SUD BOSNE I HERCEGOVINE СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Number: X-KRŽ-05/96-1
Sarajevo, 5 May 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Panel of the Appellate Division of Section I for War Crimes comprising Judges Dragomir Vukoje, as the Presiding Judge, and Hilmo Vučinić and Marie Tuma, as members of the Panel, with the participation of Legal Officer Medina Hababeh as the minutes-taker, in the criminal case against the accused Mirko Pekez, son of Špiro, and Milorad Savić, son of Ljupko, for the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) and (f) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC BiH) in conjunction with Articles 29 and 180(1) of the CC BiH, deciding on the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-116/05 dated 22 November 2007, confirmed on 28 November 2007, having held a hearing attended by the Prosecutor of the Prosecutor's Office of BiH, Mirko Lečić, the Accused in person, and the Defense Counsel for the accused Mirko Pekez, attorney Slavica Čvoro, and the Defense Counsel for the accused Milorad Panić, attorney Nebojša Pantić, on 5 May 2009 rendered and publicly announced the following:

V E R D I C T

THE ACCUSED:

MIRKO PEKEZ, a.k.a. Guzan, son of Špiro and Mara, neé Glamočak, born on 28 October 1966 in Čerkazovići, Municipality of Jajce, Serb by ethnicity, citizen of RS, electro-technician by profession, residing in Čerkazovići bb – Municipality of Jezero, married, father of two children, employed with SZR /Private Trade Shop/ *Stupna* – Šipovo, served the army in Niš and Lastovo, medium income, ID: 04FEA0281, Personal Identification Number: 2810966102097, no prior convictions, no other criminal proceedings pending against him, **held in custody upon the Court of BiH Decision number: X-KRN-05/96 of 1 November 2007; and**

MILORAD SAVIĆ a.k.a. Mića, son of Ljupko, born on 25 October 1970 in Čerkazovići, Municipality of Jezero Jajce, residing in Bosanska Gradiška, bb Socijalističke revolucije Street, Serb by ethnicity, machinist by profession, married, father of one minor child, served the army in 1988/89 in Pula and Niš, registered in the Military Records of the Gradiška Municipality, employed with *Standard* Gradiška, medium income, citizen of BiH, ID:

05EAB8040, Personal Identification Number: 2510970102081, **held in custody upon the Court of BiH Decision number: X-KRN-05/96 of 1 November 2007,**

ARE FOUND GUILTY

Because by acting in concert:

During the state of war in Bosnia and Herzegovina and the armed conflict in the territory of the Jajce Municipality between the Army of Republika Srpska, on one side, and the Army of BiH and HVO /Croat Defense Counsel/ on the other, as members of the Army of Republika Srpska and the reserve police force, they acted in violation of Articles 3 and 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, prohibiting violence against life, health or physical or mental well-being of persons, by doing the following:

on 10 September 1992, after the burial of a killed soldier of the Army of Republika Srpska, Rade Savić, as an organized group of armed people, which consisted of Jovo Jandrić, Mirko Pekez, son of Špiro, Simo Savić, Mirko Pekez, son of Mile, Milorad Savić, son of Ljupko, Zoran Marić, Slobodan Pekez, Ilija Pekez, Milorad Savić, son of Đuro, and Blagoje Jovetić, which was organized by Jovo Jandrić, having mutually agreed on the plan to collect Bosniak civilians located in Ljoljići and Čerkazovići – Jajce Municipality, whose movement of freedom was limited since they had to respond to the roll-call on a daily basis, intending to take them away and kill them at the place called *Tisovac,* so they went to these places armed with automatic and semi-automatic rifles, and under the threat of using the firearms unlawfully arrested and forcibly took out the Bosniak civilians from their houses, rounded up women, men and children in the place called *Osoje,* assisted by the accused Mirko Pekez, son of Špiro, who then left this group, while the other members of the group, including Milorad Savić, son of Ljupko, took all the civilians together in a column to the place called *Draganovac,* with the rifles in their hands, moving in front, on the sides of and behind the column, and Jovo Jandrić and Mirko Pekez, son of Mile, threatened they would kill whoever tried to escape, insulting and physically harassing them along the way by calling them different names, by punching and kicking them and by hitting them with rifles, and when they reached the place called *Draganovac,* they stopped them there and Jovo Jandrić ordered them to put at a specifically designated place all valuable items they had on them, while the other armed individuals were standing on the side with their rifles pointed, and when they did so, Jovo Jandrić and Mirko Pekez, son of Mile, appropriated those items, and thereupon they all together took them to the place called *Tisovac,* where Jovo Jandrić ordered them to line up against the edge of an abyss, and when they did so, he ordered the armed men to start firing, which most of the members of the armed group did by opening fire from the rifles pointed at them, intending to kill them, thus on that occasion they killed **Nedžib Mutić,** son of Osman, born in 1936, **Šećo Malkoč,** son of Ibro, born in 1933, **Irhad Bajramović,** son of Mustafa, born in 1971, **Adnan Zobić,** son of Sabahudin, born in 1979,

Fikreta Zobić, daughter of Arif, born in 1956, **Fahra Balešić,** daughter of Musla, born in 1928, **Faza Balešić,** daughter of Avdo, born in 1918, **Derviša Mutić,** daughter of Hadžo, born in 1933, **Latif Bajramović,** son of Mujo, born in 1959, **Senad Karahodžić,** son of Omer, born in 1968, **Ibrahim Karahodžić,** son of Alija, born in 1933, **Mujo Bajramović,** son of Ibro, born in 1927, **Asmer Zobić,** son of Nurija, born in 1977, **Zarifa Karahodžić,** daughter of Latif, born in 1928, **Đula Zobić,** daughter of Avdo, born in 1924, **Ramiza Mutić,** daughter of Šerif, born in 1936, **Adis Zobić,** son of Nurija, born in 1983, **Fikreta Zobić,** daughter of Tahir, born in 1957, **Fatima Mutić,** daughter of Huso, born in 1963, **Ekrema Bajramović,** daughter of Latif, born in 1939, **Mustafa Bajramović,** son of Aslija, born in 1946, **Mustafa Balešić,** son of Ibro, born in 1950, and **Sabahudin Bajramović,** son of Šemso, born in 1979, while **Zejna Bajramović, Nurija Zobić, Omer Karahodžić and Mustafa Bajramović** survived the execution but sustained physical injuries, while **Fahrija Mutić** suffered no injuries.

Therefore, by violating the rules of international law in times of war and armed conflicts, they committed the killings and the intentional infliction of severe physical and mental pain on persons and the plunder of property,

Whereby they committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) (killings) of the CC BiH in conjunction with Article 31 (Accessory) of the cited law for Mirko Pekez, son of Špiro; and sub-paragraphs (c) (killings, intentional infliction of severe physical or mental pain or suffering upon a person) and (f) (pillaging) in conjunction with Article 29 (Accomplices) of the CC BiH for the accused Milorad Savić, son of Ljupko, all as read with Article 180(1) of the cited law.

Thus, pursuant to Article 285 of the CPC BiH, applying Articles 39, 42 and 48 of the CC BiH, the Panel of the Appellate Division of the Court of BiH

S E N T E N C E S

the accused Mirko Pekez, son of Špiro, TO 14 (FOURTEEN) YEARS OF IMPRISONMENT

the accused Milorad Savić, son of Ljupko, TO 21 (TWENTY-ONE) YEARS OF LONG-TERM IMPRISONMENT

Pursuant to Article 56 of the CC BiH, the time the Accused spent in custody shall be credited towards their sentence of imprisonment, specifically from 1 November 2007 until the time they are committed to serving their sentences.

Pursuant to Article 198(2) of the CPC BiH, the injured parties Nurija Zobić, Zejna Bajramović, Omer Karahodžić, Fahrija Mutić and Subhudin Zobić are instructed to take civil action to pursue their claims under property law.

Pursuant to Article 188(4) of the CPC BiH, the Accused are relieved of the duty to reimburse the costs of the criminal proceedings, and the costs shall be reimbursed from within the budget.

R e a s o n i n g

1. Charges

1. Prosecutor's Office of BiH Indictment number: KT-RZ-116/05 dated 22 November 2007, confirmed on 28 November 2007, charged the accused Mirko Pekez and Milorad Savić with the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (f) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH) in conjunction with Article 29, all as read with Article 180(1) of the CC of BiH.

2. Procedural History

2. The Verdict of the Court of Bosnia and Herzegovina (hereinafter: Court of BiH) number: X-KR-05/96-1 dated 15 April 2008, found the accused Mirko Pekez, son of Špiro, Mirko Pekez, son of Mile, and Milorad Savić, son of Ljupko, guilty of the actions as described in the Operative Part of the cited Verdict, whereby they committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (f) in conjunction with Article 29 of the CC of BiH and Article 180(1) of the CC of BiH.

3. For the criminal offense mentioned above, the First Instance Court sentenced the accused Mirko Pekez, son of Mile, to twenty-nine (29) years of long-term imprisonment, and the accused Mirko Pekez, son of Špiro, and Milorad Savić, son of Ljupko, to twenty-one (21) years of long-term imprisonment each, where, pursuant to Article 56 of the CC of BiH, the time they had spent in custody, from 11 November 2007 onwards, was credited towards their sentence of imprisonment. Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter the CPC of BiH), the Accused were relieved of the duty to reimburse the costs of the criminal proceedings, while the injured parties Nurija Zobić, Zejna Bajramović, Omer Karahodžić, Fahrija Mutić and Subhudin Zobić were instructed to take civil action to pursue their claims under property law.

4. The Verdict of the Appellate Panel number: X-KRŽ-05/96-1 dated 29 September 2008, the Appeal filed by the Defense Counsel for the accused Mirko Pekez, son of Mile, attorneys Duško Panić and Predrag Radulović, was dismissed as unfounded, and the Court of BiH Verdict number: X-KR-05/96-1 dated 15 April 2008 upheld in the part

related to this Accused, while the appeals filed by the Defense Counsel for the accused Mirko Pekez, son of Špiro, attorney Slavica Čvoro, and Defense Counsel for the accused Milorad Savić, attorney Nebojša Pantić, were granted and the respective Verdict revoked in the part related to these Accused, and a retrial in this part ordered before a panel of the Appellate Division of Section I for War Crimes of the Court of BiH.

3. Evidentiary Proceedings before the Appellate Division Panel

Procedural Decisions

5. In accordance with Article 317 of the CPC BiH, a hearing was held before the Panel of the Appellate Division of the Court of BiH; and in the course of the evidentiary proceedings, the Prosecution and the Defense suggested that the evidence adduced in the first instance proceeding be presented. The Prosecution also proposed to present new evidence through the examination of witness Jovo Jandrić via video link, because he is currently in the Republic of Serbia. The Defense of the accused Mirko Pekez proposed new evidence – reconstruction of events related to the movement of the Accused, and the Accused himself proposed that he be confronted with the accused Milorad Savić, while the Defense of Milorad Savić did not propose any new evidence.

6. Having examined all of the above proposals, and guided by Article 317(2) of the CPC BiH, the Appellate Panel established that it was not necessary to re-adduce the evidence presented in the first instance proceedings, both objective and subjective, and admitted that evidence without reading or reproducing it again. Therefore, all the evidence presented before this Court in the first instance proceedings by both Prosecution and Defense has been admitted, since all adduced evidence is related to the same criminal offense, and for that reason the Panel could not separate the pieces of evidence related to the already convicted Mile Pekez, son of Mirko, because in that case the body of evidence would be inconclusive. Therefore, the following has been admitted into evidence by the Panel:

a) Prosecution Evidence

7. Audio and video recordings of the testimonies of witnesses: Nurija Zobić, Borka Oparnica, Dragan Nišić, Dragan Ždrnja, Fahrija Mutić, Nedeljko Jandrić, Pero Savić, Zejna Bajramović, Omer Karahodžić, Subhudin Zobić, Dr. Rajko Todorčević, Dr. Hamza Žujo, expert-witness in forensic medicine from Sarajevo, and the additional witness Miroljub Perlaš.

