to the perpetrator will not be assessed on a case-to-case basis, but rather that the CC SFRY will apply to the perpetrator in all cases in which both the laws prescribe the same elements of the criminal offense of a war crime.

106. Article 142(1) of the CC SFRY also provided for the criminal offense of War Crimes against the Civilian Population, charged against the accused Slavko Savić under Article 173 of the CC BiH. In view of the foregoing, and pursuant to the Constitutional Court of BiH’s case law with regard to the applicable substantive law, the CC SFRY had to be applied as the law that was in effect at the time when the criminal offense was committed and as the law that is, pursuant to the Constitutional Court of BiH’s position, more lenient to the Accused.

## **VI. DECISION ON THE GUILT OF THE ACCUSED SLAVKO SAVIĆ**

107. Based on all the tendered evidence and its evaluation, both individually and in combination, the Panel found, beyond a doubt, that the accused Slavko Savić’s acts, comprehensively described in the Operative Part of the Verdict (Sections 1 and 2), satisfied all the essential elements of the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the CC SFRY because, during the wartime in BiH and the armed conflict between the ARBiH, on the one side, and the VRS, on the other side, in the Vogošća municipality, as a member of the Vogoščanska Light Infantry Brigade of the VRS, he acted in violation of the rules of international humanitarian law, by using physical force and forcing the injured party into sexual intercourse, that is, raped the injured party on two different occasions, on unspecified days in May and June 1993.

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*under both earlier and later laws, and apply only other, more lenient sanctions, so that the most serious*

**A. GENERAL ELEMENTS OF THE CRIMINAL OFFENSE OF WAR CRIMES AGAINST THE CIVILIAN  
POPULATION UNDER ARTICLE 142 OF THE CC SFRY**

108. Bearing in mind the legal qualification of the offense of which the Accused was found guilty, the Panel will further in the Verdict provide the reasons based on which it finds satisfied both general and special elements of the charges, contained in Article 142(1) of the CC SFRY.

109. To this effect, the Panel has examined if the Accused's acts satisfied all the essential elements of the criminal offense under Article 142(1) of the CC SFRY, which reads as follows:

“Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders attack on civilian population, settlement, individual civilians and persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people’s health ...; **infliction of immense suffering or violation of bodily integrity or health...**

**or perpetrates any of the referenced acts**, shall be punished by imprisonment for not less than five years or the death penalty”.

110. The following essential elements of the criminal offense of War Crimes Against Civilians ensue from the quoted provision:

*a. The perpetrator’s act must be committed in breach of the rules of international law, in the way that the act was directed against a civilian population or persons taking no active part in the armed conflict, or persons who have laid down their arms and those placed 'hors de combat', that is, the persons protected under the provisions of the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949;*

*b. The violation must be made in the time of war, armed conflict or occupation;*

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*crimes would in practice be left inadequately sanctioned”.*

c. *There must be a nexus between the perpetrator's act and the war, armed conflict or occupation;*

d. *The perpetrator must order or commit the offense.*

111. Considering that the Court is not bound by the legal qualification of the offense provided in the Indictment, pursuant to Article 280(2) of the CPC BiH, the Panel omitted from the final legal assessment the Indictment's qualification under Article 180(1) of the CC BiH, namely the Panel did not look for a corresponding provision in the CC SFRY to use it as a counterpart of the quoted CC BiH's provision, which would explicitly provide for the forms of individual responsibility. This was done considering that the SFRY's criminal legislation, as well as BiH's positive criminal legislation, is organized in general terms and based on the principles of individualized criminal responsibility/guilt. Thus, no separate legal qualifications are needed along this line.

112. Therefore, the guilt of the accused Slavko Savić is in the concrete case qualified as war crimes against the civilian population under Article 142(1) of the CC SFRY.

**1. The perpetrator's act must be committed in violation of the rules of international law**

113. For the existence of the referenced criminal offense it is necessary that the acts of commission be an infringement upon the rules of international law, which points to the blanket character of the crime at issue.

114. Therefore, to establish this element of the criminal offense, the appropriate international conventions, or in the concrete case, the provisions of the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949 had to be considered.

115. The Panel notes that, pursuant to Article 142 of the CC SFRY, it is not necessary (or is not required for the existence of the offense itself) that the perpetrator is aware, or has the intent to act in breach of the international rule. Therefore, it is not necessary that a violation of blanket norms forms part of the perpetrator's awareness, but rather it suffices that his conduct is objectively an infringement upon the rules of

international law, while in undertaking concrete, individual acts of commission, the perpetrator's subjective relation to the offense must certainly be taken into account. The foregoing will be comprehensively elaborated on further in the reasons of the Verdict.

116. To find a violation of common Article 3 of the Geneva Conventions, it is necessary to examine its contents, as well as the scope of its application to the concrete case.

117. Article 3(1)(a) and (c) of the 1949 Geneva Conventions, also applicable in BiH on the basis of Annex 6 to the Dayton Peace Agreement, provides the following:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture. ...
- c) outrages upon personal dignity, in particular humiliating and degrading treatment.”

118. Therefore, the purpose of common Article 3 of all Geneva Conventions is providing for the minimum compulsory norms and pointing to the generally accepted humanitarian principles on which all the Conventions are completely based. Thus, common Article 3 also applies to conflicts which are not international by nature.

119. In addition, broadly accepted position is that common Article 3 is an integral part of customary international law in the way that all the offenses listed in the referenced

Article of the Geneva Conventions amount to severe violations of international humanitarian law, and, as such, entail individual responsibility regardless of the character of the conflict itself. This is so particularly considering that Article 3 is “common” to all the four 1949 Geneva Conventions, addressing the issue of both international and non-international (internal) armed conflicts.

120. Considering the finding in the proceedings at issue (to be explained further in the text below), that there was an armed conflict in the territory of Vogošća municipality, during the period covered by the Indictment, it is justified to conclude that common Article 3 of the Conventions should have applied as long as the armed conflict was ongoing.

121. In the Panel’s view, by perpetrating the criminal offenses of which he was found guilty during the period alleged in the Indictment, the Accused violated the basic guarantees enjoyed by the protected category of the population under the Conventions’ provisions, that is, by his acts the Accused violated common Article 3 of the 1949 Geneva Conventions, more specifically, Paragraph 1, subparagraphs (a) and (c) (violence to life and person and outrages upon personal dignity of the injured party).

## **2. Civilian status of the victim (the status of a protected category of population)**

122. In order to find a violation of the rules of international law, it should be determined if the offence was directed against the special category of the population protected under Article 3 of the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949.

123. The status of persons protected pursuant to Article 3(1) of the Convention is enjoyed by all persons who, during an armed conflict, do not take any active part in the hostilities, including even members of military or police formations who have laid down their arms, or those placed *hors de combat* by sickness, wounds, detention or any other cause.

124. When it comes to this element, or the civilian status of a victim, the Panel has noted that the examined Prosecution witnesses consistently confirmed that, at the time

when the incriminating acts were committed, the injured party had taken no active part in the hostilities, and that she was not a member of the armed forces of a belligerent party, namely that, at the time, she had a civilian status during the war, as she lived in Semizovac as a single parent with her minor daughter. It follows from the foregoing that the injured party enjoyed protection pursuant to common Article 3 of the Geneva Conventions. This was not contested by the Accused's Defense either.

### **3. Violation must be made during the war, armed conflict or occupation**

125. Article 142(1) of the CC SFRY also provides for the existence of an armed conflict or occupation as a general requirement for the existence of a crime, but does not insist on the character of the conflict itself, namely it does not distinguish between internal and international conflicts.

126. In the international case law, an armed conflict is said to exist "*whenever there is a resort to armed force between States or protracted armed violence between the governmental authorities and organized armed groups, or between such groups within a State.*"<sup>14</sup>

127. In correlating the violations of the rules of international law with the existence of an armed conflict, it should be noted that international humanitarian law is further applied "*in the whole territory of the warring states, or in the case of internal armed conflicts, the whole territory under the control of a party to the conflict, whether or not actual combat takes place there, and continue to apply until a general conclusion of peace, or in the case of internal armed conflicts, until a peaceful settlement is achieved*"<sup>15</sup>.

128. Therefore, it is obvious that compliance with the commonly accepted principles of laws and customs of war and the guarantees enshrined in common Article 3 of the

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<sup>14</sup> *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, case No. IT-96-23 and IT-96-23/1-A, Judgment of 12 June 2002, *Kunarac et al.*, Appellate Judgment, para. 56.

<sup>15</sup> *Kunarac et al.*, Appeals Chamber Judgment, paras. 57 and 64. In para. 64, the Appeals Chamber considers that: "the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties."



Geneva Conventions pertains to both the conflicts considered as international by character and the internal ones within a State.

129. Therefore, when the Accused was charged with a violation of Article 173 of the CC BiH (or when the existence of the elements of the offense under Article 142 of the CC SFRY is being determined), pursuant to violations of common Article 3 of the Conventions, it is irrelevant whether the armed conflict was international or internal by its character<sup>16</sup>.

130. In the concrete case, the Panel has found, primarily on the basis of the Prosecution evidence (both documentary and testimonial) that, at the critical time, there was a state of war in the BiH territory, which the Accused's Defense did not contest either.

131. In this respect, the Decision of the RBiH Presidency of 20 June 1992<sup>17</sup> *explicitely* indicated that a state of war in the RBiH territory was being declared, and that the Decision shall enter into force on the day of its publication in the "Official Gazette of the RBiH". The state of war lasted until the adoption of the Decision Terminating the State of War on 22 December 1995<sup>18</sup>.

132. In addition, the Panel finds that, at the critical time, there was an armed conflict between the VRS forces, on the one side, and members of the ARBiH, on the other, which ensues from Prosecution's documentary evidence<sup>19</sup>. The Defense did not challenge such a finding of facts.

133. Considering that an actual combat need not take place in the specifically determined territory in order to apply the rules of international humanitarian law, the Panel was not limited merely to determining if the armed conflict indeed existed in the Vogošća territory, but also to its existence in a wider area, of which this municipality is also an integral part.

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<sup>16</sup> *Prosecutor v. Duško Tadić*, case No. IT-94-1-AR-72, Decision on Defense's Interlocutory Motion on Jurisdiction of 2 October 1995 (Decision on Jurisdiction in the case of Tadić), para. 137; Appeals Chamber Judgment in *Čelebići*, paras. 140 and 150.

<sup>17</sup> Exhibit T-2.

134. In addition to the foregoing, all the examined witnesses for both the Prosecution and the Defense consistently confirmed that, at the critical time, the state of war or an armed conflict indeed existed in the territory of the Vogošća municipality.

135. In view of the foregoing, the Panel has found that, during 1993, there was a state of war in BiH, and the armed conflict between members of the VRS and ARBiH.

**There must be a nexus between the perpetrator's act and the war, armed conflict or occupation**

136. The next general element of the existence of the criminal offense at issue requires the existence of a *nexus* between the Accused's acts and the war, armed conflict or occupation. To establish the existence of the referenced element, it is necessary to determine the Accused's status at the critical time, and the causal relation between the commission of the offense and the existence of the above explained armed conflict in the wider area of the Vogošća municipality.

137. In the concrete case, the Panel examined whether "*the existence of an armed conflict have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.*"<sup>20</sup>

138. This requirement is met if "*the perpetrator acted in furtherance of or under the guise of the armed conflict*"<sup>21</sup>.

139. Along this line, the following position was taken in *Dragoljub Kunarac et al.* in relation to the referenced issue:

*"...Humanitarian law continues to apply in the whole of the territory under the control of one of the parties, whether or not actual combat continues at the place where the events*

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<sup>18</sup> Exhibit T- 6.

<sup>19</sup> Exhibits T-3, T-4, T-5 and T-7.

<sup>20</sup> *Prosecutor v. Kunarac et al.*, case No. IT-96-23 & IT-96-23/1-A, Judgment of 12 June 2002, para 58.

<sup>21</sup> ICTY, Appeals Chamber Judgment in *Dragoljub Kunarac et al.*, paras. 58-59.

*in question took place. It is therefore sufficient that the crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. The requirement that the act be closely related to the armed conflict is satisfied if, as in the present case, the crimes are committed in the aftermath of the fighting, and until the cessation of combat activities in a certain region, and are committed in furtherance or take advantage of the situation created by the fighting...”*<sup>22</sup>

140. Having evaluated the adduced evidence, the Panel found that the Accused’s act was sufficiently related to the war activities. Along this line, the Panel particularly considered the Accused’s position in the military structure – namely the fact that, at the critical time, he was a member of the Vogošćanska Light Infantry Brigade in the VRS, in BiH. The foregoing primarily ensues from the Prosecution Exhibit T-8.<sup>23</sup> This Exhibit indicated that the Accused was registered at VP 7033 Vogošća during the periods: 4 April 1992 – 31 January 1993, 1 March 1993 – 5 June 1994, 1 March 1993 – 25 February 1994, 26 February 1994 – 5 June 1994 and 6 June 1994 – 23 February 1996.

141. In addition, the Vob 8 Form, enclosed with Exhibit T-8, clearly indicated that Slavko Savić, born on 21 March 1963 in Kremeš, Vogošća municipality, joined the armed forces on 4 April 1992, or a company of the 1<sup>st</sup> Light Infantry Brigade; and that the column titled “*reasons for deleting from the record*” contained a note: “transferred to the platoon of the Military Police of the 3<sup>rd</sup> Light Infantry Brigade, with the indicated date of registration being 1 March 1993, and deleted from the record on 5 June 1994; while the other form contained the Accused’s rank of a soldier, with the entry date of 4 April 1992, and deletion date of 31 January 1993, noting in the column pertaining to the “*reasons for being deleted from the record*” - the Blagovac Battalion.

142. Also, data of the Bijeljina Municipality Administrative Service, Department for the Protection of War Veterans and Disabled Persons,<sup>24</sup> show that the information about the

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<sup>22</sup> ICTY, Trial Chamber Judgment in *Dragoljub Kunarac et al.*, para. 568.

<sup>23</sup> **T-8** – Document of the Ministry of Labor, Protection of War Veterans and Disabled Persons of the Republika Srpska, Department for Military Record of Participants in the Defense Homeland war, No. 16-03/3.2-1-835-1108/14 of 9 October 2014 with attached 5 verified copies of VOB-8 extracts.

<sup>24</sup> **T-9** – Document of the Department for Protection of War Veterans and Disabled Persons, Bijeljina municipality, No. 02/7-832-1-125/14 of 7 October 2014, with attached verified copy of the VOB-1, VOB-2 and VOB-3 forms.

Accused's participation in the war was entered in both the unit and personal records Vob 2 and Vob 3, namely that his participation in the war was recorded as follows: 4 April 1992 – 30 January 1993, 1 March 1993 – 5 June 1994 (VP 7033/5), 6 June 1994 – 23 February 1996 (VP 7033/2). Such a state of facts also ensues from the Defense's Exhibit O-6<sup>25</sup> (Certificate of the Bijeljina City Administration of 10 October 2014), which indicates that the Accused was a member of the RS armed forces, in the military post - VP 7033/5 JMK, during the period between 1 March 1993 and 5 June 1994.

143. In addition, such a state of facts (the Accused's engagement as a member of the VRS) ensues from the examined witnesses' testimonies (who were aware of this fact).

144. Along this line, the injured party testified that, during the war, she saw the Accused wearing a camouflage uniform, with a white belt and a pistol at his side. The witness did not know the meaning of the white belt, but assumed it held the weapon in its place. The injured party could not state which units the Accused was a member of, but she believes that those were military police units. The fact that the injured party is uncertain which unit specifically the Accused was a member of at the critical time is irrelevant as she need not know that at all. Also, the injured party had no special knowledge about military. Importantly, however, the injured party herself identifies the Accused during the war as an armed person wearing a camouflage uniform.

145. Defense witness D<sup>26</sup>, who had lived in the territory of the Vogošća municipality at the critical time, stated that she knew the Accused by sight, since he had worked with her aunt at the "TAS" Company. The witness stated that the Accused was a soldier during the war, but she does not know the formation to which he was assigned.

146. Defense witness Milorad Rajić<sup>27</sup>, also engaged (in the military) during the war time, testified he had seen the Accused during the war. The witness knows that the Accused was in Vogošća, but he does not know which battalion he was a member of. The witness confirmed that in the middle or at the end of the war, the Accused was in the military

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<sup>25</sup> Letter of the town of Bijeljina, No. 02/7-832-1-8/15 of 28 January 2015, with attached Certificate issued by the Bijeljina City Administration, Department for Protection of War Veterans and Disabled Persons, No. 02/7-835-3-443/14 of 10 October 2014.

<sup>26</sup> Witness D was directly examined at the hearing held on 30 March 2015.

police of the Vogošćanska Brigade and drove a jeep. The witness concluded that the Accused had not been engaged in the military police since the early beginning, but rather believes that he was in the Vogošćanski – Blagovački Battalion, and does not know what the Accused actually did there.

147. Considering the finding based on the above presented evidence that, at the critical time, the Accused was active as a member of the VRS, or of the Vogošćanska Light Infantry Brigade of the VRS, there can be no doubt that the Accused was aware of the existing state of war and the armed conflict between the ARBiH and VRS, as well as the fact that he took part in it. In addition, the adduced evidence shows there is no doubt that the Accused was fully aware of the existing armed conflict and the circumstances under which the incriminating incident occurred. Therefore, due to such existent circumstances, the Panel has found that, by his acts described in the Operative Part of the Verdict, and in order to commit the criminal offense at issue, the Accused took advantage of both his position and the injured party's helplessness, as a single mother, and member of the minority (Bosniak) people in the Vogošća municipality at the time, who had lived alone with her minor child. This will be explained in more detail in the part of the Verdict addressing the individual incriminations underlying the crime.

148. The Panel had also found that not only that the Accused was aware that there was an armed conflict between members of the ARBiH and VRS, but also that the injured party A was a Bosniak, whose status in the then existing circumstances was used by the Accused, as the perpetrator of the offense, to make her the victim of the crime that he committed.

#### **4. Individual incriminations underlying the crime**

149. The next requisite to be satisfied in order to find an individual guilty of the commission of the criminal offense under Article 142(1) of the CC SFRY is to find that the elements of any of the incriminations underlying the crime are satisfied.

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<sup>27</sup> Witness Milorad Rajić was directly examined at the hearing held on 20 April 2015.

150. Bearing in mind that the confirmed Indictment charged the Accused that, by violating the rules of international law in time of war and the armed conflict, he forced the injured party into sexual intercourse on two occasions, that is, raped her, and that Article 142(1) of the CC SFRY contains no definition of rape, as the underlying element of the crime, the Panel has held it necessary to present all relevant positions from the case law, as well as the provisions of international law concerning the crime of rape.

(a) **Definition and the elements of rape through the case law and customary international law**

151. With regard to the term “rape” within the international humanitarian law, the act of rape in time of war is prohibited under the treaty law: the 1949 Geneva Conventions and its 1977 Additional Protocols I and II. The other severe sexual offenses/assaults are explicitly or implicitly prohibited under various other provisions of these very Conventions.

152. The prohibition of rape and severe sexual assault in an armed conflict has also evolved in customary international law. It has gradually crystalized from the express prohibition of rape in Article 44 of the Lieber Code and the general provisions contained in Article 46 of the regulations annexed to the Hague Convention IV, read in conjunction with the ‘Martens Clause’ laid down in the preamble to that Convention. While rape and sexual assault were not specifically prosecuted by the Nuremberg Tribunal, rape was expressly classified as a crime against humanity under Article II (1)(c) of Control Council Law No. 10. Therefore, it cannot be contested that rape and other severe sexual assaults in armed conflict indeed entail the criminal liability of the perpetrators.

153. Furthermore, no international human rights instrument within the international human rights law specifically prohibits rape or other serious sexual assaults. Nevertheless, these offenses are explicitly prohibited by the provisions safeguarding the physical integrity of an individual, which are contained in all of the relevant international treaties. The right to physical integrity is a fundamental one, which is reflected in the national legislation, and is undeniably part of customary international law.

154. No definition of rape can be found in the international law. However, some general indications can be discerned from the provisions of international treaties. In particular, attention must be drawn to the fact that there is a prohibition of rape and 'any form of indecent assault on women' in Article 27 of the Geneva Convention IV, Article 76(1) of Additional Protocol I and Article 4(2)(e) of Additional Protocol II. The inference is warranted that international law, by specifically prohibiting rape as well as, in general terms, other forms of sexual abuse, regards rape as the most serious manifestation of sexual assault. This is, *inter alia*, confirmed by Article 5 of the International Tribunal's Statute, which explicitly provides for the prosecution of rape, while it implicitly covers other less grave forms of serious sexual assault through Article 5(i) as "other inhuman acts".

155. The relevant case law of both the ICTY and the ICTR (International Criminal Tribunal for Rwanda) also addresses the act of rape.

156. Thus, in its Judgment of 12 June 2002 in *Kunarac, Kovač and Vuković* (paras. 127-132), the ICTY's Appeals Chamber has held the following: "*The actus reus of the crime of rape in international law is constituted by: the sexual penetration however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim.*"

157. In this connection, the ICTY's Trial Chamber in *Kunarac* defines the element of coercion as a situation where "*sexual penetration is not consensual on the part of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances*<sup>28</sup>". In addition, the ICTY's Appeals Chamber in the same case concluded in their Judgment the following: "*A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had consented by taking advantage of coercive circumstances without relying on physical force.*"<sup>29</sup>)

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<sup>28</sup> Para. 440.

<sup>29</sup> Paras. 127- 133.

158. In its *Judgment of 2 December 2001*, paras. 175 and 180, the ICTY's Trial Chamber in *Kvočka et al.*, defined the act of rape as "a *physical invasion of a sexual nature*, committed on a person under circumstances which are coercive".

159. The ICTY's Trial Chamber in *Furundžija* has held that sexual penetration will constitute rape if it is not truly voluntary or consensual on the part of the victim. The relevance of not only force, threat of force and coercion, but also of absence of consent or voluntary participation is suggested in the *Kunarac* judgment, where it is observed that: "... all jurisdictions surveyed by the Trial Chamber require an element of force, coercion, threat, or acting without the consent of the victim: force is given a broad interpretation and includes rendering the victim helpless"<sup>30</sup>. Like torture, rape is used for such purposes as: intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person<sup>31</sup>. Determined in the same case were the following factors which must be satisfied (alternatively, rather than cumulatively) for the crime of rape to exist:

"- the sexual activity is accompanied by force or threat of force to the victim or a third party;

- the sexual activity is accompanied by force or a variety of other specified the sexual activity is accompanied by force or a variety of other an informed refusal; or

- the sexual activity occurs without the consent of the victim".

160. The required ***mens rea*** for the crime of rape is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.<sup>32</sup>

161. Any definition of the crime of rape established by the international tribunals addresses, expressly or implicitly, whether the necessary sexual penetration occurred without consent. The definitions in *Akayesu and Furundžija* do not expressly indicate the lack of consent as an essential element of rape. Instead, the definitions rather focus on

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<sup>30</sup> See *Kunarac et al.*, Judgment, Trial Chamber, ICTY, para. 440.

<sup>31</sup> See *Furundžija*, Judgment, Trial Chamber, ICTY, para. 176.

<sup>32</sup> Trial Chamber Judgment in *Furundžija* (December 1998) para. 185; Trial Chamber Judgment in *Kunarac et al.* (February 2001), para. 460.



the factors which can mean that sexual penetration occurred with no consent. Addressed in the *Akayesu* are “coercive circumstances”, with an explanation that not only physical force, but different other factors may constitute coercive circumstances, including “[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation”.<sup>33</sup> In addition, the Judgment explains that coercion may be inherent in certain circumstances, such as armed conflict, or the military presence.<sup>34</sup>

162. In *Furundžija*, the factors considered to mean that sexual penetration occurred without consent include “coercion or threat of force against the victim or a third person”.<sup>35</sup> Further, it is the position of the Trial Chamber that any form of captivity vitiates consent.<sup>36</sup> While the Appeals Chamber in *Kunarac* adds the element of consent on the part of the victim to the definition of rape, it observed that the circumstances giving rise to the instant appeal and that prevail in most cases, charged as either war crimes or crimes against humanity, will be almost always coercive. That is to say, true consent will not be possible.<sup>37</sup> It is also explained in *Kunarac* that there is no “resistance” requirement to prove the non-consent on the part of the victim.<sup>38</sup>

163. The Appeals Chamber in *Gacumbitsi*, has further elaborated on the definition of rape provided in *Kunarac* by inferring that “*The Prosecution can prove non-consent beyond reasonable doubt by proving the existence of coercive circumstances under which meaningful consent is not possible*” and that in order to do so, it is not necessary for the Prosecution “*to introduce evidence concerning the words or conduct of the victim or the victim’s relationship to the perpetrator*” or “*evidence of force*” but rather “*the Trial*

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<sup>33</sup> *Akayesu*, Trial Chamber Judgment, para. 688.

<sup>34</sup> *Akayesu*, Trial Chamber Judgment, para. 688; *Čelebići*, Trial Chamber Judgment, para. 495.

<sup>35</sup> *Furundžija*, Trial Chamber Judgment, para. 185.

<sup>36</sup> *Furundžija*, Trial Chamber Judgment, para. 271.

<sup>37</sup> *Prosecutor v. Kunarac et al.*, case No. IT-96-23&23/1, Appeals Chamber Judgment (12 June 2002), para. 130. Also see *Kunarac*, Appeals Chamber Judgment, para. 129 (does not depart from the Tribunal’s previous case law, but rather attempts to explain the nexus between the application of force and consent; namely that force or threat of force is not an essential element of rape, but rather the evidence of the non-consent on the part of the victim). See also *Prosecutor v. Gacumbitsi*, case No. ICTR-2001-64, Appeals Chamber Judgment (7 July 2007), para. 155, which further explains the definition under *Kunarac*, concluding that “*The Prosecution can prove non-consent beyond reasonable doubt by proving the existence of coercive circumstances under which meaningful consent is not possible*”.

<sup>38</sup> Appeals Chamber Judgment in *Kunarac*, para. 128 (where the Appeals Chamber notes that the applicants are “wrong on the law and absurd on the facts”).

*Chamber is free to infer non-consent from the background circumstances, such as an ongoing genocide campaign or the detention of the victim”.*<sup>39</sup>

(b) **Finding of the Panel that the Accused is guilty of the rape of the injured party**

164. In view of the foregoing definitions and the essential elements underlying the crime, the Panel will, in this part, address the following important aspects of the rape of the injured party, that is, the issues of whether the injured party was raped at all, and whether she was raped by the Accused on two different occasions.

165. However, prior to explaining the evidence on the basis of which it was undeniably established that the Accused is guilty of raping the injured party on two occasions (as described in the Operative Part of the Verdict), the Panel will present an overview of the situation in the Vogošća municipality before the rape was committed, as well as an overview of the injured party’s family situation and her personal circumstances at the time. In the Panel’s view, this is necessary in order to gain a complete understanding of the context in which the rape occurred, that is, the specific nature of the circumstances which had made the injured party particularly vulnerable.

(i) **Situation in the Vogošća municipality in time of war and the injured party’s position at the time**

166. The injured party directly testified before the Court<sup>40</sup> that, during the 1992-1995 war period, she lived with her minor daughter in a house located in the central part of Semizovac, Vogošća municipality. Before the outbreak of war, she had worked at the Orthopedics Clinic in Sarajevo. When the war broke out, she returned to Semizovac as she was told that her son had been sent to the (hill of) Žuč in a human shield. However, it turned out that her son had gone away with her former husband, namely that he was in Visoko. She could have stayed in Sarajevo, but she wanted to come to Semizovac for

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<sup>39</sup> *Gacumbitsi*, Appeals Chamber Judgment, supra footnote 101, para. 155.

<sup>40</sup> Witness “A” was directly examined at the hearings held on 16 February 2015 and 4 May 2015.

the sake of her children, and she had made three attempts to leave from Koševo and go to Semizovac on foot.

167. It clearly ensues from the injured party's foregoing statement that, during the war, she lived in Semizovac with her minor daughter, which, in the Panel's view, made her particularly vulnerable to the events to follow.

168. In relation to the war situation in the Vogošća municipality, the injured party testified that many killings and rapes occurred during the war. To this effect, the injured party described a situation when she was detained together with other Muslims and Croats in late 1992 (30 December 1992). They spent 3 days and 2 nights locked up in a hall within the facility called "Dom", and were subjected to ill-treatment there. The injured party further stated she has two sisters, that during the war one of her sisters was detained in the place of Zabrđe (her younger sister), and that her other sister and her sister's husband were imprisoned in the Planjina house.

169. The injured party's daughter, witness E<sup>41</sup>, confirmed the injured party's statement in the part with which she was undeniably familiar (considering that she was a minor at the critical time). Witness E lived in Semizovac with her mother during the war, while her brother and father were not together with them during that time. The witness further testified that her mother and she were exposed to different unpleasant situations during the war, on a daily basis. The witness stated that, some time earlier, they had been detained at the "Dom" facility, and spent a couple of days there. The witness could not specify the exact date, but stated that other Muslims were also detained there. Her mother and she often escaped through the windows of her house because (members of) the Serb forces kept threatening them, bursting through the house's door, knocking on the windows, with the intent to rape them, while no one protected them. In such situations, the witness and her mother were usually hidden below a wood shed, or below the stairs, in their neighbor's garden, or behind the building called "Dom".

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<sup>41</sup> Witness E was directly examined at the hearing held on 4 May 2015.

170. Witness A.S.<sup>42</sup>, who has lived in Semizovac, Vogošća municipality since 1960, including the war period 1992-1995, testified that conflicts existed in the territory of this municipality during the period 1992-1995. At the time, the Vogošća municipality was under the Republika Srpska control. The Bosniak and Croat population probably had to leave the town, and almost no Bosniak and Croat stayed. The witness learned from hearsays that detention facilities or camps existed in the territory of the Vogošća municipality during the war. However, she did not personally see this as she scarcely went out of her house, and she only did it when she had to bring some water, etc. In addition, the witness has known the injured party since her (victim's) childhood. The witness knows that the injured party lived in Semizovac throughout the entire war period, and that only her daughter (aged 10-11) was with her. The witness stated that the other close relatives of the injured party had gone away, and that she knows this as she was her neighbor during the period at issue. According to the witness, the injured party had been a single parent even before the war. Both of her children had lived with her, and her son subsequently went to Visoko. The witness herself was not intimidated during the war, but it sufficed to watch and hear all the humiliating situations to which individuals were subjected.

171. Witness B<sup>43</sup>, the injured party's sister, testified that she had been ill-treated during the war, and in 1992 taken to "the Sonja's" (camp in Vogošća), where many Bosniaks were detained for 7 days.

172. Witness C<sup>44</sup> testified that, during the war, she lived in Semizovac with her husband and two children. The witness and her husband were under the compulsory work obligation, and worked as teachers. Her husband was also drafted to the VRS forces. The witness knows the injured party very well and their children attended the same school. The witness knows that the injured party's son was somewhere else during the war, and that her daughter was with her during all that time. The injured party's daughter was so frightened that the injured party did not want to send her to school. Upon the witness's persuasion, the injured party consented to let her daughter continue

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<sup>42</sup> Witness A. S. was directly examined at the hearings held on 23 January 2015.

<sup>43</sup> Witness "B" was directly examined at the hearing held on 23 February 2015.

<sup>44</sup> Witness "C" was directly examined at the hearing held on 23 February 2015.

attending the school. The witness knows this because she worked in the primary school and was witness E's teacher. The witness's husband often recounted her, as well as the injured party on rare occasions when they could meet, that the injured party had to flee from her apartment where she had lived due to various provocations and assaults. On several occasions, the witness's husband was in a situation to help the injured party. The witness does not know who entered the injured party's apartment, but believes that the injured party fled it in fear for both her and her daughter's life.

173. The assessment of the referenced testimonies resulted in a consistent conclusion that, during the war, the injured party lived in Semizovac (Vogošća municipality) with her minor daughter (witness E), that she was a single parent, with no protection whatsoever, and with no family members to support her (she divorced her husband before the war, her two sisters were detained during the war).

174. In addition, the referenced witnesses' testimonies show that, during the war, Bosniaks in the Vogošća municipality were exposed to various inconveniences, and that, at the time, the injured party was a Bosniak, member of the minority people in Vogošća.

175. Considering the foregoing consistent testimonies of the Prosecution witnesses regarding the living circumstances in Vogošća during the state of war, the Panel dismissed the Defense's theory that the injured party was "protected" during the war and that therefore she could not have been raped.

176. During the proceedings, the Accused's Defense developed a theory that, during the war, the injured party was "protected" by Velo Antić and Miloš Jovanović, and that therefore the injured party, *de facto*, could not have been abused. The Panel did not credit the referenced theory.

177. To this effect, the Panel notes that the Defense's theory about the injured party's protection by Velo Antić is based on the Defense's submission that, throughout the entire war period, the injured party had a love affair with Velo Antić. Contrary to the foregoing, the Defense's theory of the injured party's protection by Miloš Jovanović is based on the fact that this witness owned an inn in which the injured party had worked, and a partner of witness D, allegedly the injured party's close girl-friend at the time.

178. According to the conclusion of the Defense's witness, Milorad Rajić<sup>45</sup>, the injured party was not ill-treated during the war considering that she was under Miloš Jovanović's protection. The witness further stated that the injured party's house was 20 min away from the inn in which she had worked. Also, the injured party held the key of the inn so that she could open it.

179. Even though it transpires from the adduced evidence that the house where the injured party lived was located near the "Dom" (inn), where the injured party had worked for a certain period of time (to be further addressed in the reasons for the Verdict), this in itself does not mean that the injured party could not have been exposed to violence, as the Defense's witness Milorad Rajić decisively claimed. In addition, bearing in mind that the witness was deployed at the frontline during the war, it is clear that he was not present in Semizovac all the time. This is why he could not have objectively known the fact which he claims to be true. This fact, however, shows to a great extent the quality of his testimony and its unreliability in determining the decisive facts in this case.

180. The injured party testified that Miloš Jovanović treated her fairly and that, on a couple of occasions, he even protected her against being ill-treated by "Serbians and Montenegrins" once they learned she was a Muslim. Witness Miloš Jovanović, who "had run" the inn (named "Dom"), where the injured party worked for a while, testified he did not remember being in any situation to save the injured party. The witness, however, did not exclude such a possibility, stating that various situations occurred at the time.

181. In addition, witness D testified that around 10 non-Serb families remained in Vogošća during the war. The Prosecutor asked the witness about the position of other ethnic groups in Semizovac, in addition to Serbs, at the time. The witness responded that "*whoever stayed - stayed, and no one was interested in them*". The Prosecutor also asked the witness if Bosniaks were killed in Semizovac at the time. The witness responded that she would not like to talk about that because she came to "*deal with the*

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<sup>45</sup> Witness Milorad Rajić was examined at the hearing held on 20 April 2015.

*issue of rape*” rather than that of the killings, and that “*in each war, killings occurred on all three (warring) parties*”, as well as that “*normally, killings occurred in the war*”<sup>46</sup>.

182. According to witness D, the injured party was protected during the war, even though the fear for her daughter was present. The injured party’s boyfriend, Velo Antić, primarily visited her house armed, as well as other young men. The injured party even made no attempts whatsoever to leave Semizovac during the war, and she lived better than 80% of the other population. The injured party did not tell her that anyone had ever invaded her house, and the witness saw no injuries on her.

183. In the Panel’s view, this witness’s testimony is fully calculated to discredit the injured party’s credibility, and it shows the witness’s subjectivity in drawing the conclusions, and her persistence in presenting the injured party as a promiscuous person. Therefore, the Panel credited neither such a witness’s testimony nor the nature of the relations witness D allegedly had with the injured party. This will be comprehensively reasoned in the part of the Verdict relating to the Defense’s theories.

184. No other examined Prosecution’s witness confirmed witness D’s theory that the injured party was allegedly “well” positioned during the war. Witness D herself is not consistent in this statement of hers, as she stated that she herself felt insecure during the war, and that probably the injured party felt insecure too<sup>47</sup>. The fact that the witness stated that, due to her fear the injured party did not want let her daughter attend the school during the war, supports the inconsistency of witness D’s testimony. The foregoing rather shows that the injured party was not in a “favorable” position during the war, as witness D unreasonably presented.

185. In view of the foregoing, the Panel has found that, as a single parent and a member of minority group of the population, the injured party had no protection, but was rather exposed to various forms of ill-treatment.

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<sup>46</sup> Transcript from the hearing held on 30 March 2015, p. 29/30.

<sup>47</sup> Transcript from the hearing held on 30 March 2015 (p.36): “**Prosecutor:** Dis she feel insecure during the war period? During that period? **Witness:** Sir, no one can feel safe in that war, in ... it is horrible. I did not feel safe. **Prosecutor:** In relation to you, did she, as a Bosniak, feel particularly... **Witness:** I have just told you that I did not feel safe and probably she did not feel safe either...”

**(ii) Rape of the injured party**

186. The Panel is satisfied that the Accused is guilty of the rape of the injured party, as described in the Operative Part of the Verdict, primarily based on the testimony of this witness, who is at the same time injured by the referenced offense. The Panel finds that her testimony is comprehensive, convincing and supported with the testimony of the other examined witnesses regarding the decisive facts. The inconsistencies in the injured party's testimony, accentuated by the Accused's Defense both during the proceedings and in its closing argument, are not decisive for the Panel to issue any other decision in the concrete case. This will be reasoned in detail further below in the Verdict.

187. During the direct examination before this Court, the injured party described, sincerely and convincingly, the two identical occasions when she was abducted and raped by the Accused. The Panel will first explain its finding regarding the injured party's abduction by the Accused in the way as described in the Operative Part of the Verdict (Sections 1 and 2).

188. The adduced evidence and the testimony of both the injured party and her daughter show that, on an unidentified day in May and June 1992, in the afternoon hours, the Accused appeared in front of the injured party's house in Semizovac, Vogošća municipality, where she stood with her minor daughter. As it ensues from the injured party's and her daughter's evidence, the Accused approached the injured party, pulled out his pistol and put it under the injured party's chin, ordered her to enter the vehicle and thereby forced her into his vehicle, make VW "Golf II", white color, that was parked in the close vicinity. Once the injured party sat on the codriver's seat, the Accused drove the vehicle away, pulled it over at the Krivoglavci bus stop, and thereupon raped the injured party.

189. At the hearing, the injured party testified that, once in 1993, the Accused came in front of her house, but she could not remember if the house's door was locked and how the Accused got in.

190. The injured party testified that the Accused took her to the Golf II vehicle, white color. In the process, the Accused used a pistol and put it under her neck. Her daughter



stood on the house's threshold and screamed when he abducted her. According to the injured party, her daughter told her after the incident that at the time she had thought that: "he will kill my mother". At the time, her daughter was aged 10, and she stayed alone in the house.

191. After she entered the Accused's vehicle, the Accused drove it away to the Krivoglavci bus stop, around 2-3 km away from the house where the injured party lived. The Accused parked the car at this bus stop and raped her there.

192. The Accused abducted the injured party for the second time in an identical manner, that is, he drove her in his vehicle to the same location and raped her.

193. During the direct examination, the injured party could not remember the season of the year when she was abducted from her home in the above referenced manner and subsequently raped. The injured party, however, stated that the events at issue occurred in 1993, and added that the weather was not cold, that it all occurred during the day, that is, in the afternoon hours.

194. Despite the injured party's inability to remember at the hearing the precise month when she was raped, she stated that "*there were many events during the war*". The Panel finds this explanation completely understandable given the fact that the war itself is traumatic, and that the injured party experienced/survived many traumatic events during that war, as she testified. The injured party described that approximately one month lapsed between the two abductions or rapes, or that they even occurred within one-month period.

195. In determining the period of time, that is, the precise time of the injured party's abduction and subsequent rape, the Panel bore in mind that the injured party testified at the hearing that the Accused had abducted her for the first time after her detention at the "Dom" inn on 30 December 1992.

196. In determining this matter, the Panel also relied on the statement the injured party gave during the investigation, when she presented more details, as well as on the testimony of witness E, who was present at the time when her mother was abducted. The Panel also took into account the testimony of witness Razija Sejdić, at whose place

the injured party's came after her mother's abduction.