8. In addition, the following documentary evidence has been admitted: Record on Examination of Witness Nurija Zobić, No. KT-RZ 116/05 of 27 April 2007, by the Prosecutor's Office of BiH; Hospital Discharge Papers for Nurija Zobić issued by the

Banja Luka Clinical and Medical Centre on 22 October 1992; Record on Examination of Witness Borka Oparnica, No. KT-RZ 116/05 of 15 May 2007, by the Prosecutor's Office of BiH; Record on Examination of Witness Dragan Nišić, No. KT-RZ 116/05 of 6 June 2007, by the Prosecutor's Office of BiH; Record on Examination of Witness Dragan Ždrnja, No. KT-RZ 116/05, of 23 May 2007, by the Prosecutor's Office of BiH; Record on Examination of Witness Fahrija Mutić, No. KT-RZ 116/05, of 6 June 2007, by the Prosecutor's Office of BiH; Record on Examination of Witness Nedeljko Jandrić, No. KT-RZ 116/05, of 6 November 2007, by the Prosecutor's Office of BiH; Submission of data on military records of Jajce Public Security Station, No. 11-11/01-828/93 of 26 June 1993; Record on Examination of Witness Pero Savić, No. KT-RZ 116/05, of 6 November 2007, by the Prosecutor's Office of BiH; Record on Examination of Witness Zejna Bajramović, No. KT-RZ 116/05, of 13 November 2007, by the Prosecutor's Office of BiH; Hospital Discharge Papers for Zejna Bajramović issued by the Banja Luka Clinical and Medical Centre on 16 September 1992; Video tape *War Crime against Civilians on 10 September 1992 in Tisovac, Jajce Municipality*; Record on Examination of Witness Omer Karahodžić, No. KT-RZ 116/05, of 5 November 2007, by the Prosecutor's Office of BiH; Psychologist's Findings for Omer Karahodžić issued by the Specialist Department of the Bugojno Medical Centre on 13 April 1997, Findings for Omer Karahodžić, issued by the Specialist Department of the Bugojno Medical Centre on 17 March 1997, Findings of the Travnik Cantonal Hospital of 19 March 1997, Findings of the Travnik District Hospital, Outpatient Clinic of the Surgery Department, of 17 October 1997; Record on Examination of Witness Subhudin Zobić, No. KT-RZ 116/05, of 8 May 2007, by the Prosecutor's Office of BiH; Record on Examination of Witness Rajko Todorčević, MD, No. KT-RZ 116/05, of 14 November 2007, by the Prosecutor's Office of BiH; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Sabahudin (son of Šemso) Bajramović, born in 1979, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Asmer (son of Nurija) Zobić, born in 1977, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Mustafa (son of Ibro) Balešić, born in 1950, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Mustafa (son of Alija) Bajramović, born in 1946, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Ekrema (daughter of Latif) Bajramović (wife of Šemso), born in 1939, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Fikreta (daughter of Arif) Zobić, (wife of Nurija), born in 1957, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Fatima (daughter of Huso) Mutić, born in 1963, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Adis (son of Nurija)

Zobić, born in 1984, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Ibrahim (son of Alija) Karahodžić, born in 1930, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Šećo (son of Ibro) Malkoč, born in 1934, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Irhad (son of Mustafa) Bajramović, born in 1971, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Adnan (son of Sabahudin) Zobić, born in 1979, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Fikreta (daughter of Tahir) Zobić, born in 1957, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Fahra (daughter of Mujo) Balešić, born in 1927, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Faza (daughter of Avdo) Balešić, born in 1918, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Latif (son of Mujo) Bajramović, born in 1959, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Ramiza (daughter of Šerif) Mutić, born in 1936, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Senad (son of Omer) Karahodžić, born in 1962, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Nedim (son of Osmo) Mutić, born in 1936, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Đula (daughter of Avdo) Zobić, born in 1924, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Zerifa (daughter of Latif) Karahodžić, born in 1965, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Mujo (son of Ibro) Bajramović, born in 1927, issued by the Šipovo Health Care Centre on 12 September 1992; Findings and Opinion of Rajko Todorčević, MD, on the cause of death of Derviša (son of Hadžo) Mutić, born in 1933, issued by the Šipovo Health Care Centre on 12 September 1992; Findings on Bodies Exhumed and Autopsied in the Territory of Jajce Municipality issued by the Forensic Institute of the Sarajevo University School of Medicine on 14 March 2000, prepared by Dr. Hamza Žujo, specialist in forensic medicine, Dr. Nermin Sarajlić, resident in forensic medicine and assistant to the autopsist Adnan Mušić, following the Order by the Travnik Cantonal Court number: KT-55/99-RZ; Decision on the Proclamation of the State of War, Official Gazette of RBiH number: 7/92 of 20 June 1992; Regular Operations Report of the 5th Corps Command forwarded to the Command of the 2nd Military District, strictly confidential number 84-84, of 23 April

1992; Regular Combat Report of the 1st Krajina Corps Command forwarded to the Main Staff of the Army of SR (Serb Republic) BiH, confidential, number 44-1/160, of 3 June 1992; Regular Combat Report of the 1st Krajina Corps Command forwarded to the Main Staff of the Army of SR BiH, strictly confidential, number 44-1/180 of 14 June 1992; Combat Report of the 1st Krajina Corps Command forwarded to the Main Staff of the Army of SR BiH, strictly confidential, number 44-1/195, of 23 June 1992; Regular Combat Report of the 1st Krajina Corps Command forwarded to the Main Staff of the Army of SR BiH, strictly confidential, number 44-1/248 of 20 July 1992; Combat Report of the 1st Krajina Corps Command forwarded to the Main Staff of the Army of SR BiH, strictly confidential, number 44-1/286 of 9 August 1992; Regular Combat Report of the 1st Krajina Corps Command forwarded to the Main Staff of the Army of SR BiH, strictly confidential, number 44-1/332, of 31 August 1992; Combat Report of the of the 1st Krajina Corps Command forwarded to the Main Staff of the Army of SR BiH, strictly confidential number 44-1/440, of 26 October 1992; Order of the Commander of the 1st Krajina Corps, Major General Momir Talić, on engagement of the police forces in the armed conflict, strictly confidential, number 535-1, of 19 June 1992; Mrkonjić Grad Basic Court On-site Investigation Report, No. Kri: 57/92, of 12.09.1992, of the event which took place in the night of 10 September 1992, in Čerkazovići, Jajce Municipality; Letter concerning military records of the Military Post 7048 of 5 July 1993; Letter of the Ministry of the Internal Affairs, Republika Srpska Police Crime Police Department, No. 02-11347/07, of 18 July 2007; Travnik Cantonal Court Decision number: Kri 5/99, of 27 April 1999, ordering exhumation and autopsy of the bodies of Ekrem Bajramović and other civilians from the villages of Ljoljići and Čerkazovići; Exhumation Record No. Kri. 5/99 of 28 April 1999, by the Travnik Cantonal Court Investigating Judge Slavica Čurić, in the area of Draganovac, Jezero Municipality, RS; Rules of the Road File: ROR 810 forwarded to the Chief Prosecutor Marinko Jurčević by Graham T. Blewitt, ICTY Deputy Prosecutor, for Mirko Pekez, son of Mile or Mićo, Ref. No. 025285/GB/RR810 of 17 January 2002; Rules of the Road File: ROR 810 forwarded to the Chief Prosecutor Marinko Jurčević by Graham T. Blewitt, ICTY Deputy Prosecutor, for Milan Savić a.k.a. Mića, Ref. No. 025286/GB/RR810, of 17 January 2002; Rules of the Road File: ROR 810 forwarded to the Chief Prosecutor Marinko Jurčević by Graham T. Blewitt, ICTY Deputy Prosecutor, for Mirko Pekez, Ref. No. 025281/GB/RR810 of 17 January 2002; Letter of the Jajce Police Department, No. 04-10/3-2-1-1119/02 of 10 December 2002, forwarded to the Travnik Cantonal Court, Ref. No. Ki-1/02 RZ of 29 November 2002; Court of BiH Decision number: X-KRN-05/96, of 17 October 2005, on taking over the criminal case against the suspects Jovo Jandrić, Mirko Pekez, Simo Savić, Ilija Pekez, Milorad Savić, Mirko Pekez son of Mile, Milan Savić a.k.a. Mića, Zoran Marić, Slobodan Pekez and Blagoje Jovetić, pending at the Cantonal Prosecutor's Office under Ref. No. KT-55/99; Attestation of Death for Sabahudin (son of Šemso) Bajramović, born in 1979, from Čerkazovići, issued by JKP Gradska groblja (Public Municipal Company) Visoko, ord.no. 117/99, of 8 May 1999; Attestation of Death for Mustafa

(son of Ibro) Balešić, born in 1950, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 116/99 of 8 May 1999; Attestation of Death for Mustafa (son of Alija) Bajramović, born in 1946, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 115/99 of 8 May 1999; Attestation of Death for Ekrema (daughter of Latif) Bajramović (neé Škopo), born in 1939, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 114/99, of 8 May 1999; Attestation of Death for Fatima (daughter of Huso) Mutić, born in 1963, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 113/99 of 8 May 1999; Attestation of Death for Fikreta (daughter of Tahir) Zobić (neé Krak), born in 1957, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 112/99 of 8 May 1999; Attestation of Death for Adis (son of Nurija) Zobić, born in 1985, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 111/99 of 8 May 1999; Attestation of Death for Ramiza (daughter of Šefik) Mutić (neé Mujak), born in 1936, issued by JKP Gradska groblja Visoko, ord.no.: 110/99 of 8 May 1999; Attestation of Death for Džula (daughter of Avdo) Zobić (neé Haseljić), born in 1924, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 109/99 of 8 May 1999; Attestation of Death for Zarifa (daughter of Latif) Karahodžić (neé Škopo), born in 1928, from Ljoljići, issued by JKP Gradska groblja Visoko, ord. no.: 108/99 of 8 May 1999; Attestation of Death for Asmer (son of Nurija) Zobić, born in 1977, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 107/99 of 8 May 1999; Attestation of Death for Mujo (son of Ibro) Bajramović, born in 1927, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 106/99 of 8 May 1999; Attestation of Death for Ibrahim (son of Ale) Karahodžić, born in 1933, from Ljoljići, issued by JKP Gradska groblja Visoko, ord.no.: 105/99 of 8 May 1999; Attestation of Death for Senad (son of Omer) Karahodžić, born in 1968, from Ljoljići, issued by JKP Gradska groblja Visoko, ord. no.: 104/99 of 8 May 1999; Attestation of Death for Latif (son of Mujo) Bajramović, born in 1959, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 103/99 of 8 May 1999; Attestation of Death for Derviša (daughter of Hadžo) Mutić (neé Balešić), born in 1933, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 102/99 of 8 May 1999; Attestation of Death for Faza (daughter of Avdo) Balešić (neé Mujkić), born in 1918, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 101/99 of 8 May 1999; Attestation of Death for Fahra (daughter of Muslo) Balešić, born in 1928, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 100/99 of 8 May 1999; Attestation of Death for Fikreta (daughter of Arif) Zobić, born in 1956, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no. 99/99 of 8 May 1999; Attestation of Death for Adnan (son of Subhudin) Zobić, born in 1979, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 98/99 of 8 May 1999; Attestation of Death for Irhad (son of Mustafa) Bajramović, born in 1971, from Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 97/99 of 8 May 1999; Attestation of Death for Šećo (son of Ibro) Malkoč, born in 1933, from Ljoljići, issued by JKP Gradska groblja Visoko, ord. no.: 96/99 of 8 May 1999; Attestation of Death for Nedžib (son of Osman) Mutić, born in 1936, from

Čerkazovići, issued by JKP Gradska groblja Visoko, ord. no.: 95/99 of 8 May 1999; Record on Questioning of the Suspect Mirko (son of Špiro) Pekez a.k.a. Guzan by the Prosecutor's Office of BiH, number : KT-RZ-116/05, of 30 October 2007; Record on Examination of Witness Miroljub Perlaš by the Prosecutor's Office of BiH, number: KT-RZ-116/05, of 17 March 2008 and maps of the Jajce and Šipovo municipalities.

b) Defense Evidence

9. Audio and video recordings of the testimonies of witnesses for the Defense of the accused Mirko Pekez, son of Špiro, specifically: Ljubo Jovičić, Đuro Vukadin, Pero Marić, and the Accused as a witness, as well as testimonies of additional witnesses Goran Jović and Dragan Rodić; also, witnesses for the Defense of the Accused (now convicted) Mirko Pekez, son of Mile, specifically: Nikola Nikolaš, Nedeljko Jandrić, Jovo Topić, Jovo Prole, Vlajko Radić, Bosiljka Rosić, and this Accused as a witness in a closed session. The accused Milorad Savić, son of Ljupko, did not propose presentation of evidence through witness examination.

10. The Panel also admitted the following documentary evidence tendered by the Defense for the accused Mirko Pekez, son of Špiro, specifically: Findings and Opinion of Dr. Rajko Todorčević, specialist in Industrial Medicine, about the health condition of the first-accused, of 17 December 2002, issued by the Šipovo Health Care Centre; Letter of the Mrkonjić Grad Public Security Station number: 10-2-16/02-2-434/07, of 26 November 2007; Letter of the Šipovo Police Station, number: 10-2-17/02-1223/07, of 23 November 2007; Official Note of the Šipovo Police Station, number: 10-2-17/02-55/07, of 23 November 2007; Letter of the Public Security Centre (PSC), Banja Luka Crime Police Department, number: 10-02/2-230-2831/07, of 11 December 2007, forwarding the Official Note number: 10-02/2-838/07, of 11 December 2007, including a photocopy of a page from the Banja Luka PSC On-site Investigations Log from 1992. Also admitted is the evidence tendered by the Defense of the accused Milorad Savić, specifically: Jajce PSC Official Note of 12 September 1992 by Borko Oparnica; Photograph taken on the date of Rade Savić's burial with the third-accused Milorad Savić marked on it and the Record on Questioning of the Suspect Milorad Savić by the Prosecutor's Office of BiH, number: KT-RZ-116/05, of 30 October 2007.