197. Therefore, in this context, the Panel points to the Examination Record for the injured party made in the BiH Prosecutor's Office<sup>48</sup>, where the injured party provided a comprehensive description of all the details pertaining to the commission of the criminal offense at issue. This confirms the theory that the injured party has continually and consistently stood by her description of the decisive facts pertaining to the referenced criminal offense.

198. In her Prosecution statement, the injured party stated that she could not specify the accurate time when the charged event actually occurred. However, she remembers that, in the spring or in May, 1993, the Accused came to her house, most probably from the nearby inn. The Accused met her in front of her house, where her minor child was also present. He put a pistol below her chin and told her she had to go with him, sit in the vehicle, white Golf, by which he had previously arrived. Being in fear, the injured party dared not speak up, as the Accused kept his pistol at her neck all the time. The Accused ordered her to sit on the codriver's seat. Having driven for a while, the Accused pulled the vehicle over at a bus stop in Krivoglavci.

199. In the referenced statement, the injured party also described when she was abducted by the Accused for the second time, indicating that it occurred perhaps a month after the first one. On this second occasion, the Accused had a pistol and told the injured party to "get in the car", which she did in fear. The injured party's daughter was also present at this occasion. The Accused thereupon drove the vehicle to the same spot where he had brought her for the first time.

200. Such a finding of facts, namely the fact that, during the critical events, her mother was abducted from their home by a person armed with a pistol, who took her to a vehicle, make Golf 2, white color, also ensues from the testimony of witness E, the injured party's daughter, aged 11 at the critical time. This witness testified about the

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<sup>48</sup> O – 2 – Examination Record for Witness A, BiH Prosecutor's Office, No. T20 0 KTRZ 0009107 14 of 26 August 2014.

details she knew relating to the critical incident, and her description of the decisive facts is consistent with that provided by the injured party.

201. In this regard, witness E testified that, in 1993, the Accused came to their house, and banged on the door, which her mother subsequently opened. The Accused was armed, namely he had a pistol. He put the pistol below her mother's neck and took her to a parked Golf vehicle, white color, and drove it away towards Vogošća.

202. According to witness E, the weather was not cold when her mother was abducted. The witness further stated that the weather was "warm like this" (the witness was examined in May), that it was approximately in May-June 1993, namely that she knew it was not in autumn or winter. Witness E testified that her mother was once again abducted in the same way by the same person, and that the period lapsed between these two abductions was not long.

203. Witness E described her own feelings at the time when the armed person abducted her mother: she was frozen and in shock, and she thought that the Accused wanted to tell her something, while in fact, he just slammed the (car's) door and drove her mother away towards Vogošća.

204. It consistently ensues from the correlated testimonies of the injured party and witness E, who was present when the injured party was abducted from her home on the critical occasion, that the Accused came to the injured party's house on an unidentified day in May 1993 (for the first time), and on an unspecified day in June 1993 (for the second time), in the afternoon hours. In addition, a consistent conclusion ensues from the referenced witnesses' testimonies that, by using the pistol, the Accused forced the injured party into his vehicle, make Golf 2, white color, that was parked nearby.

205. In assessing witness E's testimony, the Panel was particularly mindful of her age at the time when the critical incidents occurred, as well as the fact that the incident at issue is deeply "imprinted" in her memory, given that at those moments she remained alone, without her mother, and knew nothing about her destiny. In the Panel's view, witness E gave truthful evidence, which was not calculated to help her mother, as the Defense tried to present. The foregoing ensues from the fact that witness E testified that she had learned about the rape itself from her mother after the war, when she grew

up. Witness E did not describe any details of the rape, which she could not even know, by the nature of things. Witness E did not indicate the purpose for which her mother was abducted by the Accused, but rather described the critical incidents exactly from the perspective of a child and the way she had experienced them.

206. The Accused's Defense insisted on the inconsistencies between the testimony of the injured party and that of her daughter in terms that witness E stated that the Accused had banged on the door, while the injured party stated she did not know how she found herself outside the house on these occasions. The Panel however, finds that this inconsistency is not of such a character so as to question the consistency of these witnesses' testimonies, in their decisive parts. The Panel finds that in case of such an incident, when a uniformed person appears at the door and abducts the injured party, the detail that she does not remember if the Accused actually banged on the door, as her daughter stated, speaks exactly in support of the consequences resulting for the injured party from the incident. Also, in the Panel's view, this is not an essential detail which the injured party would remember after the traumatic incident, bearing in mind all other traumas that she experienced during the war, pursuant to her own testimony. This additionally supports the theory that these witnesses' testimonies are not harmonized/calculated because, if otherwise, they would have "agreed" upon these details.

207. The Panel finds confirmation of the conclusion that the injured party was abducted by the Accused in May and June 1993 also in the testimony of the Prosecution witness Razija Sejdić, the injured party's neighbor. This witness testified that, on one occasion, the injured party's daughter came to her, screaming and telling her: "*He took my mother away! He took my mother away! He took her away on her bare feet*". The little girl told her that the person who took her mother used a pistol. Witness Sejdić further testified that the injured party's daughter stayed with her for around one hour. The witness tried to calm down the injured party's daughter during that time, whereupon she saw her off, not knowing at all if her mother had returned. In relation to the period of time when the referenced incident occurred, the witness stated that it was in 1993, believing it was the summer time – May or June.

208. In the Panel's view, the testimony of witness Razija Sejdić is consistent with

witness E's testimony in relation to the fact that witness E was at witness Razija Sejdić's place after the Accused had abducted the injured party, and that she protected her. The fact that the injured party does not know that her daughter was at witness Razija Sejdić's home is quite understandable considering that the injured party was abducted from her home, and that her daughter had returned to the house before the injured party was brought back home, as she testified.

209. The Panel has found that, after the Accused had driven the injured party, threatening her with his pistol, to the Krivoglavci bus stop, he raped her on two occasions. Having ordered her to strip off her clothes, he firstly forced her into oral sex, whereupon he lowered back the codriver's seat and raped the injured party.

210. Such a finding of facts ensues from the injured party's testimony. She described the sequence of events after the Accused had pulled his vehicle over at the Krivoglavci bus stop on the critical occasions.

211. According to the injured party, the Accused pulled out his pistol, placed it above the steering-wheel, unbuttoned his trousers, pushed her head down between his legs and forced her into oral sex. This lasted for about 15 minutes, whereupon he raped her on the codriver's seat.<sup>49</sup>

212. The injured party testified that she was raped in the same way on the second occasion, namely that the Accused put the pistol under her chin or below her neck, drove her by the same vehicle to the same site, and raped her again like the previous time.

213. The injured party was on the codriver's seat during the rape and it all lasted "forever". In describing her own feelings during the act of rape, the witness stated she feared for her life as well as for her child's life, describing the situation with the phrase "*keep silent and endure it*".

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<sup>49</sup> Transcript from the main trial held on 16 February 2015, p. 7: "*He pulled the car over and, normally took out his pistol, placed it above the steering-wheel, unbuttoned his trousers, grabbed me by my hear forcing me to give him oral sex, for about 15 minutes, and subsequently he raped me on the codriver's seat.*"

214. In her statement to the BiH Prosecutor's Office during the investigation phase, the injured party consistently described the act of rape in relation to the decisive facts.<sup>50</sup>

215. The injured party stated that, having pulled over the vehicle at the Krivoglavci bus stop, the Accused ordered her to undress. She was struck dumb in fear, as she knew what would happen. Therefore, she had to undress, as she described, being in fear for both herself and her child, who had stayed back at home. The Accused pulled her hair strongly, bowed her head down between his legs, and forced her to put his sex organ into her mouth, having previously unbuttoned his trousers. The Accused forced her into oral sex, which lasted for approximately 5-10 minutes, holding her head pressed down all the time. Thereupon, the Accused lowered down the codriver's seat, lied on the top of her, forcefully spread her legs and raped her. This lasted for approximately 15-20 minutes. The Accused subsequently ordered her to get dressed and drove her back home. The injured party stated that she did not report the rape, because at the time, many people were being killed in Vogošća and Semizovac, and she feared for both her and her child's life.

216. The injured party comprehensively described the latter rape as well. She stated that, on the other occasion, when the Accused drove her by the same vehicle to the same site, the Accused acted in the same way like during the first rape, namely he grabbed her hair, pulled her head down between his legs and made her put his sex organ in her mouth. The injured party further stated that she had to give the Accused oral sex for around ten minutes, whereupon he lowered the seat down with his hands, forcefully pushed her legs apart and raped her. All that lasted for around 15-20 minutes. After he had raped her, the Accused drove her back to her home by the same vehicle.

217. Therefore, the Panel has held that the witness-injured party described the critical incident in a convincing, objective and unbiased manner and that, in its essential parts concerning the decisive facts in the case, her testimony is consistent with her investigative statement.

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<sup>50</sup> O – 2 – Examination Record for Witness A, BiH Prosecutor's Office, No. T20 0 KTRZ 0009107 14 of 26 August 2014.

218. The Panel has found that, due to the use of force, or the pistol by the person who is abducting her, who was the Accused according to the Panel (to be reasoned further in the Verdict), the injured party could offer no resistance being in fear for her and her minor daughter's lives, and their safety (which the injured party described in a sentence: "*I did not dare speak up in fear*"<sup>51</sup>). In addition, at the moment when the armed person came to abduct her, she was alone in the house with her minor daughter, which they both consistently confirmed.

219. Therefore, the Panel has held that, during these abductions, the injured party felt helpless, as it ensues from her statements, which she described in a phrase "*keep silent and endure it*". This is so particularly because she felt that her resistance would be in vain, as the person who abducted her used the pistol.

220. In relation to the consequences of the rape, the injured party stated that she learned she was pregnant after the first rape, because approximately 10 days after the first rape, she expected her "period", but she missed it. The witness waited for a month-two to become certain that she was pregnant. According to the witness, the pregnancy was certainly the result of rape as she had no sexual intercourses with any other persons at the time.

221. After the second rape, the injured party terminated the pregnancy with the support of her younger neighbor (witness D). The injured party did not confide in witness D that she had been raped, or that the Accused had raped her. The abortion, with the support of witness D, was carried out at the Health Center Vogošća. Even though the injured party made efforts to find the related documentation, those efforts were unsuccessful.

222. The Panel has found that the witness-injured party stated consistently, also during the investigation phase,<sup>52</sup> that as a result of the first rape she got pregnant, and that she terminated the pregnancy, which undoubtedly confirms the truthfulness of the injured party's evidence throughout the proceedings.

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<sup>51</sup> O – 2 – Examination Record for Witness A, BiH Prosecutor's Office, No. T20 0 KTRZ 0009107 14 of 26 August 2014.

<sup>52</sup> *Ibid.*

223. Despite the fact that neither the pregnancy nor its termination amounts to the essential elements of the criminal offense charged against the Accused, and the fact that they were not described in the factual substratum of the confirmed Indictment, the Panel has held that these facts presented by the injured party had to be taken into consideration in rendering the decision, in order to completely consider the truthfulness of the injured party's evidence, as well as the consequences resulting from the criminal offense for the injured party.

224. Also, in describing the circumstances of the criminal offense at issue, the injured party stated that she has changed a lot after the incident, withdrew in herself, and that she was more active while her children, who had given her the "élan" were with her. The witness subsequently "became depressed" and today feels worthless and hurt, having lost her self-confidence. The witness stated that she is still today being treated at ... (as confirmed by the medical documentation).

225. Having evaluated the evidence adduced in the concrete case, the Panel found that only the injured party was present with the rapist (during the act of rape), and that the injured party's minor daughter was present on the occasion when the injured party was abducted from her home. In the Panel's view, from the aspect of credibility of the injured party's evidence, the foregoing does not diminish its probative value required to find the Accused guilty as charged.

226. The footing for the Panel's finding that the Accused is guilty as charged is mostly the testimony of the witness – injured party A. The Panel found that the victim's evidence is credible and sufficient to a decisive extent to find the Accused guilty as charged and to sentence him.

227. In rendering its decision, the Panel took into account the ICTY's position that no corroborating evidence is necessary to establish the credibility considering the fact that rape is often committed before few, or no witnesses at all; the nature of the act is such that only the victims can identify the perpetrators and testify about the rape-related circumstances.

228. As to the minor inconsistencies in the injured party's evidence, the Panel finds, in compliance with the ICTY's position in *Furundžija*, that the persons-survivors of



such traumatic experiences such as rape “cannot reasonably be expected to recall the precise minutiae of events, such as exact dates or times. Neither can they reasonably be expected to recall every single element of a complicated and traumatic sequence of events. In fact, inconsistencies may, in certain circumstances, indicate truthfulness and the absence of interference with witnesses.”

229. The Panel also took into account the injured party’s statement relating to the fact that she had survived a lot of bad experiences during the war “which she *could not describe even if she had testified about them for days*”. Therefore, she mentioned just a few events that she had survived, and, due to the fear she had experienced, she cannot specify accurately the time when certain events occurred. The Panel finds such an explanation to be quite reasonable, considering the traumatic event and the circumstances in which it had occurred (the uniformed person threatening her with a pistol, in the presence of her child, leaving the child alone and going into an unknown direction).

230. The Panel has noted that sub-rule 96(i) of the ICTY’s Rules of Procedure and Evidence provides that no further corroboration is required in support of the victim’s evidence. Such a rule is compliant with the position taken by the Trial Chamber in the *Tadić* Judgment, as also indicated in the *Akayesu* Judgment, namely that the testimony of a victim of sexual abuse is accorded the same presumption of reliability as the testimony of victims of other crimes, something long denied to victims of sexual assault by the common law. Therefore, pursuant to the ICTY’s case law, the testimony of victims of sexual assaults, as a rule, is not less reliable than the testimony of any other witness.

231. In addition, there is no legal requirement that the evidence of a single witness given about substantive facts must be corroborated in order to be accepted. What matters is the reliability and authenticity given to the evidence at issue. The Panel has also noted, pursuant to the position of the Appellate Panel of the Court, that the quality of evidence is the most important criterion for establishing the relevance of facts rather than the mere number of (items of) evidence, namely that: “*the power inherent in the judge as a finder of fact to decide solely on principle of free evaluation of evidence and his or her personal intimate conviction. This wide discretionary power is subject to a limited number of restrictions. However, the principle reflected in the Latin maxim unus testis*

*nullus testis* (one witness is no witness)<sup>53</sup>, which requires testimonial corroboration of a single witness's evidence as to a fact in issue, is in almost all modern continental legal systems no longer a feature"<sup>54</sup>.

232. In addition, the Panel recalls the case law in *Miodrag Marković*, where the Appellate Panel concludes that the Trial Panel "could convict the Accused on the basis of the injured party's statement", quoting the opinion of the Appellate Panel of the Court of BiH in *Mejakić et al.* that "*the evidence that is lawful, authentic and credible may be considered sufficient to convict an accused even where its source is a single witness*"<sup>55</sup>. In support of this conclusion also stands the ICTR's position that, by applying Rule 96 of the ICTY's Rules on Evidence and Procedure, the ICTR also found that "*the Chamber can rule on the basis of a single testimony provided such testimony is, in its opinion, relevant and credible*"<sup>56</sup>.

233. The Panel has noted that, in addition to the injured party's Examination Record, filed in the Defense's evidentiary material was her statement she gave to the Association. The Panel has held that it is also necessary to note that the statement the injured party gave to the Association (as well as the statements witnesses C and Razija Sejdić<sup>57</sup> gave to the same Association) are not witness examination records containing the instructions prescribed by the CPC BiH,<sup>58</sup> but rather statements given by the injured

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<sup>53</sup> See the ICTY's case Prosecutor v. *Duško Tadić aka Dule* before the Trial Chamber, Opinion and Judgment of 7 May 1997, para. 537.

<sup>54</sup> *Ibidem*, para. 536: "The general principle which the Rules require the Trial Chamber to apply is that any relevant evidence having probative value may be admitted into evidence unless its probative value is substantially outweighed by the need to ensure a fair trial (Sub-rules 89(C) and (D). Rule 96(i) alone deals 96(i) with the issue of corroboration, and then only in the case of sexual assault, where it says that no corroboration is to be required. The function of this Sub-rule is stated in *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia* by Virginia Morris and Scharf. It is explained that this Sub-rule accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something long denied to victims of sexual assault by the common law."

<sup>55</sup> *Marković*, Appellate Panel's Verdict, para. 72, quoting the Verdict of the Appellate Panel of the Court of BiH in *Mejakić et al.*, para 47.

<sup>56</sup> The Trial Chamber Judgment in *Akayesu*, paras. 134 and 135.

<sup>57</sup> **O – 1** – Witness A's statement in the Women Victims of War Association Sarajevo, No. BiH-0746/07 of 6 March 2007, **O – 3** – Witness C's statement in the Women Victims of War Association Sarajevo, No. 30 January 2008; **O – 4** – Statement of witness Razija Sejdić, Women Victims of War Association Sarajevo, No. BiH-0746/07 of 6 March 2007.

<sup>58</sup> Consistently with the position of the Appellate Panel of the Court, expressed in the Decision No. X-KRŽ-07/330 of 26 March 2009, pursuant to which: "In the concrete case, the statements Witness B gave in the SJB Kreševo on 9 February 1994 and witness A in the AID No. 329/96, and AID's Summary Report, were

party, witness C and witness Razija Sejdić to a non-governmental organization, namely as indicated in the introduction of the record: "... *about the war crimes committed against the civilian population in the Vogošća municipality*". Therefore, these statements have no special probative value, but were probably significant in the process of collecting information about the war crimes committed, as indicated in the respective introductory parts.

234. Also, these statements were given in relation to much broader circumstances than the mere subject of the concrete proceedings. Therefore, in the Panel's view, neither the injured party nor witness C could recount all that they had stated in their respective statements given in the BiH Prosecutor's Office, which amount to the lawfully obtained evidence pursuant to the relevant provisions of the CPC BiH, to which the Panel accords special probative value in determining the decisive facts in the present case.

235. The Panel has found that, during her direct examination, the injured party herself stated that, in her statement given in the Association, she had just "*slightly*" mentioned the details pertaining to the critical incident because she was in fear even at the time. The injured party stated that she did not dare tell the truth even in the Association because "she was there" throughout the entire war. In addition, the injured party stated she felt much safer when she gave her statement at the BiH Prosecutor's Office, but due to the fear she had survived, she could not remember all the details pertaining to the events at issue.

236. The injured party stated that her neighbor A.S. was the first person she confided in with regard to the experienced rapes, namely after the first rape when she became pregnant, and after she had an abortion. In addition to witness A.S., the injured party also told witness C about the referenced incident. She told nothing about the rape or the rapist to witness D, who took her to have the abortion. This is so because the injured

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*inter alia* taken without any prior instructions and cautions given to the witnesses relating to their, without indicating the capacity of the persons who took the statements, or the concrete case in which the proceedings were conducted. It ensues from the foregoing that the referenced statements were not taken within the probative procedure in the criminal proceedings. For the foregoing reason, the Appellate Panel has held that the referenced statements could not be considered as "as the investigation statements" under Article 273(1) of the CPC BiH. However, the official or other notes may be accepted as documentary evidence, namely they are not unlawful in itself".

party believed witness D was “nationalistically oriented”, and she did not dare tell her anything. No sooner than when the war ended did the injured party tell her sister, witness B, about the rape, as she could not do that during the war. Also, the injured party told her daughter, witness E, about the rape no sooner than when she grew up.

237. It ensues from the injured party’s Examination Record<sup>59</sup> that she told her sister (witness B) and witness A.S. about the incident, as pointed to by the Accused’s Defense, and that she did not mention it to witnesses C and E. Despite the foregoing, the Panel considers truthful the injured party’s statement from the main trial, when she stated that she mentioned the incident also to witnesses C and E, which they also confirmed. In addition, the Panel notes that this is an irrelevant inconsistency in the statements, which does not bring into question the decisive facts.

238. The injured party’s statements relating to the decisive facts and the committed rape, and thereby the truthfulness of her testimony, are corroborated with the testimonies of examined Prosecution witnesses A.S. and B, C and E, whom the injured party told she had been raped, including certain details related to the rape itself.

239. In this context, witness A.S., the injured party’s neighbor during the war, testified that, during the war, in 1992 or 1993, the injured party confided in her that she had been raped, and that the person who raped her had abducted her threatening her with a pistol in his hand. The injured party told her the rapist’s full name. The witness remembers that the referenced person’s last name is Savić, but cannot recall precisely his name, whether it is Slavko or Slaviša.