11. Following a detailed analysis of all relevant pieces of evidence, both individually and in correlation with each other, and having applied Article 263(2) of the CPC of BiH, the Panel concluded that the reconstruction of events proposed as evidence by the Defense is unnecessary and irrelevant, since sufficient relevant evidence had been tendered as to the movement of the accused Pekez at the critical time, and the Panel had no doubts about this significant fact. The Defense could have adduced all of the proposed evidence at the previous stages of the proceedings, therefore there was no

objective inability to adduce the evidence in question. Namely, this is not new evidence or new facts.

12. Therefore, taking into account the revoked Verdict and the circumstances that need to be established, linked with the body of evidence presented both by the Prosecution and the Defense, the reconstruction of that event would not significantly contribute to establishing any relevant facts in these criminal proceedings or to a different conclusion by the Court about the circumstances surrounding the movement of the accused Pekez on the critical evening.

13. For the same reasons, this Panel also refused the proposal by the accused Pekez to be confronted with the accused Savić.

14. The Appellate Panel accepted the proposal of the Prosecution to adduce new evidence through the examination of Jovo Jandrić as a witness in accordance with Article 9.II of Protocol II Additional to the European Convention on Mutual Assistance in Criminal Matters, and he has been heard, or more precisely examined and cross-examined by the Prosecution and Defense, in the presence of his Defense Counsel, via a video link with the District Court in Belgrade, the Republic of Serbia, where this person currently resides.

15. The Court agreed that this evidence be adduced finding well-founded the reasons given by the Prosecution in support of the objective inability to previously examine this witness, because Jovo Jandrić had, at that time, still been out of reach of this country's law enforcement agencies, but he showed willingness to cooperate and testify in this case only after the completion of the first instance proceedings.

16. Finally, when making this decision, the Court was mindful of the application of the principle of judicial economy and efficiency, and decided as mentioned above in order to comply with that principle.

17. As regards the Motion by the Defense Counsel for the accused Pekez, attorney Slavica Čvoro, seeking appointment of Simo Tošić as an additional counsel because of, as the Motion stated, his ability to work in the field, closeness to the place where the Accused is, and also because of evidence and contacts with the Accused, because, since he is close, it would take the Accused much less time to communicate with him, the Panel found this Motion unfounded and dismissed it in its entirety. The Panel made this decision mindful of the current stage and the nature of the proceedings – trial before the Panel of the Appellate Division. Namely, given the fact that, as described above, this Panel accepted without the need to be presented again all evidence adduced in the course of the first instance proceedings, and also that, besides these, there were no other proposals on the part of the Defense, it followed that, therefore, there was no

18. Furthermore, the Defense had sufficient time and possibility, in the course of the first instance proceedings, then through regular legal remedy, and finally in the course of retrial before this Panel, to comprehensively collect relevant evidence to support their averments, and to build an adequate strategy, therefore, mindful of everything described above, as well as the fact that this is not a complex case since there is only one count of indictment, and that there were no amendments to the Indictment, which might require additional time and resources for the preparation of defense, the Panel found that in this specific case such Motion lacked foundation and arguments and, therefore, had to be dismissed.

4. Closing Arguments

a) Prosecution

19. In his address to the Court during his closing argument, the Prosecutor gave a detailed overview and analysis of the presented evidence, both documents and witness testimonies, elaborating upon the existence of significant elements of the criminal offense with which the Accused are charged, and their criminal liability for the perpetration of that offense.

20. The Prosecutor submitted that the evidence adduced at the main trial and its analysis, both individually and in correlation with other evidence, leads to a single correct conclusion that the accused Mirko Pekez and Milorad Savić, as co-perpetrators in a group, committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (f) in conjunction with Articles 29 and 180(1) of the CC of BiH, and moved that the Accused be found guilty and sentenced according to the law for the perpetrated criminal offense, committed in a manner and at the time as described in the Operative Section of the Indictment, and that a punishment proportionate to the gravity of the offense and its consequences be imposed on them.

b) Defense

21. In her closing argument, the Defense Counsel for the accused Mirko Pekez, son of Špiro, attorney Slavica Čvoro, stressed the fact that her client had not committed the crime he was charged with in the Indictment, which was also proved by the facts presented in the course of the main trial, especially the very facts given by the Prosecution witnesses. The Defense Counsel, *inter alia*, gave a detailed analysis to defend relevant parts of testimonies by the Prosecution witnesses, stressing that all that indicated that the Prosecution had failed to prove that Mirko Pekez, son of Špiro, was present on the scene that critical day in the first place, not to mention his involvement in the killing of a part of the population of the Ljoljići and Čerkazovići villages. The

Defense moves that, pursuant to Article 284(c) of the CPC BiH, and in compliance with the principles of legality, presumption of innocence and *in dubio pro reo,* an acquitting Verdict be handed down for this Accused

22. The accused Pekez entirely supported the closing argument of his Defense Counsel.

23. The Defense Counsel for the accused Milorad Savić, attorney Nebojša Pantić, presented brief closing arguments pointing out that it was the submission of the Defense that, with respect to the evidence, there had been no new developments in the course of the retrial, except for the new piece of evidence of the prosecution – the hearing of witness Jovo Jandrić. The Defense challenges the testimony of this witness because he was creating his own defense in his testimony and were all his allegations to be accepted as true that would question almost all testimonies of the Prosecution witnesses that have been heard. Based on the analysis of this witness's testimony and pointing to other evidence, the Defense submits that the Prosecution failed to prove the role that the accused Savić played in the criminal actions with which he is charged, and that the Prosecution attributed to him a role which, according to the Defense, he did not have.

24. The Defense Counsel stressed the necessity of the application of the CC of SFRY in the instant case, specifically Article 142 of the adopted CC of SFRY as the law that was in effect at the time of the perpetration of the criminal offense, and finally moved the Court to render an acquitting verdict for this Accused.

25. The accused Savić entirely supported the closing argument presented by his Defense Counsel.

5. Findings of the Court

5.1. General Findings (chapeau elements of the criminal offense)

26. Through the evaluation of all presented pieces of evidence, both individually and in correlation with each other, the Court examined the factual substrate of the charges related to the existence of cumulative elements of the criminal offense of War Crimes against Civilians under Article 173(1) of the CC of BiH.

27. According to the specified Indictment of the Prosecutor's Office, the Accused are charged with the commission of the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) and (f) the CC of BiH, which reads:

28. *"Whoever in violation of rules of the international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:*

    c) Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific

experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;

f) Forced labor, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic money or the unlawful issuance of money;

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

29. The provisions of the Article cited above clearly show that the **general elements of the criminal offense** *(chapeau)* of War Crimes against Civilians that needed to be established are as follows:

- The offense must have been committed in violation of the provisions of international law in a manner that the perpetration was directed against civilians, that is, persons taking no active part in the hostilities, or who have laid down their arms and those place hors de combat, and those protected by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949;
- The violation must take place in time of war, armed conflict or occupation;
- The action of the perpetrator must have a nexus with the war, armed conflict or occupation;
- The perpetrator must order or commit the criminal offense.

30. Important elements of this criminal offense, primarily diverse acts of perpetration, confirm that the legislator ensured a full-scale protection of values protected by international law. Everything mentioned above is exactly the reason why within War Crimes against Civilians there is no division of armed conflicts into international and internal armed conflicts, and why there is no classification of violations of international law into grave breaches of the Geneva conventions and other breaches which do not represent grave violations.

31. This criminal offense requires that the acts of perpetration represent violations of the rules of international law, which points to the blanket character of the criminal offense.

32. In that respect, this provision is, *inter alia,* also based on the 12 August 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The Indictment charges the Accused with acting contrary to Articles 3 and 147 of the Convention. The rules included in Article 3 of the Convention are considered to be

customary law and represent minimum standard which the warring parties should always adhere to and which prescribes that:

> "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.

33. 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;

    b) taking of hostages;

    c) outrages of personal dignity, in particular humiliating and degrading treatment;

    d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized nations.

34. Article 147 of the Geneva Convention defines the cases wherein there are grave breaches of the provisions of the Convention if any of the following acts are committed against persons or property protected by the present Convention:

    "willful killing, torture, or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

35. Thus, it is first necessary to establish the applicability of international rules at the critical time. In the ICTY case *Prosecutor vs. Tadić*, number: IT-94-1 (Appeals Chamber), it is stated: "International humanitarian law applies from the beginning of armed conflicts up until the cessation of hostilities..."

36. Interpretation of the provision of Article 173 of the CC of BiH clearly indicates that it is not necessary (not a requirement for the existence of the offense itself) that the perpetrator has an awareness or the intention to violate an international norm (not required that the violation of blanket regulations should include the awareness of the perpetrator), but it is sufficient that his conduct objectively constitutes the violation of the rules of international law, while in case of the specific and individual actions of perpetration, it is the subjective attitude of the perpetrator that should be taken into account.

- Civilian Status of the Victims

37. In order to establish violation of the rules of international law in the first place, it is necessary to establish who the act of perpetration was directed against, or more precisely whether the act of perpetration was directed against a special category of population protected by Article 3(1) of the Geneva Convention which is applied in BiH by Annex 6 to the Dayton Peace Agreement, and which, according to the ICTY case law is considered to be part of the customary international law (Kunarac, Kovač and Vuković – Appeals Chamber, Judgment of 12 June 2002, paragraph 68).

38. According to the definition in Article 3(1) of the Geneva Convention, the term "civilian" **as a protected category** refers to persons not taking part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* (ICTY *Blagojević and Jokić* – Trial Chamber, 17 January 2005, paragraph 544), which also includes persons unable to fight.

39. Based on the presented evidence, particularly witness testimonies, this Panel established beyond doubt that the persons who were forced out of their houses on the critical day, and later executed, were unarmed civilians, who were in no way included in the armed conflicts (they were not members of any force in the conflict) and who were definitely persons protected under the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

40. All witnesses mainly agree that, following an unsuccessful mobilization, the population of the villages of Čerkazovići and Ljoljići started moving out, whereupon approximately thirty persons of Muslim ethnicity remained in that area, who had to report for a roll-call on a daily basis to one reserve and one active police officer.

41. On the critical evening, all Bosniak civilians, at the same time also the victims of the crime in question, 29 of them, also including children, all between 9 and 74 years of age, were taken out of their houses at gunpoint and in a manner so that they did not

even have time to get dressed. This follows from, *inter alia*, the testimony of witness Nurija Zobić, who at the time of the arrival of the armed group was at home with his wife and children. His wife looked out of the window at around 9.15 p.m. and saw armed soldiers entering the yard, whereupon they were called by Jovo Jandrić to come out. Witness Fahrija Mutić, also a survivor victim of this crime, stated that that evening together with Omer Karahodžić, his wife Zerifa Karahodžić and their son Senad Karahodžić, Malkoč Šećo, Ibrahim Karahodžić and his father Ibrahim Mutić, he was in the house of Omer Karahodžić when it was surrounded and when they were taken out of the house. Witness's father and Omer Karahodžić jumped out of the window, whereupon the armed persons called Omer asking him to return, threatening to otherwise kill his wife and son, so he did so.

42. Everything described above was also confirmed by witness Omer Karahodžić, who on the critical night together with his wife and children was in a room upstairs in this house, until he was called by his brother from downstairs, who said the police had come and requested a roll-call. He heard his brother telling Pekez (referring to Mirko Pekez, son of Mile) "Pekez, let him get dressed", but he ordered that they go out immediately. When he went down the stairs, the witness saw Jovo Jandrić and Mirko Pekez (son of Mile) armed, and he saw that Muharem Mutić was not there in the room where he had stayed, because he had escaped through the window.

43. The civilian status of the victims was also described by Jovo Jandrić in his testimony, and this fact is also confirmed by the documentation tendered by the Prosecution, particularly the Record of the Mrkonjić Grad Basic Court Investigative Judge No. Kri-57/92 of 12 September 1992, which says that an incident where a large number of civilians were killed with fire arms occurred on 10 September 1992.

44. Thus, all witnesses who testified about the circumstances surrounding the event when people were taken out of their homes and rounded up in a place called Osoje agree that none of the persons who were taken out had any weapons or a piece of clothing on them that would indicate their membership in any military or police forces. These persons were absolutely unable to put up any resistance against the armed persons, and they did not have any means of defense either. In addition, all civilians were Muslims and at the time of this incident were in the territory held by the Bosnian Serb forces.