240. According to witness A.S., the injured party was nervous and unstable while she was describing the incident to her. The witness described that the injured party looked “*generally like any person who has experienced something bad*”. In addition, the witness stated that, on the other occasion, the injured party told her she was pregnant and that the pregnancy was a result of the rape. After a while, the injured party came to her place and confided in her that she had had an abortion. The injured party told the witness that

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<sup>59</sup> **0-2-** Examination Record for Witness A, BiH Prosecutor’s Office, No. T20 0 KTRZ 0009107 14 of 26 August 2014.

she had been raped once. According to the witness, at the time, the injured party had no one closer to her to confide in, and that she only trusted her (the witness).

241. Witness A.S. does not know whether the rape occurred in the house or somewhere else. The witness underlined that she does not know where the injured party had the abortion as well as that she had never asked her about it, as she did not like to inquire about anything. The witness added that they did not talk about the incident after the war, and that she told no one about it. This is so because: *“It is better to talk less about things”* and *“I like to bury all bad things”*. The witness did not inquire about the person’s identity, or if he was a soldier or a civilian.

242. Witness A.S. described the injured party as a normal person, who raised her children normally, who was employed and a diligent worker. They visited each other during the war, sometimes every day, sometimes once a month, depending on the situation. The witness’s daughter-in-law would see the injured party when she visited the witness’s house, but she never mentioned the incident before her daughter-in-law, she only spoke about it before the witness.

243. The Accused’s Counsel presented to the witness the statement she had given during the investigation, where the witness stated that the injured party had confided in her in relation to the 1993 rape. The witness stated this was in 1992 or 1993, but she was not certain about it. The witness explained this uncertainty as follows: *“One has just forgotten all that!”* The Panel observes that this statement is not at all tendered in the Defense’s evidentiary materials pursuant to Article 273(1) of the CPC BiH, which is why the Panel did not evaluate these statements at all. In addition, during the examination, the witness could not specify the time elapsed between the rape and her conversation with the injured party. Asked if the injured party’s behavior changed after the incident, the witness responded: *“She is sometimes nervous, and sometimes not. What can I tell you? Like all of us.”*

244. The Panel finds that witness A.S.’s testimony is corroborating in the context of the decisive facts described in the injured party’s testimony. This was an additional reason for the Panel to credit the witness’s testimony. Specifically, it is obvious from witness A.S.’s testimony that during her examination she sincerely and convincingly presented

only the information she had learned indirectly.

245. An especially important fact here is that, according to witness A.S., the injured party confided in her during the war, that is, shortly after the incident occurred. The injured party told her the full name of the person who had raped her. Also, she told her the rape-related details, such as that a pistol was used during the rape, the consequences of the rape, namely the injured party's pregnancy and the subsequent abortion, which is consistent with the injured party's testimony. All this supports the injured party's statement that she had not "imagined" the rape, as unreasonably presented by the Defense.

246. Considering that witness A.S. is an elderly woman (aged 74 at the time when she gave evidence), her statement that she had no wish to talk about that any more, is quite logical and understandable to the Panel. The fact that the injured party did not mention to this witness the second rape is not of significant importance, particularly considering that the injured party testified at the hearing that she recounted to A.S. certain details relating to the first rape and its consequences (the pregnancy and the abortion).

247. The Panel finds that witness A.S. does not in any way "fabricate the story", as the Defense tries to present. For example, when asked about the injured party's character, the witness responded: "*We are not a couple to hang out with each other*". The witness added that they started associating together no sooner than during the war, and this was due to the hard and evil times. This undoubtedly shows that it is not the witness's calculated attempt to help the injured party, but rather a truthful testimony based on indirect information learned from the injured party. In addition, the fact that witness A.S. and the injured party associated together during the war is confirmed by the testimony of witness C, the then homeroom teacher of the injured party's daughter.

248. Further bearing in the mind that, during the war, the injured party lived alone with her daughter, that she had no other family members or close friends to confide in, and considering that this was a deeply traumatic incident that shocked the injured party, the Panel finds it was a quite natural decision on the part of the injured party to confide in someone during the war. The injured party's decision to choose witness A.S. to confide in is quite understandable, considering that she is an older woman, rich with life

experiences, who thereby “inspires” confidence.

249. The injured party also confided in her sister, witness B, in relation to this incident, and she consistently confirmed this fact too.

250. Witness B testified that, after the war ended, or immediately after the Dayton Agreement was signed, the injured party told her that the Accused had forcibly abducted her and drove her towards Vogošća. The sister did not tell her the exact location to which the Accused had brought her, but she did mention to her that he had pointed his pistol into her head, and thereupon raped and abused her. The injured party told her that the referenced incident occurred twice, that for the third time the Accused came to her place with a man and beat both her and her child.

251. Witness B could not remember if her sister had told her anything about the other rapes. Her sister told her that the rape occurred in 1993. The witness stated that it may have occurred in May or June. The witness further testified that her sister had told her she had informed her neighbors about the incident as well.

252. Witness B further testified that she knew that witness D, whom she knows, helped her sister to terminate her pregnancy. In 2007, the injured party reported this incident to the Association. They both discussed this before that time, but were ashamed because they were brought up in an environment where it is a shame to talk about what they had experienced, “regardless of whoever did it”. In addition, everyone “*spit on the injured party*”, attacked her and called her (bad) names. According to witness B, her sister has become quite a different person after the war. It is a drastic difference; she is quite a different person, both physically and mentally.

253. Witness B’s testimony, that is, its decisive part pertaining to this incriminating incident, is consistent with the injured party’s and witness A.S.’s testimony. Witness B’s testimony contains more details, such as: the Accused drove the injured party in a vehicle towards Vogošća in order to rape her; the Accused raped her twice; and the Accused came for the third time with another man and beat the injured party and her child.

254. Considering that witness B is the injured party’s sister, it is logical that the injured

party confided in her more details relating to the rape itself and the way in which it was committed (they are blood-related and “closer” by their age), rather than in witness A.S., with whom she associated “due to the circumstances”, as witness A.S. essentially stated. In addition, the fact presented by witness B in her testimony, that they were brought up in an environment where it is a shame to tell what they had been through, regardless of the fact that they are victims, should not be disregarded. This is why the injured party perhaps mentioned to witness A.S. fewer details regarding the incriminating incident itself than to her sister.

255. The fact, emphasized by the Accused’s Defense, namely that the injured party’s testimony and that of witness B differ with regard to the whereabouts of the injured party’s son during the war, is of no significance to this case, since it is not legally relevant. In addition, the Panel observes that both of the witnesses consistently stated that they had not heard each other during the war. The injured party stated she had been on duty at the Orthopedic Clinic when the war broke out and that she came back home after 15 days. This is why it is quite possible that, during this period, witness B took over the child, which is one of the options the Panel will not address any further, given that those are but irrelevant inconsistencies which do not concern the decisive facts in the case.

256. Also, the injured party presented to witness C certain details relating to the referenced incidents, which was confirmed by the witness in her evidence given before the Court.

257. Therefore, the veracity of the injured party’s statements regarding the decisive facts pertaining to the charged acts, described in Sections 1 and 2 of the Operative Part of the Verdict, was also confirmed by witness C’s trial testimony. Witness C stated that the injured party personally told her that she had been raped several times in 1993, at a location outside her apartment. The witness learned from the injured party’s story that she got pregnant after the rape and that she subsequently terminated the pregnancy. Witness C does not know exactly the duration of the period lapsed between the rape and the moment when the injured party told her about it.

258. As to the frequency of their encounters during the war, witness C stated that they



rarely visited each other. The witness believes that the injured party told her she had been raped because they had known each other for a long period of time and because she trusted witness C. In addition, the witness stated that the reason for such a trust is also the fact that she had persuaded the injured party to send her child to school, and told her that she would personally look after her child.

259. Witness C testified she had observed on the injured party the consequences of the rape, which were apparent from her poor concentration, the fact that she had not felt good, that she was nervous and sick. It is certain that, among others, the critical incident significantly affected the injured party with its circumstances. Responding to the question posed by the Accused's Counsel, the witness stated that she had encountered the injured party in passing. In certain circumstances, the injured party told her just a few things, while on the other hand she would tell her more. The witness stated that the injured party "*did not dare to breath*", let alone to talk. In addition, the injured party did not have to tell the witness much about the rape, since everything was quite clear to her.

260. Even though witness C could not recall during the testimony if the injured party had told her about the rape in 1993, she concluded that it was not during the war, namely that the truce had already been signed.

261. The Panel has evaluated witness C's testimony bearing in mind the fact that she had earlier given statements both to the Association and the BiH Prosecutor's Office<sup>60</sup>. The Panel did not use her Association-related statement in establishing the decisive facts, considering the line of arguments presented in the foregoing part of the reasons for the Verdict.

262. With respect to the statement given by the witness C at the BiH Prosecutor's Office, the Panel notes that, in this statement too, consistently with her trial testimony, witness C firstly describes the injured party's bad situation during the war. In the same statement, the witness stated that, on one occasion in 1993, the injured party told her that an armed man had come to the door of her family house, with a pistol pointed at her

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<sup>60</sup> O – 3 – Examination Record for Witness C, BiH Prosecutor's Office, No. T20 0 KTARZ 0009017 14 of 2 September 2014 and Witness C's statement given in the Women Victims of War Association of 30 January 2008.

head. The injured party further told the witness that the man pulled her child from her hand, abducted her in an unknown direction, and thereupon raped her. The witness also described the consequences of the referenced act, namely the fact that the injured party was in a state of shock for a longer period of time, that she feared for her life and had no one to seek protection from and report the incident to.

263. It is transparent from the foregoing that, during the investigation phase, witness C also identically described, in the decisive part, the indirect information she learned about the rape to which the injured party had been subjected. This has additionally led the Panel to credit witness C's testimony.

264. Considering that witness C was a teacher, that is, a homeroom teacher of the injured party's daughter, and that the injured party trusted her, the Panel finds natural the injured party's decision to tell witness C certain details regarding the charged act. The details presented to witness C by the injured party depend on the nature of the relationship between them and the frequency of their encounters during the war, which they both consistently indicate in their statements. Importantly, however, witness C testifies that the injured party told her that the rape had occurred in 1993, that she was abducted and raped by a soldier, who used a gun on the occasion at issue. All these details indirectly confirm the truthfulness of the injured party's testimony in its decisive part.

265. The fact that witness C stated that witness A.S. lived alone during the war, and that contrary to the foregoing, witness A.S. stated she had lived with her daughter-in-law and her son, does not bring into question the truthfulness of this witness's testimony, contrary to the Defense's position. This is so considering that it does not concern the decisive facts in the case. Despite the foregoing, however, the Panel observes that witness C testified that the witness A.S.'s son and daughter-in-law actually fled after a certain period of time, but she was uncertain when precisely. This would mean that they had lived with witness A.S. before their escape.

266. In addition, the injured party's daughter, witness E, also confirmed the injured party's statement regarding the facts she knew about the rape. Witness E testified that her mother tried to protect her when she was a child and thus told her nothing about the

rape to which she was subjected during the war. When she grew up, witness E started questioning her mother of her own initiative, and no sooner than when she grew up did her mother start gradually disclosing to her the rape-related details. Witness E also stated that her mother had asked witness D to take her to see a medical doctor, which is in its decisive part consistent with the injured party's statement that she had asked witness D to help her terminate the pregnancy.

267. In the Panel's view, witness E's testimony is convincing and consistent with the injured party's testimony in its decisive parts, of which witness E was aware, namely the fact that, the Accused came by the white Golf vehicle on two occasions and abducted her mother, that he was armed, as well as that he came to their house for the third time and beat her and her mother.

268. Despite the Defense's efforts to question witness E's credibility, arguing that it is not clear why she remembers witness C, and does not remember witness A.S., the Panel has held that this statement does not bring into doubt the truthfulness of witness E's testimony. Specifically, witness C was the teacher of the injured party's daughter so, logically, witness E remembers her teacher better than A.S., with whom her mother had not socialized before the war.

269. In addition, the Panel has held that witness E, as she herself stated, occasionally went to school, wherefore she did not spend all the time with her mother. Also, witness E was aged 11 at the time when the crime was committed, thus it is understandable that she does not remember all the details of the war-related events, which were certainly traumatic for her. In the Panel's view, it transpires from witness E's testimony that, to a certain extent, she also remembers witness A.S. but she does not name her with this name, since witness E stated that there was a house located above the *Dom* building, where a Serb woman had lived, whose name she forgot, and who had brought them food a couple of times.

270. Witness Razija Sejdić also confirmed in her testimony that the injured party was a rape victim. This witness stated that the injured party herself told her that she had been abducted and raped, and that the injured party told her the rapist's full name. Witness Sejdić does not know how many times the injured party was raped, or whether she was

raped by a number of persons. Even though in her statement given to the Association<sup>61</sup> the witness stated that the injured party told her she had been raped multiple times, the witness stated at the hearing that she does not know how many times the injured party was raped. In addition, the witness explains that, when she gave her statement at the Association, she did not identify the person who had raped the injured party, as she was not asked about it at all.

271. Despite witness Razija Sejdić's statement that the injured party had told her about the rape, the Panel has held that the injured party did not confirm this fact, which is why it is possible that witness Sejdić learned this from other sources, considering that Semizovac is a small place. The Panel notes that witness Razija Sejdić's testimony was not consistent in the decisive parts or her overall testimony so as to be used as the basis for the Panel's decision. Also, it was inconsistent with the other evidence (except with regard to providing protection for the injured party's daughter when the injured party was abducted). In this regard, this witness's testimony will be particularly evaluated in the part of the Verdict concerning the identification of the Accused as the perpetrator of the criminal offense at issue.

272. Prosecution witness Miloš Jovanović, owner of the *Dom* inn where the injured party had worked for a certain period of time, was also examined before the Court. The Panel has evaluated this witness's testimony in its entirety and found that it is irrelevant from the aspect of determining decisive facts in the present case.

273. Witness Miloš Jovanović testifies he was on the frontline with the Semizovac Battalion, wherefore he does not know the facts concerning the critical events and has no relevant information in this regard. In addition, viewing this witness's testimony in its entirety, and considering that, pursuant to his own words, he was not interested in anything during the war, or in anyone else but only himself<sup>62</sup>, and that he cannot recall

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<sup>61</sup> The statement given by Razija Sejdić in the "Women Victims of War" Association, No. BiH-0746/07 of 6 March 2007, DO-4.

<sup>62</sup> Transcript from the hearing held on 4 May 2015, pages 82/83, witness Miloš Jovanović: "I do not have a poor memory. I have a rather good memory, but, I think, it was long time ago for me to remember. I remember that, at the time, I cared about nobody else but myself. Thus, I was not interested in who is driving which type of car, who dated who, who socialized with whom. I lived my life, a specific life to a certain extent, and nothing else interested me."

the war-related events (which the witness described as follows: “*My memory is completely poor when it comes to the war*”)<sup>63</sup>, this witness’s testimony is clearly irrelevant to establishing decisive facts, given his lack of interest in the events occurring in his immediate vicinity during the war.

274. Bearing in mind, however, that witness Miloš Jovanović “operated” the *Dom* inn, where the injured party had worked for a certain period of time, and considering the injured party’s statement that she was under the compulsory work obligation and therefore worked at the inn, which the Defense contested, the Panel will present the contents of this witness’s testimony in the part addressing the Defense’s theory challenging the injured party’s credibility.

**(iii) Identification of the Accused as the perpetrator of the crime of rape**

275. The Accused is indeed the person who had, on two occasions, raped the injured party by using force, namely he first forced her into oral sex threatening her with a pistol, and subsequently raped her, ensues primarily from the injured party’s testimony, unchallenged by the other evidence adduced.

276. Along this line, the injured party identified beyond a doubt the accused Slavko Savić, both during the investigation phase and at the hearing, as the person who had raped her. According to her testimony, she had known the Accused by sight from before the war, namely she knew his full name at the time when he abducted her.

277. At the hearing, the witness-injured party stated that she had known the Accused’s full name from before as she had many contacts with the inhabitants, who knew each other among themselves. This fact supports the Panel’s finding regarding the identification of the Accused as the perpetrator of the offense, considering that Semizovac, where the injured party had lived, is “a small place” or municipality. Thus it is natural and logical to assume that the inhabitants in the same area mutually knew each other.

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<sup>63</sup> *Ibid*, p. 79.

278. The injured party testifies she knew that, before the war, the Accused had been employed with the *Pretis* Company in Vogošća, and she saw him uniformed during the war. The injured party also added that, at the time, the Accused wore a camouflage uniform, with a white belt and a pistol at his side. The witness does not know the meaning of the white belt and assumes it held the weapon in its place. In addition, despite the fact that the witness could not specify the unit which the Accused was a member of during the war, she believes those were military police units.

279. The injured party also described the situation when the Accused came to her family house for the third time and ill-treated her. The injured party's daughter also consistently confirmed this situation. According to the injured party, at a certain period of time after the rapes, the Accused came again to her house in the evening hours, this time accompanied by Savo Šikuljak. The Accused ill-treated her in the way that he approached her and started punching and kicking her, whereupon her daughter started screaming, and he beat her up too. The witness is familiar with the full name of Savo Šikuljak because his sister had worked together with her at the Orthopedic Clinic. The witness emphasized that, at the time, Savo Šikuljak was Commander of the Intervention Platoon.

280. Considering that the Accused visited the injured party's family house for the third time and beat her and her daughter, which also transpires from the consistent testimony of the injured party's daughter, the Panel finds beyond a doubt that this finding of fact also supports the finding that the injured party did not "confuse" the Accused with someone else as the perpetrator of the acts described in Sections 1 and 2 of the Operative Part of the Verdict.

281. Therefore, the injured party's testimony provides for no other option but that the Accused is indeed the perpetrator of the criminal offense at issue, also considering that, already during the investigation, the injured party identified the Accused as the person who had undertaken the unlawful acts against her, and picked him from the photographs

presented to her in the Prosecutor's Office (the person under number 3), after being previously asked to describe him.<sup>64</sup>

282. The Panel also finds that, during the investigation, or for the Examination Record in the BiH Prosecutor's Office BiH<sup>65</sup>, the injured party identified the Accused as the perpetrator of the offense. The injured party stated that, in the spring or May 1993, Slavko Savić aka Žuti came to her house, most probably from the nearby inn. The witness knew this person from before the war, and she knew that he had resided in the place of Kremeš, Vogošća municipality.

283. The Panel assessed this part of the injured party's testimony in relation to the contents of the Prosecution documentary exhibit T-9<sup>66</sup> (or Vob-1 form concretely). Indicated in a column titled "day, month and municipality of birth" was that the Accused was born in the village of Kremeš, Vogošća municipality. This additionally corroborates the Panel's finding and the identification of the Accused as the perpetrator of the incriminating act.

284. The Panel's positive finding related to the Accused's identification as the perpetrator of the criminal offense at issue also ensues from Prosecution's other adduced evidence, namely the testimony of witnesses A.S., B, C and E.

285. Witness E testified that, in 1993, when he came to their house, the Accused was armed with a pistol. He banged on the door and her mother opened it. The Accused thereupon put the pistol below her mother's neck and took her to the Golf vehicle. Witness E stated she knew the Accused and his eyes' color, remembering that, at the time, he had a blond, slightly curly and "thoroughly cut" hair and bright eyes.

286. Witness E stated that she remembered the Accused well even though she had not known him from before, because this was a traumatic incident for her, which arouse fear in

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<sup>64</sup> This ensues from the contents of Exhibit T-1- Photo line-up Identification Record, BiH Prosecutor's Office, No. T20 0 KTARZ 0009107 14 of 26 August 2014, with attached photo-album.

<sup>65</sup> O – 2 – Examination Record for Witness A, BiH Prosecutor's Office, No. T20 0 KTRZ 0009107 14 of 26 August 2014.

<sup>66</sup> T-9 – Document of the Department for Protection of War Veterans and Disabled Persons, Bijeljina municipality, No. 02/7-832-1-125/14 of 7 October 2014, with attached verified copies of VOB-1, VOB-2 and VOB-3 forms.

her. During the examination, the witness could not remember if the Accused wore civilian clothing or not when he abducted her mother. Despite the foregoing, the witness remembered the Accused's physical appearance and his "deadly eyes". The witness also described the third situation in the war, when the Accused came to their house and beat both her and her mother.

287. Witness A.S. further testified that, during the war, the injured party confided in her that she had been raped by one Savić. The injured party told her his first and last name, but she does not recall precisely the name, whether it is Slavko or Slaviša.

288. According to witness B, the injured party told her after the war that she had been raped by the Accused, whom the witness has known by sight. Considering that the witness has known the accused from before, it is clear that she did not "confuse" him for some other person.

289. Despite witness C's statement that the injured party did not tell her the name of the person who had raped her, and that she did not ask for his name, the witness added that he was a soldier, and that she concluded so because he used the pistol when he raped her, given that only the military carried weapons at the time.

290. Even though the Panel took into account witness Razija Sejdić's statements in the context of the Accused's identification as the perpetrator of the offense, the Panel found her testimony irrelevant with regard to the determining of the decisive facts related to the Accused's identification.

291. As witness Sejdić remembers, the injured party was raped by one Savić, but the witness does not know his name. The witness is aware of the name of another person with the last name of Savić, namely Mladen Savić from Malešići who had ill-treated her, but it is not the person at issue in the present case. Also, the witness does not know if there were more persons in Semizovac with the last name of Savić, other than those two men. In addition, the witness testified that, after her conversation with the injured party, while walking with her husband, whom she had told about the rape, one day she passed by the Police Station where soldiers were present at the time. Her husband showed her one man and told her that he was the man who had raped the injured party. The judge explicitly asked the witness if she had looked at that Savić whom her husband pointed to her, but



the witness could not respond with certainty, explaining that 22 years lapsed since the event occurred.

292. Obviously, there is a certain confusion of witness Sejdíć regarding the identity of the person with the last name of Savić, who had raped the injured party, given the fact that the witness herself was ill-treated by the other man whose last name is also Savić. The witness is inconsistent with regard to the issue of whether, while she walked with her husband, she saw or not the person who had raped the injured party. The witness herself explains this with the fact that, at the time, many soldiers were present there, and with the long period of time elapsed since the critical events occurred.

293. The Defense made efforts to discredit, to a certain extent, the injured party's statement in relation to the Accused's identification, by proving that untrue is the injured party's statement that the Accused had worked in the *Pretis* Company before the war, but rather in the *TAS* Company<sup>67</sup>. The Panel has held that this is most probably the same company in the injured party's mind, since both the *Unis Pretis* Company and *Unis Tas* Company were located in Vogošća, which form the Unis companies group. Therefore, this inconsistency does not bring into doubt the truthfulness of the injured party's testimony.

294. In addition, the Accused's Defense challenged the injured party's credibility, and thereby her identification of the Accused as the person who had raped the injured party, submitting that the Accused, as ensues from the evidence adduced, was not a military police officer at the time of the commission of the crime, as the injured party claimed.

295. The Panel notes, along this line, that the injured party was uncertain of which unit the Accused was a member at the time, namely she believed he was a member of the military police. In this regard, the injured party stated that, at the time, the Accused wore a camouflage uniform; that she saw a white belt; that his pistol hung at his side; and she concluded that the referenced belt most probably served to hold his weapon in its place. According to her own words, the injured party does not know which unit the Accused was

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<sup>67</sup> This ensues from the Defense Exhibit **0-5**- Employment record card number 4353 for the accused Slavko Savić, and the testimony of Defense witnesses Milorad Rajić and D.

a member of at the time, believing, however, that those were military police units. Therefore, the injured party herself could not claim with certainty that the Accused was a military police officer, but rather, she concluded so considering that she had often seen him, according to her own words, with members of the military police.

296. The fact that the injured party is uncertain which units the Accused was actually a member of at the time, is irrelevant since she is not obligated to know that, as reasoned above. In addition, the Panel finds that the injured party had no special background information to enable her to distinguish members of the military police from soldiers, and that it is possible that the injured party confused the Accused's capacity at the critical time with the subsequent one, since the Accused was a member of the military police in 1994. Importantly, the injured party's perceived the Accused as an armed person, engaged in "the opposing party", who used such a position to commit the unlawful acts against her.

297. In addition, there is nothing unnatural in such a confusion considering that the Defense witness Milorad Rajić, who was also military active during the period, testified that he saw the Accused during the war, but does not know the battalion of which he was a member. According to witness Rajić, at the beginning of the war, the Accused was in the Vogošćanski-Blagovački Battalion, and in the middle of the war, or towards the end of it, he was with the military police. Therefore, given his engagement at the frontline during the war, the witness had to be aware, to a greater extent, of the military structure than the injured party. He too, however, is uncertain of the military formation of which the Accused was a member, or the military police during the war.

298. Therefore, it is quite understandable that the injured party, aggrieved by the criminal offense and certainly traumatized with the circumstances under which the offense was committed, should not properly perceive the Accused's affiliation to a certain structure.

299. In rendering its decision, the Panel also took into account that, in her description of the manner of commission of the incriminating offense, the injured party stated that the Accused came to her place by a vehicle, white Golf 2, which he had driven before the war, according to the Defense witness Milorad Rajić. In view of all the above presented

facts and circumstances, the Panel additionally relied on the referenced fact in crediting the injured party's testimony when it comes to the Accused's identification as the perpetrator of the crime.

300. The Defense tried to challenge the injured party's credibility also by pointing to her statements relating to the previous rape to which she was subjected by some other person. In this way, the Defense tried to bring into question the Accused's identification as the perpetrator of the criminal offense against the injured party at issue.

301. Truly, the injured party was inconsistent regarding her being previously raped by another person. At the hearing held on 16 February 2015, the Accused's Counsel asked her whether the rape committed by the Accused was the first rape she had experienced, namely if she had had other bad experiences during the war. The injured party responded that she had been raped also in 1992 and stated that: "That man took me to his home<sup>68</sup>". At the same hearing, the Accused's Counsel asked the injured party whether the first rape by an unidentified soldier occurred in 1992, or 1993 (which she claimed in the statement she gave to the Association). The injured party responded: "*Both the former and the latter one is true... the first...the first was in '92...was it in February. ...I do not remember...whether it was in January or February. I know it was in winter time<sup>69</sup>*".

302. At the hearing held on 4 May 2015, the injured party stated that, prior to the rape at issue, which is the subject of the proceedings, there was no sexual violence against her, but that she was indeed "*persecuted*" and beaten. Further during the examination, the injured party responded negatively to the question whether she was raped by an unidentified military police officer, which is what she claimed in her statement given to the Association.

303. Therefore, it ensues from the foregoing that, on several occasions, the injured party differently described the previous rapes committed by other persons (against her). However, these inconsistencies do not undermine the truthfulness of her testimony in

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<sup>68</sup> Transcript from the main hearing held on 16 February 2015, p.17.

<sup>69</sup> *Ibid.*

relation to the criminal act charged under the Prosecution's Indictment. Specifically, throughout the entire proceedings, the witness-injured party consistently described the manner in which the Accused committed the rape. During the entire period after reporting the incident, the injured party repeatedly indicated the Accused as the person who committed the rape in the way as described in the Operative Part of the Verdict.

304. In addition, by the manner of their commission, the possibly committed previous rapes, described by the witness at the Association, are not similar, not even to the smallest extent, to the rape which is the subject of the present criminal proceeding.

305. The Panel further finds, as it ensues from all the evidence adduced in this regard, that the injured party spent the entire war period in Semizovac, and suffered numerous traumas, as she testified, and as also corroborated by the testimony of the Prosecution witnesses C, B, E and Razija Sejdic<sup>70</sup>.

306. It is therefore quite logical that the injured party, as she claims, cannot recall all the details and dates of the incidents she had experienced during the war. This is all the more so considering that, during the war, the injured party lived with her minor daughter, worrying about their safety, namely she only thought "*about her child and how to save her*", as she explained.

307. The witness-injured party described her own uncertainties regarding the specification of time of the possibly experienced previous rapes, in a very humane and acceptable manner: "*I was afraid, madam, to tell you all the truth. I was present there throughout the entire war...so many things happened in the life and I cannot recall everything. Ultimately, I only thought of my child and how to save my child. How to make sure that nothing should happen to her. Now, I cannot remember dates, details... no way*<sup>71</sup>". The Panel considers this explanation as convincing and logical. In this context, the injured party also added that she told her daughter nothing about the rape (which obviously pertains to the war period), as she tried to prevent her daughter from "*watching*

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<sup>70</sup> The contents of the BiH Prosecution Record, No. T20 0 KTRZ 0009107 14 of 26 August 2014, shows that witness A stated the following: "*My house is in the central part of Semizovac. Due to this fact, I experienced many bad things during those four years, which I cannot describe, even if I were to give this statement for days. I will mention here just some of the events that I have survived.*"

*the situation*". It is apparent from the foregoing that the injured party's priority was her effort to protect her minor daughter, rather than to memorize the accurate dates when she experienced numerous unpleasant situations, including the charged acts.

308. The Panel finds that the fact of whether the injured party was possibly raped by another person does not affect the requirement of meeting the decisive facts in the case, namely the fact that since the moment the injured party reported the critical incident she consistently claimed that the Accused is exactly the person who had raped her, namely that she clearly and accurately identified the Accused as the person who perpetrated the act in the manner described in the Operative Part of the Verdict, and that the other possible rape committed by another person is not the subject of the concrete proceeding.

**(iv) Defense's adduced evidence and theories**

309. Even though the Accused's Defense made efforts during the proceedings to challenge the injured party's credibility by the examination of witnesses D, Milorad Rajić and Dušan Čadžo, and by the tendered documentary evidence, the Panel has found that neither the witnesses nor the tendered documentary evidence brought into question this witness's credibility, or the truthfulness of her testimony.

310. The Panel finds inadmissible the Defense's theory that the alleged offense did not occur at all, namely that the injured party had "fabricated" the whole incident in order to exercise the right to a pension, since she reported the incident no sooner than 2007. However, the moment when a woman decides to file criminal report for a rape, or to speak about it, is irrelevant to the question of whether the crime was indeed committed, which must be viewed in the context of the war and its consequences in BiH, but also in the context of the personal circumstances pertaining to the injured party.

311. Thus, the injured party testified at the trial that the consequences of the war events were her deep depression and fear (as confirmed by the medical documentation), fear of the same men and even of "her own people", because "*she was where she was*",

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<sup>71</sup> *Ibid.*

namely in the war, among the occupiers<sup>72</sup>. The injured party explained that, up until that time, she had fought for her children, and did “all kinds of jobs” in order to provide education and schooling for her children. The witness added that her children “gave her the boost” while they lived with her. Once her children had left her, the injured party’s depression grew deeper and deeper, as she described at the trial, and she felt worthless and broken (hurt).

312. Such an explanation by the injured party is fully acceptable for the Panel considering that, obviously, after surviving those traumas, the injured party found certain ways to combat them, where her role as a mother certainly helped her in those efforts, and after her children had left her, she probably kept thinking more and more about the critical events.

313. The fact presented by witness B in this context also cannot be disregarded. Witness B stated that she and her sister were ashamed, as they were brought up in the environment where it is a shame to tell all they had been through, regardless of who the perpetrator of the offense is. Witness explained such apposition as follows:

“**Judge:** Well, in her conversation with you, as you are sisters, ... did she state why... during the period up until '97, did she ever think of filing a (criminal) report, and why didn't she report it earlier... **Witness:** Yes, all...I mean...we both spoke about it, however we are ashamed. I do not know how to explain this to you. We were brought up in that ...environment...where it is a shame to speak up, after the war, about how...and about everything we had survived, and regardless of who was in question. It does not matter if he was a Serb, Croat or Muslim. Yes...they did spit on her to such an extent that she could not live there at all. **Judge:** And why is that so? **Witness:** Because everybody attacked her. Everybody called her bad names. Why were we ashamed? There is nothing to be ashamed of! We are the victims, and we should not feel any shame...but we are brought up to be silent, to keep silent...I even do not know how...how she decided to speak up<sup>73</sup>”.

314. Witness B’s foregoing statement undoubtedly speaks about the patriarchal environment in which the injured party and witness B were brought up, and to a certain

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<sup>72</sup> Transcript from the hearing held on 16 February 2015, p.13: “*I was afraid of the same people...I was even afraid of my own people because I was there where I was. I was in the war among the occupiers, and subsequently, I was afraid of my own people. How they will react, how they will react, because anyway, I had spent 4 years there!*”

<sup>73</sup> Transcript from the hearing held on 23 February 2015, p.12.

extent about the embedded feeling of guilt for being raped. This is, most probably, due to the view commonly accepted within the small environment where they were brought up that a woman herself “must have provoked the rape” or that “she herself is guilty for being raped”. This also speaks, to a certain extent, about the injured party’s motives to report the incident only subsequently.

315. In the Panel’s view, the Defense’s theory that the injured party could have reported the incident during the war had it indeed occurred, is also illogical and contrary to the adduced evidence considering the above explained personal circumstances pertaining to the injured party, as well as the situation during the armed conflict and the state of war described by the injured party, and particularly by witnesses B, C and E.

316. Along this line, the injured party stated during the examination that, at the time, she had no one to whom she could report the incident, as they “*were all alike*”, they persecuted and beat her and that she filed a criminal report for the first time in 2007, with the Association. According to the injured party, she indeed felt fear, but she went to the Association owing to her friend, who told her that she should help herself mentally by disclosing all that she had experienced. The injured party added that she had no health insurance because she had lost all her rights, she could not return to her work as they did not want to take her back. Thus, in 2007, she asked a person to report her employment so that she could have health insurance. Up until that time, she had fought for her children, to provide them with schooling, and she did all sorts of jobs to enable them to attend school. Once she filed the report with the Association, she started with psychotherapy.

317. Therefore, in view of all the foregoing, and the fact that the injured party belonged to the minority group of the population in Vogošća at the time, that thereupon she survived various (to say the least) unpleasant events during the war, the injured party’s position not to report the incident to anyone is quite acceptable for the Panel. In addition, the Panel notes that the fact that the injured party reported the critical incidents 14 years after their occurrence speaks about the intensity of her fear and the profoundness of the psychological trauma to which she was exposed throughout the entire period.

318. The Defense tried to challenge the injured party’s credibility also by the

examination of witness D. In the Panel's view, witness D's testimony did not bring into question the injured party's evidence, for the reasons to be presented further in the reasons for the Verdict. The Panel primarily finds it necessary to present the contents of this witness's testimony.

319. During the war, witness D lived in Vogošća and Semizovac, and she knew the injured party since before the war. According to this witness, the injured party lived in Semizovac during the war, namely in a house near the *Dom* building, that is, the premises of the *Ozren* Football Club. The witness stated that the injured party did not live in the house alone with her daughter, because the injured party's boyfriend, late Velo, who had been engaged with the Serb army, spent his time off there. Witness D knew this because, for a certain period of time during the war, that is, up until August 1993, she lived in witness A's close neighborhood, separated from her only by the fence.

320. According to witness D, the injured party started helping her out in the catering facility in late 1992, or early 1993. The injured party had helped her until the witness left her partner, Miloš Jovanović, in August 1993. The witness stated that, at the time, she and the injured party had a very close relation, and they confided in and visited each other.

321. Witness D stated that the injured party did not confide in her that she was raped, which she would have certainly done had it been true. During the examination, witness D denied that she had helped the injured party to terminate the pregnancy, indicating that the injured party made no mention of pregnancy to her. The witness further added that she would not take any person to terminate the pregnancy, because she herself cannot have children. However, the witness did mention in her statement a possibility that the injured party confided in someone else in relation to rape, explaining it as follows:

**“Witness:** Well, you know what...when I now see what she is ready to do...then she is ready for anything in the life. For me, she was my sister who had gone, and my other sister who had gone...many members of the family that I lost...she was everything to me. She was a mainstay, someone with whom I could cry and talk. But when I saw what she is ready to do, I cannot be surprised by anything she does<sup>74</sup>”.

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<sup>74</sup> Transcript from the hearing held on 30 March 2015 p. 39.



322. The Prosecutor asked witness D if it would be safe for the injured party to disclose her intimacy to her as a member of majority (Serb) group of the population in the area, namely if the injured party might be afraid that the witness would tell that to the Accused. Witness D asked how she could possibly transfer the information to the Accused when she knew him only “in passing”. As to the acquaintanceship with the Accused, the witness confirmed that she knew him by sight since he had worked together with her aunt at the *TAS Company*. Also, the witness confirmed seeing the Accused during his visits to the injured party’s house.

323. Witness D confirmed she knew witness A.S., and that she knew son even better, allowing for an option that the injured party socialized with witness A, but in her absence, as she had never met her there. Witness D confirmed her knowing witness C, but that she did not personally see her socializing with the injured party. The injured party did not tell her during the war if she had any person to socialize with. Also, the witness denied that, during the war, the injured party had any closer person than herself. According to the witness, she visited the injured party after the war, and the injured party looks perfect now, while during the war, she was like all the rest (of them) – traumatized and afraid. The witness confirmed that she was on good terms with the injured party up until 2013, when the injured party changed her phone number, and deleted the witness from the list of her friends on the “Facebook” social network. The witness does not know the motives for such a decision of hers.

324. Ultimately, the witness stated that she has ... and ... which is developing, as well as ..., and that ... she cannot have selective memory. However, the witness stated that due to the lapsed period of time since the critical events, when she had many problems, she cannot remember all the dates.

325. Having evaluated witness D’s testimony, the Panel found that it is, as stated above, obviously aimed at challenging the injured party’s credibility, the truthfulness of her testimony, presenting her as a promiscuous person and presenting the voluntary nature of the injured party’s relation with the Accused.

326. In addition, during the examination, witness D presented a series of details based on which the real motives of her testimony can be inferred – to discredit the injured party.

For example, witness D stated that “*it was strange that the pregnancy did not result after all that*”<sup>75</sup>, implying the intercours, and that there were “*more relations*” between the Accused and the injured party, and “*nothing on the part of such a person can surprise her any more*”. This shows that the relation between witness D and the injured party was not of such a nature as the witness, or the Accused’s Defense, tried to present through her testimony. While attempting to act to the prejudice of the injured party as much as she could during the examination, the witness contradicted herself. Thus, she first stated she did not know if the injured party was involved with any other men.<sup>76</sup> However, at the same hearing, she stated that the injured party was involved in a love affair with Velo Antić, the Accused and not only with those two men<sup>77</sup>, and that other men too visited her house.

327. The Panel will, in this regard, present at this point the reasons for its finding that the theories, essentially launched through the examination of witness D, are ill-founded.

328. One of the Defense’s theories, which it tried to prove by Witness D’s examination, is that the injured party had a love affair with the Accused, which would imply the voluntary basis of her relationship with the Accused. However, no other evidence adduced confirmed such a version of the events. Also, witness D could not specify when precisely the alleged relationship commenced, or for how long it had lasted.

329. To this effect, witness D claimed that the injured party talked about her relationship with the Accused in superlatives; that there was no indication of violence whatsoever, but on the contrary, that “*it was so nice, and “not let anyone find it out”*”, etc.. The injured party told the witness that her relation with the Accused was a voluntary one, and she does not know that the Accused was armed when he came to the front of the injured party’s house, or that he abducted and took her to the Krivoglavci bus stop. The witness denied any possibility that the injured party was forced into the relationship with the Accused, stating that “*If one tells you she/he has a good time, why would he/she subsequently tell it was*

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<sup>75</sup> Transcript from the hearing held on 30 March 2015, p. 25: “**Counsel:** *Did she ever mention the pregnancy?* **Witness:** *No. Because.., even more so, it was strange to me.* **Counsel:** *What was strange to you?* **Witness:** *Well, it was strange to me that there was no... after all that”.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid*, p. 39.

*under duress*". The witness could not determine the time-frame of the relationship between the injured party and the Accused since many years lapsed, and since it was "*a bit more than a mere relationship*". The witness added that many tragic events occurred at the time. Also, the witness confirmed that the Accused indeed visited the injured party's house, that he wore uniform and sat in the house. The witness does not know if he was armed, even though it is possible too. The witness stated that there are persons who can confirm her assertions concerning the nature of the relationship between the Accused and the injured party, but she did not want to expose them in the courtroom.