- Existence of Armed Conflict

45. The next element of the criminal offense is that the **violation of international regulations must take place in time of war, armed conflict or occupation.** An armed conflict exists whenever there is a resort to armed conflict between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. Within the meaning of common article

3, the nature of this armed conflict is not relevant. It is irrelevant whether a grave breach occurred in the context of international or internal armed conflict if the following requirements are met: a violation must represent a breach of the international humanitarian law; the regulation must be customary law in nature or if it belongs to the law of treaties the required conditions must be met; the breach must be grave, or more precisely it must represent the breach of the regulation protecting important values, and the breach must include severe consequences for the victim, and the breach must include individual responsibility of the person violating the regulation. Also, the Criminal Code of Bosnia and Herzegovina does not divide the armed conflicts into international and non-international, therefore the international law is directly applicable in full extent.

46. In the instant case, the Panel established that, by the actions of which they were found guilty, the Accused acted with intent also with respect to the rules of international law, because their actions were directed against the most significant protected property, that being the lives of people, therefore there is no doubt that, at the time of the perpetration of the criminal offense, they were aware that their actions were unlawful in all legal systems, thus rendering indisputable that, by their actions, the accused knowingly violated the rules of international law. Therefore, violence to life and person, especially all types of killings, mutilation, cruel treatment and torture, are particularly forbidden against this category of population. Therefore, it is obvious that the criminal acts of the Accused, of which they were found guilty, are entirely contrary to the rules of international law.

47. The existence of the armed conflict between Army of Republika Srpska on one side and the Army of BiH and HVO on the other in the area of Jajce Municipality, during the state of war in BiH, as one of the general elements of this criminal offense, in the instant case was established by the Court based on documentary evidence in the case file, specifically: Decision on the Proclamation of the State of War in BiH, (Official Gazette number: 7/92 of 20 June 1992), and also from the Regular Operations Report of the VRS 5th Corps Command of 23 April 1992, and regular combat reports of the VRS 1st Krajina Corps Command, and a series of testimonies of the heard witness of both the Prosecution and the Defense. Therefore, these pieces of evidence indicate beyond any reasonable doubt that there existed an armed conflict in the territory of BiH, including the area of Jajce Municipality.

48. The existence of the armed conflict was also described by the Prosecution witnesses Nurija Zobić, Fahrija Mutić, Zejna Bajramović, Omer Karahodžić, Subhudin Zobić, Borko Oparnica, Nedjeljko Jandrić, Dragan Nišić, Pero Savić and Jovo Jandrić, as well as Defense witnesses Đuro Vukadin and Pero Marić.

49. The testimonies of the witnesses mentioned above show that the first mobilization in the area covered by the Indictment started as early as late 1991 when the members of the Territorial Defense were summoned to be issued with uniforms and weapons because of the war in Croatia, which the Muslims refused to do, and that was one of the reasons for separate patrols, which is when the first firing began at the houses occupied by Muslim families. According to the testimony of witness Nurija Zobić, who during the war lived in the village of Čerkazović where he was born, the first attack on the village of Ljoljići started on 22 March 1992 at approximately 11.00 a.m., while the second attack was directed against the village of Čerkazovići, which is where he lived, and which was at some 1.5 kilometers distance. Witness Zejna Bajramović also confirmed that the unrests in these villages started in March during the Muslim holiday of Ramadan, which was when the shooting started, and according to witness Fahrija Mutić the shooting mainly occurred around the houses, in the beginning from small arms and later on even from mortars. All witnesses mainly agree that after the unsuccessful mobilization the population started moving out of these villages, after which around thirty one Muslims remained in that area and they had to report for a roll-call on a daily basis to one reserve and one active police officers.

50. Also based on the testimonies of the heard witnesses, the Court inferred that in the night hours the trucks would arrive bringing sand bags which were used to construct checkpoints. At that time, according to witness Omer Karahodžić, the checkpoints were located close to the house of Mirko Pekez, son of Mile, whereby the Serbs held the road to Mrkonjić Grad, while witness Subhudin Zobić also mentions the setting up of checkpoints close to the so-called Relja's house, which was located opposite Ljoljići and Čerkazovići, later these checkpoints were relocated close to Perućica, and then several days later close to Jezero.

51. Witnesses Nedjeljko Jandrić and Borko Oparnica testified about the roll calls of the remaining Muslim population in the villages of Ljoljići and Čerkazovići, which is a circumstance significant for the existence of the armed conflict. Specifically, according to Nedjeljko Jandrić, who at the critical time held the position of the Chief of Police, there were roll calls of the population in these villages, and these allegations were also confirmed by the witness Borko Oparnica, who at the critical time was an active police officer. According to him, in March 1992, fire was opened from the village of Ljoljići at the checkpoint in Stupna manned by the Red Berets, after which, together with his Commander, he patrolled those villages to check the security situation. When there was no need for that anymore, in order to maintain public order and the security of the remaining Muslim population in the villages, who were approximately thirty-two, roll calls were introduced at 10.00 a.m. in specific locations in the villages and they were carried out by two police officers.

52. Witness Jovo Jandrić states that just before the break out of the conflict, the relations between Serbs and Muslims were worsened by the actions of the Muslims, and the armed conflicts between the members of these two ethnic groups started on 22 March 1992, when certain unknown Serb soldiers arrived and started shelling the villages of Ljoljići and Čerkazovići and brought dissention between Serbs and Muslims. The Muslims then started leaving, mainly those who, according to the witness, "had some unsettled debts dating back from '41".

53. The existence of the armed conflict was, as has already been mentioned, described by the Defense witness too, specifically: Đuro Vukadin and Pero Marić.

54. Taking into account everything described above, as well as the fact that the Defense itself did not dispute the existence of the armed conflict either in the course of the proceedings or in their closing arguments, the Panel found that it has been established beyond a doubt that a conflict with attributes as described above existed between the members of the Army of Republika Srpska on one side and the Army of BiH and HVO on the other, thus establishing another element of the criminal offense with which the Accused have been charged.

55. Due to everything described above, the Panel left out from the factual substrate the blanket rule under Article 75.2. of the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), given the fact that it is applied in cases of international conflicts, and the Panel in the instant case did not go on to establish, nor was it obliged to do so, the character of the armed conflict at hand.

- Nexus between the Action of the Perpetrator and the Armed Conflict

56. The examination of the status of the Accused at the time relevant to the Indictment is also significant from the aspect of another requirement necessary for the existence of the criminal offense, which is that **the action of the perpetrator must be connected with the war, armed conflict or occupation.**

57. What is important here is "that the existence of an armed conflict 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". (*Prosecutor vs. Kunarac et al., No.*: IT-96-23 and IT -96-23/1–A, Judgment, 12 June 2002, paragraph 58).

58. Therefore, in the instant case, it was necessary to establish **the status of the Accused** at the time of the commission of the criminal offense, or more precisely during the

armed conflict between the members of the Army of Republika Srpska on one side and the Army of BiH and HVO on the other.

59. This Panel finds it indisputable that, at the time of the commission of the criminal offense at hand, both Accused were members of the reserve police forces, which is indicated by the documents tendered by the Prosecution, witness testimonies, specifically testimonies of the following Prosecution witnesses: Borko Oparnica, Nedjeljko Jandrić, Miroljub Perlaš and Jovo Jandrić, as well as the Defense witness Goran Jović, which the Accused themselves did not dispute.

60. This fact primarily follows from the documentary evidence tendered by the Prosecution, specifically: Letter of the Jajce Public Security Station, number: 11-11/01-828/93 of 26 June 1993, and Letter of the Republika Srpska Ministry of Internal Affairs, number: 02-11347/07 of 18 October 2007, stating that the accused Mirko Pekez, son of Špiro, was a member of the reserve police force in the period between 1992 and 1995, and the accused Milorad Savić until late September 1992.

61. This fact is additionally supported by the testimonies of witnesses and the Accused themselves. Thus, Prosecution witness Borko Oparnica who, at the relevant time, was an active police officer in the area of Jezero Local Community, which included the villages of Ljoljići and Čerkazovići, stated in his testimony at the main trial that he knew Mirko Pekez, son of Špiro, and Milorad Savić in person and that, at the relevant time, they were members of the reserve police force and that, as such, they signed for weapons which they always had with them. These allegations were also confirmed by witness Nedeljko Jandrić, the then Chief of Bravnice Police Station.

62. In his testimony before this Court, the accused Pekez himself stated that in late May 1992 he left the military to join the Jajce PSS reserve police force, where he stayed until 1995, however, in late 1992, he was assigned the duties of the communications officer.

63. This fact was also corroborated by the additional witness for the Defense Goran Jović, who stated that, just like Mirko Pekez, son of Špiro, whom he recognized in the courtroom, he too was a member of the reserve police force in Bravnice during the war; and by the additional witness for the Prosecution Miroljub Perlaš, who stated that he knew that both Accused had been members of this police force. Finally, this matter was also mentioned and affirmed by Jovo Jandrić in his testimony before this Panel.

64. Therefore, these persons had certain assignments and weapons which they regularly carried with them owing to their status during the armed conflict, and the population recognized them as the members of the reserve police or military police forces to which they reported to be roll-called at the specified time.

65. Therefore, due to the existence of the criminal offense, these persons were engaged in the police and military structures of the newly established Srpska Republika BiH and,

owing to their thus acquired status, they were capable of striking the civilians with fear. More precisely, they could, by misusing their positions in the police structures, force those persons to follow their orders without resistance, which they did in this particular case, wherein they took the remaining civilians to the execution site Draganovac (so-called Tisovac) on the relevant night, using excuses that they "were going to be exchanged in Bravnice" or to "the conversation", which was a case of forcible abduction the said persons could not resist.

66. Everything mentioned above shows that the existence of the armed conflict played a substantial part in the perpetrators' ability and their decision to commit the crime, and the manner in which it was committed. Namely, as members of the police formations of armed forces dominant in that area, they felt untouchable, since they had the power and control over the civilian victims. That way, they were also in a position to achieve their goal – revenge for the death of the Serb soldier Rade Savić and the death of Serbs in 1941.

- The Perpetrator Must Order or Commit the Criminal Offense

67. Finally, in addition to the indisputable existence of the three out of four general *(chapeau)* elements of the criminal offense of War Crimes against Civilians under Article 173 of the CPC of BiH, as discussed in detail above, the Panel also found that the fourth element (that the accused must undertake the action of perpetration of this offense which consists of the commission or ordering some of the acts alternately set out in the sub-paragraphs of the cited article) is founded and reasonable. Based on the presented evidence, it has been established beyond a reasonable doubt that the accused Mirko Pekez, son of Špiro, actively participated in the rounding up, or more precisely in the unlawful deprivation of liberty or forcible taking of Bosniak civilians from their houses, knowing that the final goal of the undertaken actions was the execution of these individuals, whereby he contributed to its perpetration; while the accused Milorad Savić, son of Ljupko, as a co-perpetrator, made a decisive contribution to the perpetration of this crime by participating in the rounding up, taking away and robbing of the civilians, and by, in the least, being present at the site of the execution of Bosniak civilians, as described in the Operative Part of the First Instance Verdict, if not taking part in the execution himself, which definitely represents a decisive contribution to the commission of the criminal offense at hand.

68. Discussion of the existence of this last element should begin with the existence of the common criminal plan, knowledge and participation of the Accused in it.

69. Pero Savić, Miroljub Perlaš and Jovo Jandrić, who were themselves present during this incident, testified about this circumstance.

70. In his testimony, witness Pero Savić gave a detailed account of the events at the memorial lunch, which was actually the scene of the creation of the common plan for later crimes, and it was manifested in Jovo Jandrić's call to everyone present there to avenge the death of the killed soldier, Rade Savić, and for the liquidation of the Muslims, whose words, according to the witness, could be clearly heard, since Jovo Jandrić was very loud on that occasion. After he opposed this together with some other older neighbors, they had a quarrel and not long after that, the witness went home.

71. These allegations are also corroborated by witness Miroljub Perlaš, who was an active police officer at the time relevant to the Indictment. This witness also attended the memorial lunch, when Jovo Jandrić addressed everyone present there with a clear call to a revenge, after which the witness left this gathering and headed towards Šipovo.

72. Jovo Jandrić, who is one of the main participants in this crime and an accused in a case pending before this Court (Case No.: X-KR-05/96-2), was heard as a witness in the instant case. On that occasion, he stated that he was well acquainted with both Accused, as well as Mirko Pekez, son of Mile, who has already been sentenced in a final verdict for co-perpetratorship in the same crime, and that he was sure that he, as well as Milorad Savić, attended the memorial lunch on the day relevant to the Indictment, while he did not remember about Mirko Pekez, son of Špiro. The presence of Milorad Savić is also logical, according to this witness, since it was the funeral of his uncle, killed Serb soldier, Rade Savić. As regards the creation of the common plan aimed at the killing and liquidation of Muslim civilians, the witness says that its initiator was Mirko Pekez, son of Mile, who, at some point, addressed a group consisting of 5-10 people saying that "tonight the neighbor must disappear" referring to their Muslim neighbors from the village. According to Jandrić, everyone present there took this suggestion lightly, since they were "half drunk", silently agreeing with it, and then set off to the memorial lunch.