330. In the Panel's view, contrary to witness D's assertion, the finding that the relation between the injured party and the Accused was not voluntary ensues from the testimony of both the injured party and her daughter, who was present there when her mother was abducted. Thus, witness E stated that her mother was not in love with the Accused, and that they did not have a love affair, because "*If it were a love affair, one would not have abducted her with a pistol in front of a child aged 11*<sup>78</sup>". Witness E added that, once her mother returned to her home after the abduction, her hair was all messed up, and she was in tears. Witness E testified that the situation was similar on both occasions when the Accused abducted her mother, and that he always used force.

331. Many details presented by the witness during the examination indicate that witness D cannot be trusted when it comes to the alleged love affair between the injured party and the Accused. To this effect, indicative to the Panel is that witness D does not know if somebody from the injured party's family was detained in Zabrdje and Planjina house (Planjina kuća) during the war, and that she even does not know where those detention centers were located, while it ensues from the injured party's testimony that one of her sisters was detained in Zabrdje, and the other in the Planjina house with her husband. Also, the injured party and witness E consistently testified that they were also detained over a certain period during the war, which witness D should have known had

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<sup>78</sup> Transcript from the hearing held on 4 May 2015, p.36: "*I can tell you that she was not in love with the man at issue. And she had no love affair with him, because had it been a love affair, he would not have abducted her with a pistol in front of the child aged 11. He left me there, in the house; he said nothing, he just dragged her out, and forced her into his car. I remember that she came back in tears, and that her hair was all messed up. It was not a love affair.*"

her relation with the injured party been of such a confidential and intimate nature, as witness D wants to present.

332. In addition, witness D testified she had seen the Accused arriving at the injured party's house uniformed. Asked if she had seen the Accused driving a car to the injured party's house, the witness responded that she could not see that, even if the Accused had indeed come by car, because he would have to park it "either there, or in front of the inn", which she did not allow. Witness D also added that she did not look if the Accused had come by car, but she did see him coming on foot.

333. Considering that the Accused is charged with raping the injured party in the car by which he previously drove her from the house where she lived to the Krivoglavci bus stop, it is clear why witness D stated expressly that she could not see the Accused coming by his car to the injured party's house, or why witness D stated that she did not pay attention to that at all.

334. It is obvious from witness D's testimony that, even before being summoned to testify as Defense's witness, she knew with which offense the Accused was charged. Thus, the witness herself stated she was shocked when she learned that proceedings were pending against the Accused. She wanted to leave a message to the injured party on "Facebook" and to find out "*if she was in her right mind*", whereupon she saw that the injured party removed her name from the contact list of the referenced social network.

335. During the examination, witness D confirmed she had previously known who the injured party indeed was, namely that the Accused has been charged with rape. Asked how she knew that exactly the injured party is the alleged victim of rape, the witness responded that she could not answer the posed question. In addition, the witness did not want to respond concretely to the question of whether she contacted the Accused once she learned that proceedings were pending against him. The witness claimed that it was possible that she learned this from a third person.

336. Witness D's negative attitude caused by the fact that the injured party filed a criminal report against the Accused as the perpetrator of the offense was described by the injured party in her testimony. In this regard, the injured party stated that the other persons told her what witness D had stated in relation to the proceedings at issue, and

the injured party herself, namely: “*What that bula wants..., she pretends to be a bula after being fucked by 1,000 men*”, pardon my language.

337. It undoubtedly ensues from the foregoing that witness D is definitely aware of the criminal proceedings, but that she did not explain how she knew that exactly witness A is the injured party in the present case, and did not want to identify the persons who had disclosed to her the identity of the injured party in the case. The witness also avoided identifying the persons who can confirm the alleged voluntary nature of the love affair between the Accused and the injured party, which additionally indicates that this witness’s testimony cannot be credited.

338. One of the Defense’s theories fabricated through witness D’s examination is that, during the war, she and the injured party attended “the parties” allegedly organized on the upper floor of the *Dom* facility. Also, witness D stated at the hearing that, once her child was asleep, the injured party made love to the Accused intoxicated with alcohol at the party.

339. Witness D’s theory about the parties allegedly organized during the war on the upper floor of the *Dom* facility has not been confirmed by any other examined Prosecution’s or Defense’s witness, or any item of evidence adduced during the proceedings. On the contrary, this theory was denied by witnesses Miloš Jovanović and Milorad Rajić.

340. Witness Miloš Jovanović, who had “run” the *Dom* inn, where the injured party worked over a certain period of time, testified that drinks were indeed served at the *Dom* inn, but that there were no services other than the catering ones. There were no rooms in the *Dom* facility, only the apartments on the upper floor. The witness could not specify the names of persons who had lived there, but knows that both refugees and local people were present there.

341. In this regard, Defense witness Milorad Rajić stated that four apartments were on the upper floor of the Culture Center (*Dom*), where four families had lived. One of the families was that of a teacher in the primary school, who had lived there even from before. Some refugees were in the other apartment, and ultimately another woman-refugee. According to the witness, all family rooms were occupied, and it was

impossible for anyone to come in and use the premises for other purposes.

342. Therefore, with regard to the referenced fact, it ensues from the consistent testimonies of witnesses Miloš Jovanović and Milorad Rajić that refugees lived on the upper floor of the Culture Center. In view of the foregoing, and of the fact that a state of war existed back then in the territory of the Vogošća municipality, the Panel finds that witness D's statement that parties were organized there despite the state of war, and the refugees' difficult position in the war away from their prewar places of residence, is unconvincing and illogical.

343. Despite witness D's denial that she helped the injured party to terminate the pregnancy, namely that she had taken her to the doctor's, this is, in the Panel's view, another attempt to discredit the injured party's credibility. Even though the termination of pregnancy is not an element of the criminal offense charged against the Accused, the Panel notes that it is a result of the criminal offense described by the injured party and confirmed, in this part, by the testimony of witness E, as stated above. Therefore, the Panel did not credit witness D's testimony in this part.

344. Also, the examined Defense witnesses Milorad Rajić and Dušan Čadžo did not bring into question the decisive facts in relation to the individual charges pressed against the Accused.

345. Despite the Defense witnesses Milorad Rajić's and D's statements that Velo Antić and the injured party had a love affair throughout the war, which in the Defense's view implies that the injured party could not have been raped, the Panel notes that the injured party clearly stated that she had no love affair with Velo Antić, and that he was involved with some other person, called Ceca, a hairdresser. According to the Panel, had the injured party even had a love affair with Velo Antić, he would have certainly protected the injured party and her daughter in a certain way, from being repeatedly ill-treated by third persons.

346. In addition, the Panel finds that, with regard to determining decisive facts in the present case, Milorad Rajić's testimony was unconvincing and aimed at exculpating the Accused from the acts charged against him.

347. It ensues from the consistent testimony of the injured party and witness E that, on the critical occasions, the Accused picked up the injured party by a white Golf vehicle, where the injured party was raped twice, as ensues from her testimony.

348. Contrary to the foregoing, Defense's witness Milorad Rajić, who has known both the Accused and the injured party, as they had lived in Semizovac before the war, testified that, during the war, he never saw the Accused driving a Golf vehicle 2. The witness mostly saw the Accused driving a military jeep, on the occasions when he visited Semizovac. Therefore, the witness concluded that the Accused was probably a member of the military police. However, further in his testimony, this witness stated that he did see the Accused driving the jeep, but that this is related to the second half of the war namely, the 1994-1995 period. Up until that time, the Accused was in the Blagovac Battalion and the witness had not seen him using any vehicle at all.

349. The Panel wonders why the witness would recall that the Accused drove a white Golf before the war, and twenty years since the incriminating events occurred, he remembers that the Accused did not drive his Golf exactly during the period covered by the Indictment, also remembering that the Accused drove a jeep during the period 1994-1995 (that is, after the critical events' occurrence). According to the Panel, the motive for such a witness's testimony may only be the attempt of witness Milorad Rajić to exculpate the Accused from his responsibility.

350. In addition, the Panel finds that witness Milorad Rajić's testimony is unconvincing also for the above presented reasons concerning the attempt to present the injured party's allegedly "good" position during the war, which is contrary to the other testimonies, or those given by the injured party, witnesses B, E and Razija Sejdić, who described the difficult position of the minority Bosniak population during the war time in Vogošća.

351. Also, the Panel did not credit the testimony of the Defense witness Dušan Čadžo, the Accused's relative. This witness stated that, after the war, the Accused and the injured party had a cordial encounter in an inn in Ilijaš, where the injured party worked, which in the Defense's view, implicitly excludes the forcible character of the relationship between them.

352. Thus witness Dušan Čadžo testified that the encounter at issue occurred in the spring 2000-2001, namely that the Accused had first visited him, and the witness proposed him to stop by the inn, owned by Miodrag Savić, which they had frequently visited. According to the witness, the Accused and the injured party greeted each other “*cordially indeed*”, and the injured party served drinks to them, sat at their table, and had a drink with them. During the examination, the witness stated that, on the referenced occasion, the injured party had some Vodka, while he and the Accused had beers. They spent approximately one hour there. The whole encounter was friendly in nature, and no one told each other any “bad words”. The injured party relatively mentioned some war related events, namely that she had problems after Vogošća was reintegrated, that she was called bad names like “Četnikuša”, probably because she had problems with the people who returned to Vogošća and ill-treated her because she had stayed there.

353. Responding to the question asked, the witness stated that the encounter “*was nothing special*”, that they had some drinks, that the injured party mentioned having certain problems, but he did not have a thorough look of her nor did he listen that much to the contents of their conversation. Being specifically asked to do it, the witness could not identify the persons who could confirm the cordial nature of the conversation in the inn. After this encounter, the witness did not continue any communication with the witness, but she merely served drinks to him as a guest.

354. It is primarily unclear why the witness would remember that the injured party had some Vodka exactly, 15 years after the encounter which according to witness Dušan Čadžo was “nothing special”, which the Panel interpreted as if the encounter was not a memorable one.

355. The Panel further notes that the injured party herself did not contest the chance encounter with the Accused, but she did contest sitting with the Accused and witness Dušan Čadžo, having a friendly conversation with them, which the Panel credited. The fact of truthfulness of the injured party’s testimony is supported by the fact that, at the hearing held on 16 February 2015, that is, prior to witness Dušan Čadžo’s examination (on 30 March 2015), the injured party stated that, on one occasion after the war, she saw the Accused in the café where she had worked, but denied sitting and having drinks with the Accused. The injured party added that she was shocked by seeing the Accused,



namely that she simply remained beside herself, almost frantic. The Panel finds that such a reaction is quite reasonable considering that, after the war and the traumatic events she had experienced, she suddenly meets the person who had raped her, but does not live any more in the territory of the municipality where the injured party works/lives, wherefore she did not expect she would meet him ever again.

356. The injured party sincerely explained that the reason for which she greeted the Accused at this chance encounter was: *“in order to avoid other people seeing her reaction”*. The injured party added she was afraid even on that occasion. In the Panel’s view, this explanation is quite reasonable and natural.

357. In addition, the Panel did not credit witness Dušan Čadžo’s testimony, which was an attempt to challenge the injured party’s credibility and present a different nature of the relationship between the injured party and the Accused, for the above presented reasons of certain “calculation” of this witness’s testimony. The Panel further took into account that witness Čadžo is the Accused’s relative, and that, bearing in mind his testimony’s contents, his interest is to exculpate the Accused from his responsibility by his evidence.

358. Ultimately, the Defense challenged the injured party’s credibility also through the theory that the injured party was not under the compulsory work order, contrary to what she had stated. Even though the fact of whether the injured party was under the compulsory work obligation during the war or not is irrelevant in relation to the existence of the decisive facts in the case, the Panel finds that this issue nevertheless should be addressed in order to gain a more comprehensive view of the truthfulness of the injured party’s testimony and her credibility.

359. In relation to the foregoing, the injured party testified that, during the war time in Semizovac, she was “forced” to work under the compulsory work order, indicating Rajko Janković, Commander of the Intervention Squad, as the person who forced her to work, and who was the “terror”. Within the compulsory work order during the period 1992-1993, the injured party had to clean an outpatient clinic, whereupon she worked as a waitress in an inn, that is, a catering facility called Dom. The facility was first “managed” by Nebojša Špirić, and subsequently by Miloš Jovanović. Witness D also worked in this catering facility. The witness was not paid for the work performed in the inn, nor was she

officially registered as a worker performing this job, but rather lived on humanitarian aid. The witness did not work in the referenced inn either at the time when the incriminating incidents occurred or before them. Even though she could not specify the precise time when she had worked as a waitress in the referenced facility, the witness stated it was some time before the end of the war, in 1994.

360. The injured party described the forcible character of the compulsory work order as follows:

“...Witness: I was under the compulsory work order. I was forced. I was forced into it because it was a war. We were occupied. We had to do it and we could not refuse it. In fact, I did not dare, we did not dare to (do so). I was not the only one. ....Witness: It was not a voluntary work. Prosecutor: OK. This means that the work was a compulsory one. Where did you work? Witness: I could not refuse. It was...I was... it was not connected with the case at all<sup>79</sup>”.

361. The injured party’s statement, in this part, is confirmed by and ensues from the testimony of her daughter, the injured party E. Witness E testified that her mother was forced to clean the Semizovac outpatient clinic, and that before the war ended, she also worked at the inn called Dom.

362. The contents of Exhibit 0-7<sup>80</sup> shows that, based on the review of compulsory work order record kept by the referenced body, the injured party’s name was not entered on the list of persons under the compulsory work order for the Vogošća municipality. Despite the foregoing, the Panel finds that the injured party’s testimony shows that she was issued with no decision concerning the compulsory work order, which is why it is understandable that no traces in writing exist in relation to it. In addition, the injured party testified she had no decision relating to the compulsory work order. Counsel asked her who, in fact, forced her to perform compulsory work, and the injured party responded: “*Who forced us? I am a Muslim among Serbs. Who forced us?*”<sup>81</sup>, and thereupon added: “*It was simply an order*”.

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<sup>79</sup> Transcript from the hearing held on 4 May 2015, p. 6.

<sup>80</sup> Višegrad Municipality Notice, General Administration Department, No. 03-931-8.1/15 of 24 April 2015 pertaining to the record of witness A’s compulsory work obligation.

<sup>81</sup> Transcript from the hearing held on 4 May 2015, p. 13.

363. Even though the witnesses who performed certain jobs based on orders, referring to it as to the work under compulsory work order, the Panel finds that, formally speaking, this was not a compulsory work obligation, because a compulsory work order implies the establishment of a certain employment-legal status of the person concerned. In the concrete situation, it was forced labor, or occasional jobs with no record being kept and no compensations received.

364. The Panel finds that the injured party's credibility was not brought into question in this segment either. To this effect, the Panel notes that the consistent testimonies of witnesses D, E, Miloš Jovanović and Milorad Rajić show, in relation to this fact, that at a certain period of time during the war, the injured party worked at the inn called Dom. Witness Miloš Jovanović confirmed that the injured party worked in this facility for some time at the end of the war, which is consistent with the injured party's statement in this part.

365. The Panel, however, could not credit the part of witness Miloš Jovanović's testimony where he stated that the contact, made regarding the commencement of the injured party's work in the inn, was made spontaneously. Specifically, during the examination, the referenced witness could not describe in which way the witness had come to work in the facility, which is why it is not possible that the witness made it quite spontaneously, as the witness presents it.

366. Also, bearing in mind that, at the time, there was a state of war in the territory of the Vogošća municipality, and that other witnesses testified they had worked under "the compulsory work order" (e.g. witness Razija Sejdić), the Panel finds it quite possible that no precise and accurate records were kept, but rather that tasks were given to certain non-Serbs in a non-organized way, and that those persons performed them fearing for both their personal safety and the safety of their family members.

## **VII. CONCLUSION**

367. Having made a comprehensive evaluation of all the evidence adduced, the Panel found that the Accused's acts have satisfied all the essential elements of the criminal

offense of War Crimes against Civilians under Article 142(1) of the CC SFRY.

368. The Panel found that the Accused indeed committed the criminal offense of which he was found guilty, having acted with direct intent, consciously and knowingly, being aware of the character of the acts undertaken, and in breach of the rules of international humanitarian law and Article 3 of the Geneva Convention on the Protection of Civilians in Time of War of 12 August 1949, or more precisely, Article 3(1)(a) and (c) (violence to life and person and outrages upon personal dignity of the injured party).

369. According to the Panel, the Accused had both the *mens rea and actus reus* requirements, necessary to establish the criminal responsibility of the perpetrator of sexual violence, as presented in the foregoing standards.

370. The Panel concludes that the Accused had had sexual intercourse with the injured party on two occasions, firstly by oral sex and subsequently by penetrating the injured party's body with his sexual organ. In addition, the Panel finds that the Accused used the threat of force (by using a pistol in front of the injured party's minor daughter), and the violent environment in order to force the victim into sexual intercourse, and that the victim did not freely and voluntarily consent to the sexual intercourse, which means she was brought into the state of helplessness. The Panel ultimately found that the Accused actually had the intent to have a sexual intercourse with the victim, being fully aware that the victim did not consent to it freely and voluntarily.

371. In this context, the Panel notes that it has made minor corrections in relation to the indictment, by deleting irrelevant details from the factual substratum and adjusting it to the results of the evidentiary proceedings, being mindful, at the same time, of the objective identity of the offense. The Panel is satisfied that, in the concrete case, the changed facts do not change the identity of the offense, and that the changed circumstances do not amount to exceeding the charges, but rather specify with more precision the criminal offense on trial. Specifically, the Panel specified in more detail the factual description of the criminal offense in question, which does not involve the modification of the decisive facts, or the modification bringing the Accused to a less favorable position.

372. In rendering its decision, the Panel was also mindful of the other evidence

tendered at the trial, but did not elaborate on it specifically, as it did not affect, to a decisive extent, the final finding of facts, and the conclusions inferred by the Panel based on the evidence, the comprehensive evaluation of which is presented further in the Verdict.

## VIII. SENTENCING

373. In fixing the punishment for the Accused, the Panel took into account the general purpose of punishment, set forth in Article 33 of the CC SFRY<sup>82</sup> and the rules for fixing the punishment set forth in Article 41 of the CC SFRY.<sup>83</sup> In the process, the Panel was mindful of the legal framework of the punishment prescribed for the criminal offense concerned, evaluated and took into account all the relevant circumstances, and thereupon imposed on the Accused a prison sentence for a term of 8 (eight) years.

374. The Panel particularly took into account the gravity of the criminal offense, the degree of danger or violation to the protected value, and the degree of the Accused's criminal responsibility. The gravity of the criminal offense charged against an accused is always evaluated based on the effects on the victim or the persons related to the criminal offense and the closest family. The gravity is determined *in personam*, rather than in terms of universal consequences.

375. The Panel finds that the consequences of the offense are severe since the offense itself was humiliating for the victim at the moment when it was committed, and caused traumas for the victim over a continued period of time. The injured party stated that she still receives treatment at the Psychiatric Department, that she does not feel well and that she has lost her self-confidence. The attached medical documentation and the Findings and Opinion of Prof. Dr. Alma Bravo-Mehmedbašić show that the injured party has significant health problems, to be explained further in the part of the Verdict concerning the claim under property law filed by the injured party. Also, the Panel was mindful of the fact that, in the concrete case, the Accused raped one person, on two separate occasions, over a relatively short period of time.

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<sup>82</sup> Article 33 of the CC SFRY (the purpose of punishment).

<sup>83</sup> Article 41 of the CC SFRY (general rules in fixing the sentence).

376. As to the degree of criminal responsibility, the Panel found that the Accused acted with direct intent, namely that he was aware that, by his acts, he was committing a criminal offense and he wanted to commit it.

377. Also, in rendering its decision, the Panel took into account the motives for which the offense was committed, as well as the circumstances under which it was committed.

378. Along this line, the Panel found that, by undertaking the unlawful acts against the injured party, the Accused abused her helplessness and lack of any protection at the relevant time, namely the fact that the injured party belonged to the minority ethnic group of the population in the Vogošća municipality at the war time, that she feared for her life and the safety of her minor daughter with whom she had lived at the time. In addition, the Panel took into account the circumstances under which the offense was committed, namely that the Accused put his pistol under the injured party's throat in front of her minor daughter, causing a strong fear and trauma not only in the injured party but also in her daughter, who was at the time at a very sensitive life age (11 years), and in this way abducted the injured party from the house and brought her into a completely helpless situation.