73. When asked again by the Prosecutor about the presence of Mirko Pekez, son of Špiro, in this group of people, this witness answered he did not remember that detail.

74. It is also necessary here to discuss the credibility and validity of the testimony of this witness, which was challenged by the Defense of the accused Milorad Savić. Namely, in rendering their final decision, the Panel used this testimony merely as supporting evidence, aware of the fact that this witness is not under an obligation to incriminate himself. Thus, particularly, having examined the part of this witness's testimony mentioned above, and compared it with other testimonies dealing with this fact – the fact of the creation of the joint criminal plan and the knowledge of the Accused about it, the Panel inferred that, with respect to critical moments, this testimony matched the other evidence, except in the part directly incriminating Jandrić as the organizer and the mastermind of the criminal plan. Namely, in that part, he shifts the liability onto

Mirko Pekez, son of Mile, who has already been sentenced, saying that it was him who suggested that revenge be taken on the Muslim neighbors, which this Panel finds significant in the sense that, in those parts, he is trying to avoid or minimize his criminal liability, which is after all logically expected, given that he is aware of the gravity of the charges with which he is charged (in the Indictment confirmed before this Court). Therefore, this Panel decided, based on all other evidence, that credence should be given to this testimony to an extent necessary to paint a full picture of everything that had happened that night, of course with reservations about the actions directly taken by Jovo Jandrić because it is reasonable to expect that when it comes to those aspects of the realization of the crime at hand, his goal was to minimize his own criminal liability with his testimony.

75. Finally, even without the testimony of this witness, the Court would have drawn the same inferences with respect to significant facts of the case.

76. Based on everything discussed above, the Panel inferred that Jovo Jandrić indeed is the initiator of the criminal plan, which consisted of the liquidation of the remaining Muslim civilian population, in order to avenge the death of the killed Serb soldier, as he pointed out on that occasion. This allegation is also supported by the fact that witness Pero Savić himself stated that he thought the reason was the revenge, given the site where the execution of civilians took place, which according to him was not randomly chosen. The reason for this being the fact that his late father had told him that on this very site, Draganovac, in World War II Serbs were executed by Ustashas, when 21 persons were killed, while some survived.

77. Attendance at the memorial lunch was also not disputed by the Accused themselves. However, what was questionable is whether on that occasion they heard Jovo Jandrić calling for revenge, or more precisely whether they knew about the criminal plan from the beginning, and whether they accepted or agreed to contribute to its implementation by their actions.

78. In that regard, the Panel finds that there exist very strong and convincing facts, based on all presented evidence, which indicate both the existence of the knowledge on the part of the Accused about the common plan, and the existence of the intellectual and voluntary element on the part of the Accused with regard to the participation in the implementation of the common plan, their nexus with it, as well as the consequences projected by that common plan.

79. This Panel has no doubts as to the existence of the common plan, the mastermind of which was Jovo Jandrić, and also as to the awareness of the Accused about its final purpose. Moreover, this criminal purpose was also shared by the Accused as members of the organized group of armed people whose actions were aimed at the

implementation of that plan. Based on all the circumstances that ensued, they were able to envisage with certainty the real aim of the enterprise, which was the killing of the remaining Muslim population of the villages of Ljoljići and Čerkazovići.

80. Therefore, the Panel finds that they did know about the final result and consequence of the plan and they knew about it from the early stages of its implementation, and they shared with other participants the criminal intent to finally carry out the liquidation of the rounded up civilian population, which can be inferred from all actions individually taken by both Accused on that critical evening, when together with other armed like-minded individuals, they rounded up the group of helpless civilians, men, women, children, their neighbors, and took them to a certain and inevitable death. All the circumstances that night indicated that the Accused could not have been unaware of the final result. Namely, everything took place in the night hours, between 9 p.m. and 10 p.m., when a group of armed soldiers arrives at the houses of the civilians, unlawfully forces them out, deprives them of liberty and does not take them to the Police Station for possible questioning, but instead takes them to a solitary location under armed escort, which in itself symbolizes the suffering, hitting them, insulting them and indirectly implying to them that they would be killed, all of which leads to a logical conclusion about the fate of those people.

5.2. Individual actions of the commission of the criminal offense

a) Mirko Pekez (son of Špiro)

81. At this point, it is necessary to define the actions taken individually by these two Accused as is also clearly specified in the factual description of the operative part of the Verdict. The form of individual participation of each Accused, the extent of their contribution to the commission of the criminal offense concerned and, finally, the issue of criminal liability directly depend on this factual issue.

82. The Panel established beyond any reasonable doubt that both Accused, in concert with other like-minded persons, and all together as members of an organized group of armed people, on the critical night, around 21:00 h, went to realize their joint criminal plan.

83. The accused Pekez was charged that in concert with other members of the organized group of armed people, as an accomplice, he participated in rounding-up, taking away, abusing, pillaging and finally killing 23 Bosniak civilians, that is, he killed and intentionally inflicted on persons severe physical or mental pains and injuries to bodily integrity and pillaged them in violation of Article 173(1)(c) and (f), in conjunction with Articles 29 and 180 of the CC BiH.

84. The Defense argued that on the referenced evening the Accused was not in the group that committed the criminal offense at issue and that at this particular time he was in Šipovo. During the entire course of the proceedings, the Defense made an effort to prove that the Accused neither knew about nor participated in any phase of the realization of the plan at issue. Initially, the Defense did so in an attempt to create an alibi for him through the testimony of Miroljub Perlaš, and after this theory failed as unsuccessful, the Defense summoned witness Goran Jović.

85. The Prosecution witnesses Fahrija Mutić, Nurija Zobić and Zejna Bajramović testified with regard to the participation of the accused Mirko Pekez son of Špiro. Goran Jović, Jovo Jandrić, Miroljub Perlaš and Mirko Pekez son of Mile also testified to this end, while Goran Jović testified for the purpose of construction of alibi of the Accused for that night.

86. The Panel will analyze the testimony of these witnesses in relation to the testimony of other witnesses given with regard to this key circumstance. The Panel will also provide a detailed explanation of the reasons due to which it gave its credence to certain pieces of evidence, and based on them found proven or unproven certain relevant facts, particularly providing an assessment of reliability of contradictory evidence, as imperatively prescribed by Article 290(7) of the CPC BiH.

87. Primarily, the Accused himself argued that on the critical night he headed toward Šipovo with Miroljub Perlaš to visit his girlfriend, where he spent the night. This assertion was contested by the testimony of heard witnesses and the other Accused. To wit, witness Perlaš, who was supposed to confirm his alibi, stated that on that evening he had started off toward Šipovo with the Accused and his brother, but that they ran out of the fuel around 3-4 km further down the road. Therefore the Accused volunteered to bring the fuel from his house, after which he returned no more. On the following morning, around 5 A.M., his brother brought the fuel and said that Mirko would return no more. By this, witness Miroljub Perlaš denies that on the critical night he was in Šipovo with Mirko, as initially asserted by the Accused.

88. After the hearing of witness Miroljub Perlaš, in his testimony given at the main trial on 29 February 2008 the accused Mirko (Špiro) Pekez gave a changed presentation of the events both in relation to his statement given in the Prosecutor's Office and the statement given by witness Perlaš. To wit, the Accused did not contest his presence at the memorial service lunch held after the funeral of Rade Savić, asserting that he had come there with witness Miroljub Perlaš. However, as he asserts, he did not leave with the witness after the funeral, but he went alone to his house, before dusk, where he had a nap. Around 21:00 h he went to Šipovo to visit his girlfriend. At the place called Osoje, located some 150 m far away from his house, he noticed a group of people, including Jovo Jandrić. Jovo Jandrić told him that he was taking the collected group to

be exchanged. The Accused responded to this: „Jovo, let these people be, what is their fault?" He also added that they had been dully responding to roll calls on a daily basis. Thereafter, he took the road toward Šipovo up to the Ljoljići bridge. Along this road he met witness Ljuba Jovetić who asserts that she saw him during the period between 21:00-21:30 h and that she spoke with him.

89. Finally, having failed to provide any convincing argumentation from the testimony of witness Perlaš for its assertion, in the opinion of the Panel, the Defense for the Accused unsuccessfully tried to build the alibi through witness Goran Jović. The witness stated that on the critical night he had been in Šipovo around 22:00 h sitting with the Accused in an inn called „Kuća Prole", although they had not known each other from before the war. According to this witness, they had a drink in this inn only once, that is, just at the critical time, while never before or after the incident did they socialize together in such manner.

90. After a detailed analysis of all the statements of the Accused given in the different phases of the proceedings, the conclusion is drawn that certain discrepancies and differences exist regarding the key issues. Although the decision of the Court in its decisive part cannot be based on the testimony of the Accused that should serve only as means of control if other pieces of evidence exist in support of a certain averment, in the opinion of this Panel the fact of existence of differences in the statements of the Accused, when brought into connection with all other mentioned statements, justifiably suggests the conclusion that the Accused was not in Šipovo at the critical time, as the Defense unsuccessfully argued.

91. Witness Fahrija Mutić stated that after being taken away from the village of Ljoljići, while walking in a line toward the place of Osoje, they also passed by the house of accused Mirko Pekez son of Špiro, whom the witness saw at the Osoje crossroads, but he did not notice him thereafter among the persons who led the civilians to the place of Draganovac.

92. Witness Nurija Zobić, also a victim who survived the crime, describes in his statement the Bosniak civilians abduction from the village of Čerkazovići. For him, it was Mirko Pekez son of Mile whom he remembered most as he told him, after he had gone out on his bare feet, to return to the house, get dressed and take his wife and children with him. On that occasion, the witness saw Jovo Jandrić hitting other persons, his neighbors, who were also taken out from their houses. After he went out from the house for the second time, he saw Milorad Savić son of Đuro, Simo Savić son of Mile, Milorad Trkulja, and also some other persons whom he did not recognize immediately. Subsequently, in the moonlight, he could also see Mirko Pekez son of Špiro.

93. Witness Zejna Bajramović also testified with regard to the civilians being taken away from the place of Čerkazovići. In her testimony given at the main trial, she confirmed that the taking away started during the night hours on the day of funeral of the killed soldier Rade Savić. On that critical night, she was in the house of Fahro Balošić, when

someone banged on the door and said: „Get out, open the door!“, upon which the witness opened the door and spotted her husband, her son, Nedžib Mutić, his wife, Mustafa Bajramović and his son. On that occasion, she also recognized Jovo Jandrić and the person whom she believes to be Mirko Pekez son of Špiro, whom she could not recognize in the courtroom. However, she categorically asserts that she knows that two persons with the name Mirko Pekez exist. She recognized Špiro's son on that critical night because he had attended the wedding of her son and slept in her house. In the statement given in 1994, which was played at the main trial, the witness stated that on the relevant night „all the Pekez persons were present - both Mića's and the one from above“.

94. In evaluating the statements of this witness, the Panel took into account that there were certain minor discrepancies, but that those differences did not concern the key parts. Such discrepancies are realistic and logical considering that more than 15 years have elapsed after the commission of this offense. Therefore, it is justified to conclude that although the witness did not recognize the Accused in the courtroom, her memory was better and fresher in 1994, that is, two years after the incident, when she categorically asserted that "all the Pekez persons, the two of Mića's and the one from above" were present during the incident. This is particularly so because the witness is an older person with certain health problems that have worsened during the elapsed period of time. On the other hand, it is realistic that the physical appearance of the Accused has also changed after so many years and that he certainly does no look as he did 15 years ago.

95. In the opinion of the Panel, the foregoing is also supported by the fact that in describing the events at issue and the involvement of the Accused, the witness states that she saw him only at the civilians' round-up and their abduction, solely pointing to his presence, which is also consistent with the statements of other witnesses and the conclusions in the Court's final Verdict, with the same number dated 29 September 2009. In the referenced Verdict, it was concluded that by their actions the convicted Mirko Pekez son of Mile and Jovo Jandrić took most active part in the realization of the criminal intent. In accordance with the confirmed, the witness does not specify the actions of the Accused because, according to her, she is not certain, except that she knows that she saw him during the abduction. When this is brought into relation with other related statements, it very clearly points to the conclusion that the witness testifies about something that she actually saw and experienced, and not about a certain subsequently learned-about event or an attempt to incriminate the Accused for no other reason but to make somebody liable.

96. The Panel also considered the testimony of witness Jovo Prole, who was a police commander in the place of Bravnice during the relevant period and who made an interview in the police station with the participants in the incident concerned. On that occasion, Jovo Jandrić told him, referring to Mirko Pekez son of Špiro: "Do not ask me

anything, this young man did not participate". He added that, as far as he knew, the investigation or the criminal report upon which the investigation had been initiated immediately after the commission of the crime, did not include this Accused. During his video link testimony, Jovo Jandrić maintained all that he had stated during the interview concerned. He stated that he did not remember that the accused Pekez was present from the beginning itself when they gathered and went to round up Muslims in the village of Čerkazovći, but that others joined them at the crossroads near Osoje on the road toward Ljoljići, and that he remembered well that the Accused was there. After all the captured civilians were gathered at the Osoje crossroads, the accused Pekez cursed something, took a rifle and went away. This is additionally supported by the statement of Mirko Pekez son Mile, already convicted by a final verdict, when he testified in the capacity of an accused in the first instance proceedings, stating that after the conversation with Jovo Jandrić, the accused Pekez went in the direction of his home. Although Mirko Pekez son of Mile directly incriminates himself and the accused Savić by his testimony, he categorically asserts that the accused Mirko son of Špiro was not present during the commission of the crime against the civilians.