379. Also, in meting out the duration of sentence, the Panel took into account the Accused's previous life, his personal circumstances and conduct after the commission of the criminal offense. Among the extenuating circumstances pertaining to the Accused, the Panel took into account that he has no prior convictions and that he is a family man (father of three children). The Panel further notes that, in assessing the extenuating circumstances, the Panel did not take into account the fact of the Accused's correct conduct during the trial, which is both implied and expected from any accused person, and therefore cannot be considered a privilege that would form part of the extenuation circumstances in determining of the duration of sentence.

380. On the other hand, among the aggravating circumstances taken into account were the Accused's ruthlessness and persistence in the commission of individual charged acts of which he was found guilty. In addition, the Panel took into account the consequences of the committed criminal offense – the injured party's unwanted pregnancy and its termination, and psychological consequences resulting from these incidents, which

ensue from both the injured party's testimony and the testimony of the other witnesses, as well as the abundant medical documentation related to the injured party, and the Findings and Opinion made by Prof. Dr. Alma Bravo-Mehmedbašić.

381. Therefore, on the basis of all the tendered evidence, the Panel found beyond a doubt that the Accused committed, with intent, all the acts satisfying the essential elements of the crime of which he is found guilty, in the way described in the Operative Part of the Verdict (Sections 1 and 2). The Panel finds that the prison sentence for a term of 8 (eight) years is proportionate with the gravity of the committed offense and its consequences, by which the purpose of punishment will be achieved, and that its duration is proportionate with the above mentioned circumstances pertaining to the Accused.

#### **IX. DECISION ON THE CLAIM UNDER PROPERTY LAW**

382. Considering that the Accused has been found guilty of committing the criminal offense by the acts comprehensively described in the Operative Part of the Verdict, as charged under the Prosecution's confirmed Indictment, the requirements have been met to also meet the other requirements needed to decide on the claim under property law filed by the injured party-witness A.

383. Specifically, as an authorized person, within the criminal proceedings the injured party A filed a claim under property law (which she specified through her attorney), having clearly and completely presented the evidence on which the reasonability of such claim is based, and thereby met the positive statutory requirement for deciding on the claim under property law. In addition, the Panel found it justified to address such a claim since it would not significantly delay the proceedings, which is a negative requirement under Article 193(1) of the CPC BiH.

384. The Panel first notes that, pursuant to Article 195(3) of the CPC BiH, the person authorized to submit the petition must state his/her claim specifically and must submit evidence. Pursuant to paragraph 4 of the same Article, if the authorized person has not filed the petition to pursue his/her claim under property law in criminal proceedings before the indictment is confirmed, he/she shall be informed that he/she may file that

petition by the end of the main trial or sentencing hearing.

385. It follows from the referenced provisions that the duty of the person authorized to submit claim under property law is to accurately specify his/her claim, which was done by the authorized person in the present case, and that the Court's duty is to instruct the referenced person, during the proceedings, that he/she is entitled to file such a claim. In addition, the instruction to pursue the claim under property law, pursuant to Article 198(2) of the CPC BiH, is given only if the data obtained during the criminal proceedings do not provide for a reliable ground for adjudication, in whole or in part, which was not the case here.

386. As already stated in the part of the reasons for the Verdict relating to the presentation of evidence by the injured party, on 5 February 2015 (during the hearing before this Panel), the injured party in the concrete case submitted, through her authorized representative, the petition to pursue her claim under property law, specifically, the non-pecuniary damages resulting from the commission of the crime at issue. In this regard, the injured party specified the amount of her claim under property law, indicating the amount of KM 80,000.00 KM (a cumulative amount of single non-pecuniary damage), which includes the following types of damage: KM 6,000.00 in respect of the suffered fear; KM 60,000.00 in respect of suffered mental and physical pains, violation of personal rights and outrages upon personal dignity and morale by torture, inhuman and humiliating treatment, and KM 14,000.00 in respect of mental pains due to the diminished quality of life. The same petition also stated that the claim under property law would be fully completed upon the completion of the forensic evaluation of the injured party.

387. The Panel dismissed as ill-founded the objections concerning the presentation of evidence by the injured party, specifically the expert evaluation conducted for the reasons already presented in the reasoning of the Verdict, wherefore the Panel considers their repetition as redundant.

388. In deciding on reasonability of the claim under property law, the Panel primarily took into account the Findings and Opinion made by expert witness Prof. Dr. Alma Bravo-Mehmedbašić, produced after she had reviewed both the medical documentation



pertaining to the injured party (tendered as evidence in the case record) and the examination of the injured party herself. In addition, the Panel considered the expert witness's statement given directly at the hearing and during cross-examination by the Accused's Counsel.

389. In her written Findings and Opinion of 27 March 2015<sup>84</sup>, Prof. Dr. Alma Bravo-Mehmedbašić primarily indicated that it was made in relation to the suffered mental pains, fear and the diminished quality of life as a result of the criminal offense charged against the Accused, with a view to pursuing the claim under property law filed by the injured party. To this effect, the Findings contain the data relating to the injured party's history of disease, with a note that, during the examination, the injured party submitted the original medical documentation for review. The Findings further indicated the medical documentation in question and presented the status of the injured party's mental health.

390. In view of the foregoing, the expert witness concluded in her Finding that there is .... within ... the injured party also suffers from .... In addition, ... the injured party developed ..., after ..., and the injured party also suffers from ....

391. Ultimately, the expert witness concluded that the injured party suffered mental pains, whose intensity ranged between strong and medium, throughout the entire period between May 1993 and October 1995, mental pains ranging from medium to mild intensity over the 5-year period (due to the mental consequences of combined torture and medical treatment), while mild intensity mental pains are permanent. Also, the injured party felt strong fear during the 2-month period (when she was raped), medium-intensity fear during the 2.5-year period, while mild-intensity fear was occasional and connected with the symptoms of .... The injured party's general quality of life has been permanently diminished by 25% due to her permanently changed personality after the catastrophic experience and the development of .....

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<sup>84</sup> The injured party's Exhibit **O-3** – Final specified claim under property law of the injured party A, filed through her authorized representative, Attorney Nedžla Šehić, of 21 May 2015 (with the expert witness's Finding and Opinion attached thereto).

392. During the direct examination before the Court, expert witness Prof. Dr. Alma Bravo-Mehmedbašić<sup>85</sup> stood by her previously submitted Finding and Opinion, and further explained the arguments contained therein.

393. To this effect, the expert witness primarily stated that she had examined the injured party on the premises of the Psychiatric Clinic, and thereupon produced her findings in writing, of 27 March 2015. The expert witness also stated that, before the examination, she had reviewed the original medical documentation pertaining to the injured party. The expert witness examined the injured party, collected the data relating to the personal history of her disease and discussed with the injured party how she sees and experiences her own mental state. The expert witness did not know the injured party from before, which is why the examination lasted for almost three hours. The expert witness drew her conclusions based on both the interview made with the injured party and the psychological instruments (psychiatrist's interview and the application of psychological tests to the mental consequences manifested with the injured party).

394. The expert witness further explained that, even though the injured party had multiple traumas as she had spent the entire war period in the occupied territory, when addressing a trauma, in order to make a distinction, the experts tend to pick the gravest one. On the basis of the injured party's experience, the expert witness chose to process the traumatic incident of the war-related rape in connection with the Accused. According to the expert witness, this was the most traumatic incident for the injured party, even though she had experienced other traumas too. To this effect, the expert witness submitted that the person who had experienced a series of traumatic events tends to suppress or "belittle" the other events in her perception, wherefore it is only the strongest incident that is being taken in the psychiatry as the most relevant one.

395. The expert witness concluded that the injured party has developed ..... and that her previous system of values has changed.

396. According to the expert witness, the injured party had experienced one ... whereupon she started treating herself with alcohol. Therefore, the injured party is in

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<sup>85</sup> The expert witness was examined at the hearing held on 11 May 2015.

possession of several discharge letters issued by the Institute for Alcoholism, indicating that she has developed the syndrome of ..., which is common for the victims of torture, who have used different psycho-active substances. In general, addiction to other psycho-active substances and alcohol addiction in victims of torture are the most frequent comorbidity disturbances, depressive disorder. In all discharge letters issued by the Institute for Alcoholism the injured party was diagnosed with ... and .... The injured party is currently in the phase of abstinence, and she has been subjected to regular checks at the Institute for Alcoholism.

397. Along this line, the expert witness explained that, once a mental disorder is diagnosed pursuant to the international classification of illnesses, MKB-10, in relation to the mental disorder the experts evaluate the suffering of mental pains, so the intensity of pains, ranging between mild, medium and strong, is evaluated according to the intensity of everything that the person had suffered within the psychiatric/mental disorder, which developed as a cause-and-effect result of the survived torture. The expert witness explained that, in the forensic practice, it is very difficult to determine the intensity of mental pains specifically by days, and added that, throughout the entire period at issue, the injured party had lived in an environment where she had no support whatsoever. When the critical incident occurred, the witness had ... (which occurred in 1993). The expert witness further explained that the present ... is acute if it lasts up to 3 months, while it becomes chronic if its duration exceeds a three-month period.

398. Even though the expert witness could not state why the critical incidents described in Sections 1 and 2 of the Operative Part of the Verdict were more traumatic for the injured party than some other incidents she had experienced during the war, she assumed that the injured party felt more secure when she was detained, which she admitted to the expert witness, as there were other detained persons with her, and after being raped she was returned among those people. Therefore, in the expert witness's view, the injured party felt more protected knowing that the other people knew she was there, that they would not kill her, and that they would take her back, while she was completely unprotected in the situation when the person at issue who raped her had abducted her from her house. Obviously, what matters at that moment is the protection of a person, or anticipated protection, and it even need not be objective, but a person

may anticipate such protection so that (the incident) is perceived as a less traumatic one.

399. The expert witness explained that the diminished quality of life includes efficiency in the person's cognitive or mental functioning in all aspects of life. In explaining the diminished quality of the injured party's life, the expert witness stated that the speed of the injured party's memorizing, cognitive memory, concentration, and learning has been slowed down and impaired, because ... affects the learning ability, wherefore the injured party's primary intellectual and mental abilities are presently diminished.

400. The Panel has accepted the expert witness's Finding and Opinion, as well as her oral evidence (given at the hearing), as truthful, reliable and based on the rules of profession and science. The Panel took into account the expert witness's long professional experience, and the fact that her Findings are based on the medical documentation presented by the injured party, the results of the examination of the injured party, and the interview made with her on the premises of the Psychiatric Clinic. In view of the foregoing, the Panel found that, as a result of the criminal offense at issue, the injured party has developed the symptoms of ...

401. Also, the Panel finds reliable the assertions the expert witness presented at the oral hearing, pertaining to the fact that, even though the injured party suffered a number of traumatic incidents, the charged acts were the most traumatic ones in her perception, considering the reasons presented by the expert witness, namely the fact that, in those situations, after being abducted from her home under the threat of pistol, the injured party could not anticipate that any protection would be provided to her, unlike in the other incidents she had experienced during the war. Therefore, in her perception, the injured party "belittled" or suppressed the other events in relation to the charged incidents. The Panel finds that this explanation is quite acceptable.

402. The expert witness explained at the main trial that, in such cases, in evaluating the gravest trauma based on the examined person's subjective assessment, focus should be put on examining the gravest trauma. The gravest trauma for the injured party was this particular trauma. The Panel was also mindful of the expert witness's arguments that overall traumas affect the consequences, which means that the post-traumatic environment significantly affects the consequences of the trauma, e.g. had the injured

party had any support, or had she been timely relocated from the threatening environment, had she underwent any medical treatment, obviously the destructive impact of the criminal offense would have been significantly less severe for her.

403. In the Panel's view, ill-founded are the objections of the Accused's Counsel advanced in relation to the expert witness's findings, arguing that the findings are subjective and mostly based on the injured party's recount. Specifically, it ensues from the expert witness's written Findings and Opinion and her oral presentation that she made her finding taking into account the presented medical documentation, and examined the injured party by using, *inter alia*, the psychological instruments for .... Therefore, the Defense's objections advanced to this effect lack the necessary logical and probative grounds for rendering a different decision.

404. On 21 May 2015, the Court received the final and specified claim under property law, filed by the injured party through her authorized representative, which was further specified once the psychiatric evaluation was completed, and the Findings and Opinion orally presented by the expert witness. In this regard, as stated in the specified claim under property law, the claimed total amount of compensation for non-pecuniary damages was reduced and harmonized with the expert witness's findings. Thus, the cumulative amount of single non-pecuniary damage specified in the claim under property law is now KM 30,000.00 in total, and includes the following types of damage: in respect of the suffered fear the amount of KM 6,000.00; in respect of the mental and physical pains, violation of personal rights and outrages upon dignity and morale by torture, inhuman and humiliating treatment the amount of KM 20,000.00; and in respect of mental pains due to the diminished quality of life the amount of KM 14,000.00.

405. In rendering its decision, the Panel took into account the fact that the injured party tendered into the case record abundant medical documentation (126 documents<sup>86</sup>), in support of the consequences of the criminal offense for the injured party and the continued medical treatment, during the 2006-2012 period. The Panel finds it unnecessary to present the contents of, or make any reference to the medical

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<sup>86</sup> O- 2 – Verified copy of the medical documentation pertaining to the injured party A, comprising 126 written documents.

documentation at issue, considering that it was the subject of expert evaluation by Prof. Dr. Alma Bravo-Mehmedbašić.

406. Therefore, bearing in mind the final specified claim under property law of 21 May 2015, and the fact of the Panel's finding that the injured party suffered significant damage resulting from the criminal offense committed by the Accused, as apparent from the suffered mental pains, experienced fear and permanently diminished quality of life, and the information collected during the proceedings, which provides to the Panel a reliable ground to make its decision, the Panel accepted the finally specified claim under property law in the total amount of KM 30,000.00 KM. Specifically, the Panel awarded the injured party KM 16,000.00 for mental pains caused by violation of liberty or personal rights, and KM 14,000.00 for mental pains due to the diminished quality of life. The Panel finds that the single awarded amount is a fair compensation to the injured party.

407. In this context, the Panel notes that the total sum of individual forms of damage in the specified claim under property law was KM 40,000.00 (KM 6,000.00 + KM 20,000.00 + KM 14,000.00), rather than KM 30,000.00, as indicated in the claim itself. At the same time, however, the Panel notes that, in rendering its decision, it was limited by the amount of the claim under property law specified by the injured party.

408. The Panel notes that, in deciding on the injured party's claim under property law, it took into account the provisions of the Law on Obligations (as the *lex specialis* law in this context), being mindful of the significance of the violated good and the purpose of the award, but also of the fact that the award should not favor any aspirations that are incompatible with its nature and social purpose.

409. The Panel notes that, in rendering its decision, regardless of the types of non-pecuniary damages as specified in the claim under property law, it took into account only the types of non-pecuniary damages prescribed by Article 200 and Article 202 of the Law of Obligations, being mindful of the way of commission of the criminal offense at issue (underlying the criminal offense of which the Accused was found guilty, that is, rape), as well as the consequences the injured party suffered due to the commission of the referenced criminal offense.

410. The Panel was further mindful of the fact that monetary (material) satisfaction

will exist when a violation of personal rights (injury to honor, reputation, freedom, disfigurement, diminished quality of life, etc.) resulted in the physical and mental pains and fear, and when the Court has found, pursuant to the circumstances of the case, that the intensity of pains and fear so justified, and awarded the injured party a fair compensation. The characteristic of monetary satisfaction is that it may be awarded only if the physical and mental pains and fear are causal to the violation of personal rights, which means that, in such a case, it is a cumulative satisfaction.<sup>87</sup>

411. To this effect, the Panel noted that, pursuant to Article 202 of the Law on Obligations, the injured party, who was subjected to some other criminal offense against personal dignity and morale, is also entitled to monetary compensation for mental pains.

412. In the concrete case, the individual incrimination underlying the war crime against civilians - rape, in the Panel's view and pursuant to the positions taken in case law, constitutes a criminal offense against personal dignity and morale. In relation to the criminal offenses against personal dignity and morale, a criminal sentence<sup>88</sup> itself entails the right monetary satisfaction, wherein the civil court (which has powers that are also vested in this Court and the criminal proceedings) should determine the existence of non-pecuniary damages, or mental pains and fear resulting from the criminal offense at issue, and the amount of award.

413. As stated above, such positions were also taken in case law, the relevant parts of which state as follows: "*Non-pecuniary compensation for mental pains and fear shall be awarded to the person who was subjected to enforced sexual intercourse*<sup>89</sup>", as is the case here.

414. The Panel therefore finds that, essentially, the injured party is entitled to compensation of non-pecuniary damages for mental pains caused by a violation of liberty or personal rights under Article 202 of the Law on Obligations, awarded in a single

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<sup>87</sup> Vilim Gorenc, Law on Obligations and the Commentary, 1998, p. 287.

<sup>88</sup> *Ibid*, p. 293.

<sup>89</sup> Vs, GŽ-264/78 of 1 January 1979 and VS, GŽ-674/78 of 17 January 1977, PSP-15/33, the view presented in: Vilim Gorenc, Law on Obligations with the Commentaries, 1998, p. 294.

amount, with a possibility of adding compensation for mental pains due to the diminished quality of life.

415. When it comes to compensation of non-pecuniary damages for mental pains caused by violation of liberty or personal rights (also including fear pursuant to the above presented views), the Panel has found that, by the Accused's acts described in the Operative Part of the Verdict, the injured party was brought into a subordinate position and that the Accused forced her into punishable sexual intercourse, as a result of which the injured party suffered mental pains.

416. In evaluating the intensity and duration of pains, and having found the expert witness's Finding and Opinion to be objective and reliable, the Panel found that the injured party suffered strong and medium-intensity mental pains throughout the period between May 1993 (the first rape) and October 1995 (during which she had no protection and could not even anticipate being protected), medium to mild mental pains over the 5-year period, and that as a result of the critical incident the injured party's mental pains of mild intensity are permanently present.

417. Considering that the rape was committed during the war, and bearing in mind the time lapsed after the incriminating events, the Panel found that it is difficult to strictly determine how many days the pains were of strong or of medium intensity, as indicated by the expert witness, Prof. Dr. Alma Bravo-Mehmedbašić, and that this can be determined only approximately. Specifically, the expert witness stated that it can be assumed that strong mental pains were present when the injured party's life was, pursuant to her own perception, directly endangered (during the first and the second rape, as well as the third time when the Accused visited her). It is also justified to assume that the injured party suffered medium-intensity mental pains for a larger number of days, rather than the strong ones, for she could not have survived permanently strong pains, namely she would have experienced a psychological breakdown.

418. In determining the amount of monetary compensation for non-pecuniary damages, the Panel also took into account the Orientation Criteria and the amounts for determining fair awards for non-pecuniary damages (the Criteria), as also considered and accepted by the Civil Department of the Supreme Court of the Federation of BiH at its session held on



20 June 2006.

419. In applying the Criteria, the Panel took into account that they apply to all civil proceedings related to non-pecuniary damage awards (which by its nature is an adhesive procedure, conducted upon a claim under property law). These criteria, *inter alia*, specify the following: amounts for determining the amount of compensation for physical pains - by days, a fair monetary compensation for the fear, the amounts for determining the amount of compensation due to diminished quality of life. In this context, the Panel particularly took into account that, pursuant to the case law of the Supreme Court of the FBiH, "*the orientation criteria of the Supreme Court of the FBiH are not a math formula which is, by mere automatism, used for determining and calculating a fair monetary compensation, because deciding on the amount of non-pecuniary damages means a trial where the legal standard of fairness is being applied for the purpose of determining the amount of compensation*".

420. Therefore, as a form of compensation for this type of damage (mental pains caused by a violation of liberty or personal rights), the Panel awarded a fair compensation in the amount of KM 16,000.00, which also includes compensation for fear, bearing in mind in that regard the Findings and Opinion made by the expert witness, Prof. Dr. Alma Bravo-Mehmedbašić.

421. Also, in determining the amount of fair compensation, the Panel took into account the permanent consequences of the referenced criminal offense. According to the expert witness's Findings (presented both orally and in writing), the injured party's quality of life has been permanently diminished by 25%, which is obvious from the fact that the speed of the injured party's thoughts, her cognitive memory, concentration, and learning abilities have all been slowed down and impaired, including her primary intellectual and psychological abilities. Therefore, compensation for this type of damage (mental pains due to diminished quality of life) has been awarded in the amount of KM 14,000.00 (as requested in the specified claim under property law).