97. The Accused Milorad Savić also explicitly stated for the record during the questioning in the capacity of suspect that, upon his return to the village after the incident in Draganovac, he saw Mirko Pekez son of Špiro.

98. Having considered all the foregoing statements individually and in their mutual correlation, the Panel could conclude beyond any reasonable doubt that on the critical night, together with other armed persons-members of the group, the accused Mirko Pekez son of Špiro participated in rounding up and taking away the Muslim civilians in as much as he participated in the collection of Bosniak civilians, women, men and children from the villages of Ljoljići and Čerkazovići – the Municipality of Jajce, with an intention to take them to be killed at the place called „Tisovac", that is, by sharing with the other members their joint criminal intent, whose final goal was to liquidate these persons. In this manner, by his actions, the Accused aided other members of the armed group in the commission of the crime at issue.

99. In establishing the fact of participation of the Accused and his contribution through the individualization of his specific actions, the Panel did not start from the negative argumentation, that is, the denial of the Defense theory that the Accused was in Šipovo on that critical night. The Panel addressed the issue of his possible presence in Šipovo and the examination of evidence in favor and against this assertion only to the extent to which it was necessary for an additional confirmation of the conclusion on his participation in the manner as established based on the other relevant evidence. This is so because the Panel found sufficient evidence based on which a complete picture of the events on that night can be created clearly, and also the specific moment when the Accused leaves the scene of action, with no participation in the actions of the further

realization of the criminal plan. Therefore, the obvious and subsequently learned testimony of witness Goran Jović to whom no credence was given, and the change of testimony of the Accused, both being confirmed as control evidence, only confirmed that the Accused did take the actions referred to in the operative part of the Verdict.

100. It is quite irrelevant for the Panel whether the Accused possibly went to Šipovo and spent a night there, or he went to his home after that moment. What is important and relevant is that it is established beyond any reasonable doubt that he participated in the collection of population, that is, in taking them out from their homes and bringing them to the Osoje crossroads, whose final consequence, that is, their killing, was included in his intent.

101. Based on the evidence presented, the Panel established his participation only by the moment when the civilians were collected. None of the witnesses for the Prosecution or the Defense stated to have seen the accused Mirko Pekez son of Špiro after that moment, while regarding the accused Milorad Savić, Mirko Pekez son of Mile and Jovo Jandrić they stated very explicitly and specifically the details of their participation, including the act of execution itself.

102. The statement of Jovo Jandrić given during the investigation in the Bravnice Police Station, when he said "Do not ask me anything, this young boy did not participate", when brought into relation with his testimony before this Court, very clearly indicates that for him, the act of leaving the group by the accused Pekez before the execution was carried out, means that the accused Pekez "did not participate" in the final act of the civilians execution.

103. However, in order to resolve the issue of criminal liability, in the opinion of the Panel, such action of the Accused on the one hand is not sufficient so as to exempt him from liability for the committed crime. On the other hand, it cannot be qualified as the participation of the Accused as an accomplice in all individual actions of this crime realization, also including the taking of civilians to the place of Draganovac, the insults, mistreatment, pillage and finally the execution of civilians, as asserted by the Prosecutor's Office. Based on the presented evidentiary materials, the Panel found proven the participation of the accused Mirko Pekez as an accessory in the crime at issue, in the manner that he participated in the action of rounding up, that is, the forcible arrest of Bosniak civilians, after which he left the armed group.

104. Therefore, the Prosecutor's Office failed to prove beyond reasonable doubt that the Accused also undertook other acts of commission of the criminal offense at issue or that he was at least present at the crime scene. For this reason, the Panel drew the foregoing conclusions regarding the factual findings referred to in the factual description that are different from those offered by the Prosecutor's Office. Therefore, the Panel made changes to the relevant facts and circumstances in the manner that the

Accused was not brought into a less favorable position, but just the opposite. Finally, according to the changed factual description, the Panel omitted from the legal qualification of the criminal offense the commission of the criminal action of intended infliction on persons severe bodily or mental pains and injuries to physical integrity referred to in item c), and the actions of pillage referred to in item f) of Article 173(1) of the CC BiH with regard to this Accused. Regarding the deletion of the criminal action of injury to physical integrity, see the explanation given in paragraph 153 of the Verdict.

105. Also, the Accused is convicted of the commission of the criminal offense at issue as an accessory and not as an accomplice as initially charged under the Indictment.

106. In coming to the issue of subjective element - the guilt of the accused Pekez, the Panel primarily concludes that, as explained above through the issue of proving the general elements of the criminal offense of War Crimes against Civilians, the Accused knew that those were helpless and innocent civilians, including children, and knowing that in the end they would be killed, he wanted the commission of the criminal offense, or the prohibited consequence as a result, that is, he acted with a direct intent in the capacity of accessory.

107. Article 31 of the CC BiH defines the responsibility of accessory as:

> *(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.*
>
> (2) *The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence*.

108. The essence of this notion is that an accessory, either physically or mentally (morally), that is, by an act or omission to act, takes certain actions that aid the perpetrator to commit an offense. As to the subjective side, it is required that: 1) the accessory is aware that by his actions he aids the perpetrator to commit the offense, and 2) he must be aware of the essential elements of the criminal offense.

109. Based on the foregoing findings, it is undoubtedly concluded that on that evening together with other armed persons the accused Mirko Pekez son of Špiro beyond any reasonable doubt participated in the collection of population from these villages,

namely in their being forcibly taken away from their houses, and in this manner by his action aided the perpetrators to commit the offense, that is, to eventually execute the arrested persons. Knowing about the criminal plan, he went on to realize it despite being aware that by his actions he was aiding the perpetrators in the commission of a prohibited action and being aware of the essential elements of the offense and its prohibited consequences, but anyway he wanted those consequences to take place. He knew, or at least it could not have remained unknown to him, bearing in mind all the circumstances and the dynamics of this specific case, that the arrested civilians in whose arrest he himself participated would be executed. Therefore, the killing of civilians that subsequently followed was included in his intent. Although the accused Mirko Pekez himself did not participate in the act of killing, since he withdrew himself after the first phase of the joint plan realization, because his activities ceased after the people were rounded up and brought to the Osoje crossroads, he aided the other perpetrators in the realization of the joint criminal plan, and in this manner, by his actions entered in the criminal sphere of the criminal offense concerned as an accessory. Therefore, the circumstance that in the place of Osoje the Accused withdrew himself from the further realization of the criminal intent committed by other members of the criminal group remains irrelevant.

110. The Panel found that the Accused acted with a direct intent, that is, he undoubtedly anticipated that the prohibited consequence would result as certain, and he wanted this because he participated in the collection of civilians specifically for that purpose, which by its quality, in terms of both the intellectual and the voluntary element, corresponds to this type of psychological relation of the perpetrator toward the offense.

111. The Panel therefore found that on the part of this Accused there is a responsibility for the committed offenses that are the subject of charges in his capacity of accessory but not accomplice, as he was charged in the Indictment. Considering that there is no evidence that the Accused directly participated in the killing of civilians, and that there is no evidence that other members of the armed group relied to a decisive extent on the contribution of the Accused in the commission of killing, the Panel concludes, bearing in mind the proved essential factual findings, that the accused Mirko Pekez son of Špiro did not contribute in a decisive manner to the commission of the criminal offense, as prescribed in Article 29 of the CC BiH – Accomplices.

112. Consequently, the Court respected the relation to the incriminating incident, in the manner that by the corrections made it did not go beyond the boundaries of the factual description of the event as given by the Prosecution, not thereby violating the objective identity of both the Indictment and the Verdict, without bringing the Accused into a less favorable position. By the clear differentiation of the actions of this Accused in relation to the other participants and the perpetrators, based on the completely and

correctly established facts, his guilt was established pursuant to Article 32 of the CC BiH, and ultimately his criminal liability for the committed criminal offense.

b) Milorad Savić (son of Ljupko)

113. The accused Milorad Savić was charged that, in concert with other members of the group of armed people organized by Jovo Jandrić, he participated in the forcible arrest of Bosniak civilians, that is, in their collection and taking to the place of Draganovac, on which occasion they abused, insulted and pillaged and thereupon executed them, having killed 23 persons, while 5 persons survived, of whom 4 sustained severe bodily injuries.

114. The Defense for this Accused denied his participation in certain actions of the commission of the crime concerned, presenting the theory that the Prosecutor's Office failed to prove that this Accused participated in the arrangement or the planning of the crime, and unreasonably gave him the role that, in the opinion of the Defense, the Accused did not have.

115. Based on all the evidence presented during the first instance proceedings concerning the fact of participation of the accused Savić, the Panel also has no doubts as to the liability of the accused Savić, finding that, being aware of the criminal plan, and sharing the criminal intent with the other members, by his actions the Accused contributed in a decisive manner to the realization of the criminal offense as charged under the Indictment.

116. Primarily, the Accused himself does not contest his presence at the memorial service lunch where the criminal plan was created. The proof for his knowledge about this plan was addressed in the introductory part herein. Therefore, this Panel has no doubts as to this fact. According to all the circumstances that followed, he could have certainly anticipated the final goal, namely the killing of the remaining Muslims from the villages of Ljoljići and Čerkazovići.

117. Therefore, the Panel finds that he knew about the final outcome and results of the plan from the early phases of this plan realization, and shared the criminal intent of other participants to ultimately liquidate the gathered Bosniak civilians, which can be concluded from his presence during all phases of the realization of the criminal intent. By no act whatsoever did the Accused show his disagreement with the plan, and the Panel could not possibly draw such conclusion based on the evidence presented by the Defense, just the opposite.

118. In examining the psychological background of the actions objectively taken by the Accused, the Panel emphasizes that the fact itself that the criminal plan was created based on the retaliatory motives, namely in order to avenge the death of a Serb soldier

119. To wit, in his statement dated 30 October 2007, the Accused himself does not contest his participation in the taking away the civilians from the village of Ljoljići, to which circumstance Mirko Pekez son of Mile has initially pointed.

120. Further, witness Fahrija Mutić also testified with regard to this fact. He stated that after they had been taken out from the house by Mirko Pekez son of Mile and Jovo Jandrić, further down the road they were met by two sons of Ljupko Savić, namely the person whom he knows under the nickname Mićo and the other one whom they called Pajo. The witness also confirmed these assertions in the cross-examination by the Defense for Milorad Savić, where he categorically stated that he had recognized this Accused when he was taken out from the house of Omer Karahodžić.

121. Witness Nurija Zobić also testified that in the place of Osoje he saw the accused Milorad Savić son of Ljupko who had waited for them together with other neighbors. He was dressed in a camouflage uniform like other persons who took them out. The witness clarified that there were two groups that rounded up the population. Jovo Jandrić and Mirko Pekez (son of Mile) were in one group. This is the group that came to the witness's door. However, his house is located near the well and it is the last house in the village. Therefore, Milorad Savić's group was probably taking out people from other houses, but he is certain in his averment that both groups met at the Osoje crossroads, where he saw this Accused for the first time.

122. During the cross-examination, witness Jovo Jandrić stated that the accused Savić „was present all through the end", having in mind the act of execution.

123. According to the testimony of the survived witnesses, the captured civilians were taken together to the place of Draganovac or „Tisovac", as also called by some, referring to the same location. They all assert that they walked in a column while the armed persons walked in the front, by the sides and at the back of the line. On that occasion,

Jovo Jandrić and Mirko Pekez son of Mile threatened to kill everyone who would try to escape and while taking them down the road, they insulted and physically abused them. Witness Fahrija Mutić gave a more detailed description of the civilians' movement. He stated that they walked two-by-two in a column and were not allowed to look either left or right. Just before the arrival at the location of Draganovac, the line was stopped at the meadow owned by Pero Savić and located near the execution site. There, Jovo Jandrić ordered that all valuable items that the civilians had with them be placed in a jacket previously taken off by Mirko Pekez (son of Mile) and placed on the grass, while other armed persons stood at the sides with their rifles pointed at them. According to witness Nurija Zobić, Jovo Jandrić and Mirko Pekez son of Mile collected the surrendered items, including watches and gold, and put them in a bag. He also confirmed these averments in the cross-examination. Omer Karahodžić and Zejna Bajramović also testified with regard to this circumstance, and their statements are to this end consistent with the statements of the earlier mentioned witnesses.