422. In view of the above described manner, the Panel granted, in part, the injured party's claim under property law, and rejected it in the part pertaining to the fear (considering that the compensation for mental pains caused by violation of personal

rights also subsumes fear), and thus, in respect of mental pains caused by violation of personal rights, awarded the amount of KM 16,000.00. The Panel found that this amount is a fair compensation, namely that, for the purpose of fairness, it is not necessary to award the amount of KM 20,000.00 for this type of damage, as the injured party requested in her specified claim under property law.

423. The Panel notes that, during the proceedings, the injured party filed no claim to be awarded legal default interest on the amount of non-pecuniary damages, nor a claim for compensation of possibly accrued expenses related to the conduct of the procedure to pursue the claim under property law, wherefore it made no decision to this effect.

424. Ultimately, the Panel finds that by awarding compensation to the victim of a criminal offense, as in the concrete case, it has established a principle of social justice. From the sociological point of view, the principle of reparation for victims should be of the same significance as the principle of punishment as a form of reaction of the society to criminal activities. Specifically, the purpose of trial must not be merely the repression against the perpetrator, but rather it should seek to completely restore the situation violated by the criminal offense (committed)<sup>90</sup>.

## **X. DECISION ON THE COSTS OF CRIMINAL PROCEEDINGS**

425. The Panel noted that it is justified to relieve the Accused of the duty to reimburse the costs of the proceedings considering that he is indigent (according to the data in the case record, namely the Defense's evidence), owns no property<sup>91</sup>, that he, his wife and one of his sons are recorded on the list of unemployed persons of the Employment Bureau<sup>92</sup>, while his two other children are regular university students<sup>93</sup>.

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<sup>90</sup> In compliance with the position taken in the Verdict of the Court No. K-76/08 of 11 September 2009.

<sup>91</sup> This transpires from Exhibit O-9 – Certificate of Cadaster income to the name of Slavko Savić, Republic Administration for Geodesic and Property-Legal Affairs, Banja Luka, Regional Unit Bijeljina, No. 21.12/952.1-5-167/15 of 21 May 2015.

<sup>92</sup> This transpires from Exhibit: O-10 – Certificate of the Republika Srpska Employment Bureau to the name of Slavko Savić, No. 1-30-10057-4-2013-1161 of 20 May 2015, O-11 – Certificate of the Republika Srpska Employment Bureau to the name of Đurđija Savić, No. 1-30-10057-4-2009-492 of 20 May 2015 and O-12-

426. In view of the foregoing facts and circumstances, as well as the fact that, under the present non-final Verdict, the Accused is sentenced to a term in prison for a number of years, which means that in the forthcoming period he will be objectively prevented from earning any income, and considering that in the hitherto course of the proceedings the expenses of the *ex-officio* appointed Counsel were paid from the budget of the Court, imposing on the Accused the duty to reimburse the costs of the criminal proceedings would jeopardize the support of both the Accused and the members of his family. Therefore, applying Article 188(4) of the CPC BiH, the Panel decided to relieve the Accused of the duty to reimburse the costs of the criminal proceedings.

**PANEL PRESIDENT**

**JUDGE**

**MINUTES-TAKER:**

**Legal Advisor-Assistant**

Sanja Salčić-Sabljica

Mira Smajlović

**NOTE ON LEGAL REMEDY:** An appeal from this Verdict may be filed with the Panel of the Appellate Division of the Court of BiH within 15 (fifteen) days after the receipt of a written copy of the Verdict.

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Certificate of the Republika Srpska Employment Bureau to the name of Vladimir Savić, No. 1-30-10057-3-2014-929 of 20 May 2015.

<sup>93</sup> This transpires from Exhibit: O-13 – Certificate of the Faculty of Political Sciences, University of Banja Luka, to the name of Vojislav Savić, No. 393/11 of 21 May 2015 and O-14 – Certificate of the Faculty of Philosophy, University in Banja Luka to the name of Marijana Savić, No. 07/4.1001/2015 of 21 May 2015.

## XI. ANNEX

### A. PRESENTED EVIDENCE

#### 1. Examined Prosecution Witnesses

Testimony Date	Witness	Note
4 February 2015	A. S.	
16 February 2015 4 May 2015	Witness A (injured party)	The witness was granted protective measures under the Decision of 19 January 2015
23 February 2015	Witness B	The witness was granted protective measures at the hearing held on 23 February 2015
23 February 2015	Witness C	The witness was granted protective measures at the hearing held on 23 February 2015
4 May 2015	Witness E	The witness was granted protective measures at the hearing held on 4 May 2015
4 May 2015	Razija Sejdić	
4 May 2015	Miloš Jovanović	

## 2. Prosecution's Documentary Evidence

T – 1 – Record of Identification of Person from Photographs, BiH Prosecutor's Office, No. T20 0 KTARZ 0009107 14 of 26 August 2014 with attached photo-album

T – 2 – Decision Declaring the State of War, *Official Gazette* of the R BiH, No. 7 of 20 June 1992

T – 3 – Decree with the Force of Law relating to the Armed Forces of the Republic of Bosnia and Herzegovina, *Official Gazette* of the R BiH, No. 4 of 20 May 1992

T – 4 – Decision Declaring Amendments I – IV to the Constitution of the Serb Republic of Bosnia and Herzegovina, *Official Gazette* of the Serb People in Bosnia and Herzegovina, Year I – No. 6, 12-17 May 1992

T – 5 – Order by the Commander of the Main Staff of the Army of the Serb Republic of Bosnia and Herzegovina, strictly confidential no. 30/18-17 of 16 June 1992

T – 6 – Decree declaring the Law on Amendments to the Law on Determination of Border Crossings of the Republic of Bosnia and Herzegovina, *Official Gazette* of the Republic Bosnia and Herzegovina, Year IV – No. 50, of 28 December 1995

T – 7 – Regular Combat Report with the status at 17:00 hrs, Command of the SRK, str.conf.no. 20/15-727 of 14 June 1993, verified by the ICTY

T – 8 – Document of the Ministry of Labor and Protection of War Disabled Veterans of Republika Srpska, Military Record Section for participants in the defensive-homeland war, No. 16-03/3.2-1-835-1108/14 of 9 October 2014, with attached 5 verified copies of VOB-8 extracts

T – 9 – Document of the Department for Protection of Veterans and Disabled Persons, Bijeljina municipality, No. 02/7-832-1-125/14 of 7 October 2014 with attached verified copies of VOB-1, VOB-2 and VOB-3 forms

T – 10 – Criminal Record Extract, Ministry of Interior, Police Administration, No. 02/3-3-04-8-2/3455 of 1 October 2014

**3. Examined Witnesses for the Accused’s Defense**

Testimony Date	Witness	Note
30 March 2015	Dušan Čađo	
30 March 2015	Witness D	The witness was granted protective measures at the hearing held on 30 March 2015
20 April 2015	Milorad Rajić	

**4. Documentary Evidence of the Accused’s Defense**

O – 1 – Witness A’ statement given in the Association of Women Victims of War, Sarajevo, No. BiH-0746/07 of 6 March 2007;

O – 2 – Examination Record for Witness “A”, BiH Prosecutor’s Office, No. T20 0 KTRZ 0009107 14 of 26 August 2014;

O – 3 – Examination Record for Witness “C”, BiH Prosecutor’s Office, No. T20 0 KTARZ 0009017 14 of 2 September 2014 and Witness C’s statement given in the Association of Women Victims of War, Sarajevo on 30 January 2008;

O – 4 – Statement of witness Razija Sejdić given in the Association of Women Victims of War, Sarajevo, No. BiH-0746/07 of 6 March 2007;

O – 5 – Verified copy of the employment record card for Slavko Savić, Socialistic

Republic of Bosnia and Herzegovina, Vogošća municipality;

O – 6 – Letter of the city of Bijeljina, No. 02/7-832-1-8/15 of 28 January 2015, with attached Certificate issued by the Bijeljina City Administration, Department for the Protection of Veterans and Disabled Persons, No. 02/7-835-3-443/14 of 10 October 2014;

O – 7 – Notice of the Višegrad municipality, General Administration Department, No. 03-931-8.1/15 of 24 April 2015 pertaining to the compulsory work obligation of witness “A”;

O – 8 – Forensic expert evaluation of Dr. Žarko Savić, Chief Physician, of 22 May 2015 relating to the expert evaluation of the health condition of the Defense witness for whom protective measures were sought;

O – 9 – Certificate of cadaster income to the name of Slavko Savić, Republic Administration for Geodetic Survey and Property-Relation Affairs, Banja Luka, Regional Unit Bijeljina, No. 21.12/952.1-5-167/15 of 21 May 2015;

O – 10 – Certificate of the Republika Srpska Employment Bureau, issued in the name of Slavko Savić, No.1-30-10057-4-2013-1161 of 20 May 2015;

O – 11 – Certificate of the Republika Srpska Employment Bureau, issued in the name of Đurđija Savić, No. 1-30-10057-4-2009-492 of 20 May 2015;

O – 12 – Certificate of the Republika Srpska Employment Bureau, issued in the name of Vladimir Savić, No. 1-30-10057-3-2014-929 of 20 May 2015;

O – 13 – Certificate of the Faculty of Political Science, University in Banja Luka, issued in the name of Vojislav Savić, No. 393/11 of 21 May 2015;

O – 14 – Certificate of the Faculty of Philosophy, University in Banja Luka, issued in the name of Marijana Savić, No. 07/4.1001/2015 of 21 May 2015.

## **5. Evidence of the injured party-Witness “A”**

O – 1 – Petition to satisfy the claim under property law of the injured party-Witness

“A”, filed through her authorized representative, Attorney Nedžla Šehić, of 5 February 2015

O – 2 – Verified photo-copy of the medical documentation pertaining to the injured party-Witness “A”, comprising 126 items:

1. Discharge Letter, Public Institution (JU) Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 23 July 2012
2. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 21 March 2012
3. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 5 March 2012
4. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 20 February 2012
5. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 23 October 2014
6. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 23 January 2014
7. Physician Finding from the „Dr. Ljubović“ Psychiatry Office of 16 February 2010
8. Outpatient Examination, Clinical Center of the University in Sarajevo, 27 February 2008
9. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 28 March 2011
10. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 16 November 2012
11. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 10 October 2012
12. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 19 September 2012
13. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 6 August 2012
14. Outpatient Examination, Institution for Alcoholism and Other Toximannies, Canton Sarajevo, 7 March 2013



15. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 31 January 2013
16. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 20 November 2014
17. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 11 April 2013
18. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 4 October 2013
19. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 15 August 2013
20. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 10 June 2013
21. Physician's' Findings, Department of Neurology, Clinical Center of the University in Sarajevo, 10 May 2011
22. Findings and Opinion by physicians of the Radiology Clinic, Clinical Center, University in Sarajevo, 29 September 2010
23. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 15 November 2013
24. Psychologist's Findings and Opinion, Psychiatry Clinic, 9 November 2010
25. Psychologist's Findings and Opinion, Psychiatry Clinic, Clinical Center, University in Sarajevo, 20 March 2010
26. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 6 September 2011
27. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 15 September 2011
28. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 29 September 2011
29. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 22 August 2011
30. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 1 April 2011
31. Specialist's Finding and Opinion, JU Health Center of the Canton Sarajevo, 14 January 2014

32. Radiology Specialist's Finding, JU Institution for the Women Health and Maternity Protection, Canton Sarajevo, 7 October 2013
33. Outpatient Examination, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 1 February 2012
34. Specialist's Finding and Opinion, JU Health Center of the Canton Sarajevo, 25 August 2014
35. Physician's Finding, Ultra-sound Diagnostics Center, 18 September 2013
36. Specialist's Finding, SANASA Group Practice Center, 30 January 2006
37. Physician's Finding and Opinion, Radiology Clinic, Clinical Center, University in Sarajevo, 6 June 2011
38. Analysis made by the Nuclear Medicine Clinic, Clinical Center, University in Sarajevo, 15 November 2013
39. Outpatient Examination, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 27 August 2012
40. Specialist's Finding and Opinion, JU Health Center of the Canton Sarajevo, 19 November 2014
41. Physician's Finding, Gastroenterology Pathology Clinic, Clinical Center, University in Sarajevo, 1 December 2014
42. Specialist's Finding and Opinion, JU Health Center of the Canton Sarajevo, 13 March 2015
43. Physician's Finding and Opinion, Radiology Clinic, Clinical Center, University in Sarajevo, 7 January 2015
44. Proximal Endoscopy Finding, Clinical Center, University in Sarajevo, 3 August 2011
45. Specialist's Finding, SANASA Group Practice Center, 1 February 2006
46. Specialist's Finding, SANASA Group Practice Center, 21 December 2006
47. Specialist's Finding, SANASA Group Practice Center, 24 August 2007
48. Specialist's Finding, SANASA Group Practice Center, 24 August 2007
49. Specialist referral form 22 November 2011 and Specialist's Finding and Opinion of 28 November 2011
50. Finding and Opinion, Internist-Ultra Sound Group Practice Center, 8 April 2010
51. Psychologist's Finding and Opinion, Psychiatry Clinic, Clinical Center, University in Sarajevo, 14 April 2008

52. Discharge Letter, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 2 August 2011
53. Specialist's Finding and Opinion, JU Health Center of the Canton Sarajevo, 18 August 2014
54. Specialist's Finding and Opinion, JU Health Center of the Canton Sarajevo, 14 August 2014
55. Spirometry Test, Lungs Diseases Clinic, Clinical Center, University in Sarajevo, 5 January 2015
56. Pathohistologic Report, Institution for Clinical Pathology and Cytology, KCUS, 8 October 2013
57. Physician's Finding and Opinion, Radiology Clinic, Clinical Center, University in Sarajevo, 20 March 2015
58. Outpatient Examination, Clinical Center, University in Sarajevo, 7 October 2008
59. Specialist referral form of 7 October 2008 and (no date)
60. Specialist referral form of 30 March 2011 and Specialist's Finding and Opinion of 26 April 2011
61. Specialist referral form (date illegible) and Specialist's Finding and Opinion of 9 May 2008
62. Specialist referral form of 22 May 2008 and Specialist's Finding and Opinion of 27 May 2008
63. Finding and Opinion of Specialist in Radiology, JU Health Center Sarajevo, Working Unit Vogošća 17 December 2008
64. Physician's Finding and Opinion, JU Health Center Sarajevo, Working Unit Vogošća, 23 May 2008
65. Discharge Letter, Clinical Center, University in Sarajevo, 14 May 2008
66. Discharge Letter, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 2 August 2011
67. Discharge Letter, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 5 March 2015
68. Discharge Letter, Psychiatric Clinic, Clinical Center, University in Sarajevo, 23 March 2011
69. Discharge Letter, ORL Clinic, Clinical Center, University in Sarajevo, 21 July 2010

70. Discharge Letter, Psychiatric Clinic, Clinical Center, University in Sarajevo, 14 May 2008
71. Discharge Letter, Gynecology Clinic, Clinical Center, University in Sarajevo 14 July 2013
72. Discharge Letter, Psychiatric Clinic, Clinical Center, University in Sarajevo, 3 March 2011
73. Discharge Letter, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 5 March 2015
74. Discharge Letter, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 23 July 2012
75. Specialist's Finding and Opinion of 28 May 2008
76. Specialist's Finding and Opinion of 6 July 2009
77. Specialist referral form of 12 April 2010 and Specialist's Finding and Opinion of 12 April 2010
78. Specialist's Finding and Opinion of 9 April 2010
79. Specialist referral form of 12 April 2010 and Specialist's Finding and Opinion of 12 April 2010
80. Specialist referral form of 27 January 2010 and Specialist's Finding and Opinion of 28 January 2010
81. Specialist referral form of 18 February 2010 and Specialist's Finding and Opinion of 16 March 2010
82. Outpatient Examination, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 23 November 2011
83. Outpatient Examination, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 13 October 2011
84. Outpatient Examination, Institution for Alcoholism and Other Toximanies, Canton Sarajevo, 27 October 2011
85. Specialist referral form of 22 May 2008 and Specialist's Finding and Opinion of 23 May 2008
86. Specialist referral form of 18 February 2010 and Specialist's Finding and Opinion of 22 February 2010
87. Specialist referral form of 4 April 2011 and Specialist's Finding and Opinion of 6 April 2011

88. Findings, O.J. Urgent Medicine Clinic, Clinical Center, University in Sarajevo (dateless)
89. Physician's Finding and Opinion, JU Health Center Sarajevo, Working Unit Vogošća, 22 November 2010
90. Outpatient Examination, Clinical Center, University in Sarajevo, 18 November 2010
91. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 21 December 2011
92. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 14 December 2011
93. Outpatient Examination, Institution for Alcoholism and Other Toximancies, Canton Sarajevo, 10 November 2011.
94. Outpatient Examination, Clinical Center, University in Sarajevo, 17 November 2009
95. Outpatient Examination, Clinical Center, University in Sarajevo, 3 December 2009
96. Outpatient Examination, Clinical Center, University in Sarajevo, 10 December 2009
97. Outpatient Examination, Clinical Center, University in Sarajevo, 1 December 2009
98. Outpatient Examination, Clinical Center, University in Sarajevo, 23 February 2010
99. Outpatient Examination, Clinical Center, University in Sarajevo, 11 February 2010
100. Outpatient Examination, Clinical Center, University in Sarajevo, 30 March 2010
101. Outpatient Examination, Clinical Center, University in Sarajevo, 06.05.2010.
102. Specialist referral form of 22 May 2008 and Specialist's Finding and Opinion of 23 May 2008; Specialist referral form of 13.05.2009 and Specialist's Finding and Opinion of 26 May 2009
103. Specialist referral form of 15.09.2009. and Specialist's Finding and Opinion of 17 September 2009; and Specialist's Finding and Opinion of 26 May 2008
104. Specialist referral form of 22 September 2009 and Specialist's Finding and Opinion of 5 October 2009
105. Outpatient Examination, Clinical Center, University in Sarajevo, 22 June 2010

106. Outpatient Examination, Clinical Center, University in Sarajevo, 19 August 2010
107. Outpatient Examination, Clinical Center, University in Sarajevo, 16 September 2010
108. Outpatient Examination, Clinical Center, University in Sarajevo, 21 October 2010
109. Outpatient Examination, Clinical Center, University in Sarajevo, 10 December 2008
110. Outpatient Examination, Clinical Center, University in Sarajevo, 13 October 2009
111. Outpatient Examination, Clinical Center, University in Sarajevo, 1 October 2009
112. Outpatient Examination, Clinical Center, University in Sarajevo, 3 September 2009
113. Outpatient Examination, Clinical Center, University in Sarajevo, 6 August 2009
114. Outpatient Examination, Clinical Center, University in Sarajevo, 4 June 2009
115. Outpatient Examination, Clinical Center, University in Sarajevo, 2 July 2009
116. Outpatient Examination, Clinical Center, University in Sarajevo, 21 January 2009
117. Outpatient Examination, Clinical Center, University in Sarajevo, 18 March 2009
118. Outpatient Examination, Clinical Center, University in Sarajevo, 7 May 2009
119. Outpatient Examination, Clinical Center, University in Sarajevo, 18 June 2008
120. Outpatient Examination, Clinical Center, University in Sarajevo, 27 August 2008
121. Outpatient Examination, Clinical Center, University in Sarajevo, 8 November 2008
122. Outpatient Examination, Clinical Center, University in Sarajevo, 12 March 2008
123. Outpatient Examination, Clinical Center, University in Sarajevo, 7 April 2008
124. Outpatient Examination, Clinical Center, University in Sarajevo, 21 May 2008

O – 3 – The injured party's final specified claim under property law filed through the authorized representative, Attorney Nedžla Šehić, of 21 May 2015 (with attached Findings and Opinion of expert witness, Prof. Dr. Alma Bravo-Mehmedbašić of 27 March 2015).

## 6. Examined Expert Witnesses

Date	Witness	Note
11 May 2015	Prof. Dr. Alma Bravo-Mehmedbašić	Expert evaluation of the health condition of the injured party-Witness A
25 May 2015	D. Žarko Savić, Chief Physician	Expert evaluation of the health condition of the Defense witness for whom protective measures were sought