124. The criminal action of pillaging is defined in Article 173(1)f) of the CC BiH. Lacking the concretization of this action as an offense within the scope of the offenses of war crimes against civilians in the national legislation, the Panel accepted the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY), according to which the criminal offense of pillage is defined as "willful and unlawful appropriation of property", and as enshrined in Article 3(e) of the Statute, it may affect both private and public property. The term is general in scope, comprising not only large-scale seizures of property within the framework of systematic economic exploitations of occupied territory but also acts of appropriation committed by individual soldiers for their private gain. Dispossession of personal property, a common way individual soldiers gain illicit booty, is considered a war crime of the more traditional type.[1]

125. Also, as concluded in one of the ICTY Judgments[2], plunder should be understood to embrace all forms of unlawful appropriation of property in armed conflict which individual criminal responsibility attaches under international law, including those acts traditionally described as 'pillage'.

126. Analyzing the relevant provisions of international law, the Panel established that according to this law, for the existence of plunder it is not necessary that it concerns the seizure of property whose economic value is significant, as is *in concreto* the case. Based on the witnesses' testimony, the Panel established that the value of the seized property was not large. However, bearing in mind the circumstances under which the offense was committed, and particularly the manner of its commission, when the group of helpless civilians is forced under the threat of death and with rifles pointed at them

[1] Trial Chamber Judgment in the *Naletilić and Martinović* case (October 2003), par.612.
[2] Trial Chamber Judgment in the *Blaškić* case (March 2000), par. 184.

to surrender all valuables they had with them, certainly represent severe violations of international humanitarian law.

127. Such conclusion of the Panel is also supported by the findings referred to in the Judgment of the Trial Chamber in the *Jelisić* case[3], where the Tribunal concludes that the accused is criminally liable on the charge of plunder because he stole money, watches, jewellery and other valuables from the detainees upon their arrival at the Luka camp by threatening those who did not hand over all their possessions with death.

128. Therefore, taking into account all the foregoing, including the findings referred to in the final Verdict of this Court (against the accused Mirko Pekez son of Mile, No. X-KRŽ-05/96-1 dated 29 September 2008), confirming the existence of this criminal action, the Panel concludes that, as a member of the armed group, the accused Savić was present in all phases of the criminal plan realization, which he himself did not contest, and also in the commission of the actions of physical abuse and pillage of civilians, in the manner that together with other members of the group he held rifles pointed at the civilians, thereby enabling Jandrić and Pekez to directly execute these actions.

129. The commission of the offense at issue by the Accused as charged is represented by his decisive contribution to its realization in the manner that he held the rifle (or some other fire weapon) pointed at the civilians, that is, by his sole presence he enabled the principal perpetrators to commit the action of pillage.

130. Regarding the subjective element, based on the presented factual findings concerning the manner of participation of the Accused, the Panel has no doubts that the accused Savić participated as an accomplice in the offense at issue, having acted with a direct intent.

131. The Prosecutor's Office charged the Accused that together with other armed persons he *directly undertook* the actions of abuse, insult, and hitting the civilians while they walked in the column, and the pillage. However, the Panel did not draw such conclusion based on the presented evidentiary materials. The Panel found that his participation was manifested through *enabling the commission* of these criminal actions, that is, in a *decisive contribution*, which is required for complicity. Therefore, the Panel altered the factual description offered in the Indictment by specifying the individual actions of this Accused, thereby also individualizing both his contribution and finally his criminal liability, and in doing so, its legal qualification remained unchanged (accomplice).

[3] Trial Chamber Judgment in the *Jelisić* case (Decembar 1999) par. 49.

132. It was necessary to make the same changes of the factual description regarding the participation of the accused Savić in the action of civilians' execution. It was established beyond any reasonable doubt that by his participation in the collection of civilians and securing that they are brought to the site of execution, the Accused contributed in a decisive manner to the commission of the offense although he did not participate in the execution. Starting from the theoretical concept of complicity, the roles that the accomplices had individually are not decisive for the establishment of its existence. It is quite sufficient that their individual actions supplement each other and that in their entirety they constitute the wholeness that necessarily leads to the prohibited consequences, which is the case here. It is not important to which extent any member of the organized group participated in the commission of the criminal offense on the occasion concerned. Therefore, the conduct of the accused Savić did not have to represent the sole act of commission, but his action was established as the act of complicity in this specific case because it was related to the actions of other accomplices whereby the prohibited consequences were directly caused. This, in fact, constitutes their joint activity and thereby the sense of the term of complicity.

133. Jovo Jandrić also testified with regard to the fact of presence of the Accused at the civilians' execution. He stated that the Accused was present during the entire period of shooting, but that he did not know whether the Accused fired.

134. The analysis of this factual circumstance should be started with the fact that when he gave his statement on 30 October 2007, the accused Savić confirmed that he was present at the execution of these civilians in the place of Draganovac. However, during the first instance proceedings he asserted that at the critical time he had a 7.62 caliber pistol called "Tetejac", which should suggest that on the critical occasion he did not shoot at the civilians.

135. In the opinion of the Panel, however, this assertion was successfully contested by the statements of the witnesses who were back then members of the reserve or regular police force. During the proceedings, it was undoubtedly established that police officers were mostly issued with automatic and semi-automatic weapons, which were personal weapons that they always carried around. This particularly ensues from the testimony of Nedjeljko Jandrić and Jovo Jandrić. Also, all the survived witnesses are consistent in stating that all members of the group that led them to death on that night were armed with the same type of weapon.

136. The results of the conducted evidentiary proceedings showed that the accused Savić was present all through the end of the civilians' execution, that prior to this he had an active role in their collection, abduction, and the seizure of their valuables. When his proven knowledge of the joint criminal plan from its creation is added to these factual findings, then the conclusion is clear that when speaking about his behavior as an

accomplice, it was in such objective-subjective relation with the behavior of other accomplices – members of the armed group that directly caused the prohibited consequences, constituting with them a unique and solid entirety. The described actions taken by Savić armed with a rifle continuously through the end of the incident were necessarily projected to the overall joint activities of other accomplices – members of the armed group, having become their common element. Without his contribution, bearing in mind the general notion of complicity (which is nothing else but „a multiplied complicity, with particular objective-subjective relations, [...], which means that they have the same ontologic nucleus“[4]), and also the factual findings in this case, it was not possible to commit the criminal offense, which gives him the character of a decisive contribution on his part. Pursuant to the foregoing, it is clear that the psychological basis of his activity was also enriched with the awareness of joint action.

137. The averments of witness Nedeljko Jandrić also support such position of the Panel. In performing the Chief of Police duty, after the investigation of the referenced incident that was conducted directly after its commission, based on the official notes made by police officers, he concluded that Jovo Jandrić and Milorad Savić aka „Mića“ were involved in the event and immediately removed them from the police.

138. In this specific case, the Accused did not have to commit the offense of murder physically in order to be criminally liable. Thus, the issue raised by the Defense concerning the type of fire weapons (whether a short or long barrel) the Accused carried on the critical night, if disputable for the Defense, was not disputable for this Court bearing in mind the presented evidence. It was sufficient to establish that the Accused willingly participated in an aspect of the joint plan and that he intended such outcome. At least, his presence during the action of execution of the captured civilians by holding his rifle pointed at them whereby he enabled the direct commission of this criminal action, was proven beyond any reasonable doubt. So, if his participation in all the aspects and phases of realization of the final intent – the killing of civilians and his sole presence at the execution site are taken as indisputable, this concretely implies the existence of his preserved will for the resulting prohibited consequence and his decisive contribution to the criminal plan execution. Therefore, it is sufficient that the Accused, as indisputably established, only stood armed while the others were shooting at the civilians, to qualify his action as the action of commission of the criminal offense at issue in the capacity of an accomplice.

139. In drawing such conclusion, the Panel reviewed the documentary evidence, namely the Record of the Investigative Judge of the Basic Court in Mrkonjić Grad, No.: Kri-57/92 dated 12 September 1992 and irrefutably established that 66 cartridge cases caliber 7.62 mm for automatic and semi-automatic rifles were found at the place where the

[4] See the Judgment of the VS RS, Kvlp: 6/93 dated 20 December 1993.

civilians were executed, while at least 94 entry-exit wounds were recorded after the external examination of corpses, as it ensues from the Findings and Opinion of the specialist Dr. Rajko Todorčević dated 12 September 1992. If the wounds inflicted by fire arms on the four survived persons and the terrain configuration are also taken into account, then it can be clearly concluded that all cartridge cases could not have been found. Therefore, the Panel concludes that on the critical occasion, far more than 100 bullets were fired, as rightfully pointed out by the Prosecutor. Accordingly, bearing in mind on the one hand the fact that it was not proved beyond any reasonable doubt that the accused Savić participated in the action of shooting itself, and on the other hand the presented factual findings regarding the number of fired bullets, and an approximate number of the persons that participated in the crime, the Panel stated that after the civilians had been lined up, *most* members of the armed group started firing with the intention to kill the civilians.

140. The Accused is also charged with the commission of the criminal action referred to in Article 173(1)(c) of the CC BiH - **"intentional infliction of severe physical or mental pain".** This action implies a willful causing of great suffering or serious injury to body or health, provided the requisite level of suffering or injury can be proven [5]. Article 2(c) of the Statute defines this criminal offense as:

    a) the willful occurrence of acts or omissions which cause great suffering, serious injury to body or health, including mental health;

    b) committed against a "protected person"

141. The Commentary on Article 147 of Geneva Convention IV describes the offence of willfully causing great suffering as referring to suffering which is inflicted without ends in view for which torture or biological experiments are carried out. It could be inflicted for other motives such as punishment, revenge or out of sadism, and could also cover moral suffering. (The motive must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person[6]). In describing injury to body or health, it states that the concept usually uses as a criterion of seriousness the length of time the victim is incapacitated for work.[7]

142. Serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment, or humiliation. It must

[5] *Kordić and Čerkez* (Trial Chamber, 26 February 2001, par.245.
[6] *Kunarac,* Trial Chamber Judgment, par. 142.
[7] *Naletilić and Martinović* (Trial Chamber), 31 March 2003, par 340.

be harm that results in a grave and long-term disadvantage to a person's ability to lead a normal and constructive life.[8]

143. Based on all the presented evidence, both the documentary and the subjective ones, which is the fact also uncontested by the Defense, the death of 23 persons and also inflicting wounds or severe bodily injuries from wire weapons on 4 out of 5 civilians who survived were established. This certainly represents severe bodily injury implying a high extent of mental and physical suffering.

144. The victims who survived the crime testified about the injures sustained, namely: Nurija Zobić, Zejna Bajramović and Omer Karahodžić, who are still suffering from the consequences of the sustained injuries, whose gravity is sufficiently supported by the medical findings and the discharge notes tendered as evidence for the Prosecution.

145. On the basis of the testimony of witness-victim Omer Karahodžić, and particularly after the review of material documentation testifying about the gravity of the inflicted injuries and the consequences for this person (the Finding of the Specialists Service of JU Medical Center in Bugojno for Omer Karahodžić dated 17 March 1997, the Finding of the Cantonal Hospital in Travnik dated 19 March 1997, the Finding of the District Hospital in Travnik, Surgery Unit dated 17 October 1997 and the Psychiatric Findings issued by the Specialist Service of the JU Medical Center in Bugojno for Omer Karahodžić dated 13 April 1997), the Panel drew the conclusion that he was wounded in the right lower leg and the chest from fire arms, with severe consequences manifested in pains and difficulties in movement. Also, it can be seen from the neuropsychiatric findings that since the execution day, when his family was executed and he survived, the witness has had recurring traumas, and was diagnosed with chronic PTSD (post-traumatic stress disorder).

146. Furthermore, after reviewing the discharge note by the RO Clinical and Medical Center in Banja Luka, dated 22 October 1992 for Nurija Zobić, the Panel noted that he was medically treated for a defect on his right lower leg, a surgery was performed and his disability to work established. Also obvious from the discharge note by the RO Clinical and Medical Center in Banja Luka, dated 16 September 1992 for Zejna Bajramović, is that this injured person was hospitalized due to the chest and the abdomen injuries, initially bandaged in Šipovo, and that on this occasion a subsequent surgical treatment of these (war) wounds was provided. This person's disability to work was also established.

[8] *Naletilić and Martinović* (Trial Chamber), 31 March 2003, par. 342 in which it referred to the Trial Judgment in the *Krstić* case, 2 August 2001, par. 513.

147. From all the foregoing, the clear and undoubtful conclusion is drawn as to the gravity of injuries and the severity of consequences that resulted for those persons after the execution.

148. Furthermore, during the proceedings, as evidence for the death of 23 persons, the Prosecutor's Office tendered the material documentation in the form of autopsy reports made in the Visoko City Cemeteries. It can be seen from this documentation that the death of these persons was caused forcibly, as also supported by the hearing of forensic expert, Dr. Hamza Žujo. In his testimony, this witness expert stated the details from the written findings for each corpse individually. With regard to the cause of death of all the stated persons, he emphasized that he did not exclude the head and the chest injuries that were all a result of the fire weapons activity. As to the corpse number 13 that was identified as Asmer Zobić, the witness expert stated that no skeletal injuries were found, but that it was possible that he was killed by fire weapons in the manner that a bullet passed through the heart or the abdominal cavity of the victim, without touching the ribs or other skeletal parts of the body, due to which it would not be possible to observe any skeletal injuries during autopsy.

149. Also, with regard to the fact of establishment of violent death of these persons, the BiH Prosecutor's Office heard Dr. Rajko Todorčević in the capacity of a witness. At the critical time he was the Director of the Health Center in Šipovo. In addition to providing medical treatment to the injured victims who survived the execution, upon an order by the Investigative Judge of the Basic Court in Mrkonjić Grad together with crime-technicians of the SJB Banja Luka he went to the crime scene where the civilians had been executed, and in the capacity of a coroner attended the crime-scene investigation. In his estimate, around 30 persons were lying there. After his arrival, the identification of corpses started based on the information collected from local inhabitants, after which the witness recorded the injuries and numbered each corpse before an external examination. As requested by the Investigative Judge, the witness drafted a written document concerning each corpse individually, which was signed and verified by the health institution in Šipovo, after which the materials were transferred to the Basic Court. This was tendered as evidence for the Prosecution.

150. With regard to the subjective element, that is, the perpetrators' intent (*mens rea),* the Panel has no doubts whatsoever that this is an intentional action or omission to act reflected in the infliction of severe bodily or mental pain. To wit, the fact itself that the perpetrators went out to execute the crime at issue with an intention to kill the captured Bosniak civilians also implies the existence of intent *(dolus directus)* for all the results of the prohibited action. The intention for causing more severe consequences consumes in itself the intent for the less severe consequence that resulted from the realization of the criminal action directed at causing the more severe consequence as a result.

151. The findings of the Trial Chamber in the *Blagojević and Jokić* case[9] support such conclusion of the Panel, when it was established that the individuals who managed to survive the mass executions suffered serious bodily and mental harm. Mental harm was also inflicted on the persons who were killed (....) when they understood they would also be executed.

152. Therefore, all that the captured and helpless civilians survived on that evening while walking in the column under the threat of arms, helpless to do anything, knowing what was to follow – their inevitable death, go far beyond the common human experiences and knowledge. For this particular reason, the mental harm was also inflicted on the killed individuals who, based on everything that happened on that evening, long before their final execution sensed and knew what their final fate would be. The survived victims were lying wounded among the corpses of their closest relatives and neighbors, fearing for their own life. Such an atmosphere and enormous fear and horror represent only a portion of the traumatic experience for these persons, because their suffering has continued over the years after the war due to all what they survived. Not only that they experienced severe physical sufferings after being injured and the enormous mental pain caused by the traumatic event itself and their own experience, but these persons also lost their most beloved ones in the tragic event, which is certainly an immeasurable loss. Finally, the Panel concludes that these are injuries whose consequences are long term and severe damage to the ability of the survived persons - the victims to live a normal life.

153. The Panel deleted from the factual description the incrimination for the injuries to bodily integrity, being of the opinion that the elements of this individual incrimination were included in the established infliction of severe bodily pain through the infliction of severe bodily injury from fire weapons.

154. Bearing all the foregoing in mind, the Panel found beyond any reasonable doubt that, having acted in the capacity of accomplice the accused Milorad Savić committed the criminal offense of War Crimes against Civilians in violation of Article 173(1) (c) and (f) of the CC BiH.

6. Application of Substantive Law

155. When the substantive law to be applied to this criminal offense is in question, within the context of its commission, and bearing in mind all the objections of the Defense in this sense, the Appellate Panel decided as stated in the operative part hereof having respected the principles of legality and time constraints regarding the applicability of

[9]Trial Chamber Judgment in the *Blagojević and Jokić* case (January 2005), par. 647-648.

law set forth in Articles 3 and 4 of the CC BiH. In applying the substantive law and the legal qualification of the criminal offense, the Panel correctly applied the provisions of the applicable Criminal Code of BiH that entered into force on 1 March 2003 for the reasons to follow.

156. The principle of legality is prescribed by both national Criminal Code (Article 3 of the CC BiH) and Article 7(1) of the European Convention on Human Rights (ECHR), that has primacy over all other laws in BiH (Article 2.2 of the Constitution of BiH), and Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR).

157. Article 7(1) of the ECHR prescribes: „ No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed".

158. On the other hand, Article 15(1) of the ICCPR prescribes: „ No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby".

159. In examining the related legal criteria for the establishment of the more lenient law *(lex mitior)* for the perpetrators *in concreto,* following the objections raised by the Defense in its closing arguments, the Panel found that considering the punishment prescribed for the criminal offense at issue, the CC BiH is more lenient to the perpetrators in relation to the Criminal Code of the SFRY that was applicable at the time of the commission of the criminal offense, which also proscribed the criminal offense of War Crimes against Civilians in Article 142.[10] Pursuant to Article 142 of the CC SFRY, the criminal offense at issue was punishable by the sentence of imprisonment for a term of

[10] The stated provision reads as follows: Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to **killings, torture, inhuman treatment**, biological experiments, immense suffering or violation of bodily integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy's army or in its intelligence service or administration; forcible labor, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of a property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency, or who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty.

at least five years or death penalty, while according to the applicable Code, the same criminal offense carries the punishment of at least 10 years imprisonment or a long-term imprisonment. Having compared the foregoing punishments, the Court concluded that the punishment prescribed by the applicable Code is in any case more lenient than the earlier prescribed punishment regardless of the fact that under the earlier law the minimum punishment was five years. This is so because pursuant to the customary international law, it was determined that the death penalty was in any case more severe than the long term imprisonment. Also according to the international law, it is an absolute right of a suspect not to be executed, while the state must ensure this right, as was done by the new law adoption.

160. In addition to the foregoing, it must also be stated that the sentences imposed on the Accused in this particular case were not meted out within the frame closer to the minimum prescribed punishment for the criminal offense at issue, in which case, the CC of the SFRY could be exceptionally applied as the more lenient law.

161. In support of the foregoing, the Panel states that the case at hand concerns a more severe form of this criminal offense (killing), and pursuant to the principle of alternativity, the direction of meting out the punishment dictates the selection of law, and not vice versa.

162. Pursuant to all the foregoing, and bearing in mind *ratio legis* of Article 4(2) of the CC BiH pursuant to which provides for the *application of the law more lenient to the perpetrator* rather than the application of *a more lenient law*, the Panel found that having in mind the direction of meting out the punishment for both Accused (in the special maximum direction), the Panel found that the CC BiH is the more lenient law in this specific case, considering that its maximum is lower in relation to the CC SFRY.

163. Furthermore, with regard to the accused Savić, the Panel found that another criterion was satisfied which in this specific case renders the applicable Code more lenient in relation to the Code that was applicable at the time of the criminal offense commission. To this end, in evaluating the code in force at the time of perpetration and the code in force at the time of the trial, in the case at hand the Court found that in relation to complicity, that is, the complicity acts of this Accused, the CC BiH is the more lenient code. This clearly ensues from Article 29 of the CC BiH that defines this instrument more restrictively. Therefore, pursuant to Article 4(2) of the CC BiH, the Court applied this Code to the specific case, which is also in accordance with the referenced Article 15(1) of the ICCPR.

164. Article 29 of the CC BiH prescribes: *„If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive*

contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence".

It ensues from the quoted legal provision that complicity is a form of perpetration which exists when a number of persons satisfying all the requirements needed for a perpetrator, based on a joint decision, knowingly and willfully, commit a certain criminal offense, in the manner that in doing so each accomplice gives his contribution which is important and without which the criminal offense would not be realized, or would not be realized in the anticipated manner. Accordingly, in addition to the joint participation of a number of persons in the commission of the offense concerned, it is necessary that the awareness also exists on their part that the committed offense represents a common result of their actions.

165. However, the Criminal Code of the SFRY, that was applicable at the time of commission of this criminal offense, prescribed that: *„If several persons jointly commit a criminal act by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act ".*

166. It ensues from this legal provision that all the persons who by participating in the act of commission or in any other way jointly committed a criminal offense will be punished, and that each perpetrator will be punished by the sentence that is prescribed for the committed criminal offense. Consequently, the accused participates in the action of perpetration of the criminal offense of which he is found guilty.

167. Pursuant to the foregoing, an essential difference can be observed between the two legal definitions of the term „complicity". The difference concerns the fact that according to the new code, the notion of complicity is given in a narrower sense, because the participation that does not represent an action of execution is now restricted to those contributions that in a **decisive manner** contribute to the criminal offense, which is far more difficult to prove, while the earlier code only required that a general contribution to a joint consequence of the offense be established. In this specific case, the Panel established beyond any reasonable doubt the criminal responsibility of the accused Milorad Savić for the actions of complicity in the offense at issue. Therefore, in the opinion of the Court, the Criminal Code of BiH is also in this respect more lenient to the perpetrator of the criminal offense in relation to the Criminal Code of SFRY.

168. Finally, in support of all the foregoing, the Court refers to the Decision of the Constitutional Court of Bosnia and Herzegovina in the *Abdulhadim Maktouf* case[11], in which it was concluded that in the referenced case, the issue of application of the CC

[11] Decision issued on 30 March 2007.

BiH in the proceedings before the Court of BiH did not constitute a violation of Article 7(1) of the ECHR.

7. Decision on Criminal Sanction

169. In ruling on the punishment, the Panel was led by the general rules on meting out the punishment as set forth in Article 48 of the CC BiH and also by the purpose of punishment set forth in Article 39 of the CC BiH. The Panel believes that by the sentence of long term imprisonment for twenty one (21) years imposed on the accused Milorad Savić and fourteen (14) years imprisonment imposed on the accused Mirko Pekez son of Špiro, the purpose of punishment will be entirely achieved. The Panel took into account the legal frames for imposing the sentence for the criminal offense at issue, that is, the prescribed punishment for the offense of which the Accused were found guilty, which is the imprisonment for at least 10 years or a long-term imprisonment, and also the general rules on the selection of type and duration of punishment, that is, the purpose of punishment, and particularly the level of criminal responsibility of the Accused, the circumstances under which the offense was committed, the extent of jeopardizing, that is, the damage inflicted on the protected goods, the past life of the Accused, their personal situation, the conduct after the committed offense and the motive to commit the offense.

170. As to the criminal responsibility of the accused Mirko Pekez son of Špiro, bearing in mind the established state of facts, the Panel imposed on the Accused the sentence of imprisonment for a term of 14 (fourteen years). The Panel took into account that it was indisputably established that in the commission of the criminal offense as charged, the Accused acted willfully (with a direct intent) as an accessory, in the manner that he participated in the action of collection of Bosniak civilians whereby he aided the direct perpetrators to commit the criminal offense of murder. According to the factual findings, the accused Milorad Savić participated as an accomplice in an all phases of the realization of the crime at issue, having acted with a direct intent.

171. The circumstances under which the criminal offense was committed – during late night hours when the group of armed drunk persons forcibly, with threats and mistreatment, took out helpless civilians from their homes, without telling them the reason for their abduction or where they would be taken, which certainly caused in them a high intensity of suffered fear – were considered as the aggravating circumstances on the part of both Accused.

172. With regard to the protected good, the Panel considered the status and number of victims, namely that they were civilians, women, children and men, who contributed in no manner whatsoever to the commission of the crime in which 23 civilians were killed, and four of the five victims who survived the execution sustained severe bodily

injuries caused by fire arms. In assessing these circumstances, it was necessary to show a special sensibility considering the fact that children, who are the most vulnerable population among civilians, were also among the victims.

173. They were killed only because they were Bosniaks and in order that their executors satisfy their retaliatory motives. Having used their domination and power on the one hand, and the helplessness of the victims on the other hand, the Accused committed the offense against the universal human values that are the object of absolute protection. These goods are not only the precondition and the basis that imply a human treatment, but they are also a positive obligation.

174. It is certain that due to the experienced sufferings, the injured parties-the survived victims will feel permanent and deep consequences throughout their lives in terms of their traumatization, mental and physical pain and the loss of their beloved ones.

175. Also as an aggravating circumstance, the motive, that is, the incentives due to which the criminal offense at issue was committed particularly influenced the Panel in meting out the punishment. To wit, the offense concerns revenge as one of the lowest motives out of which a criminal offense can be committed, and this particular motive was the key motive on the part of the Accused in the creation and realization of the criminal plan.

176. Concerning the extenuating circumstances on the part of the Accused, the Appellate Panel found the fact that the accused Mirko Pekez son of Špiro is father of two children, while the accused Milorad Savić is father of a minor child, which *in concreto* implies certain responsibilities and liabilities in the children support and upbringing, and also the fact that the Accused have never been convicted before.

177. In individualizing the sentences, the Panel also took into account Article 31(1) of the CC BiH which prescribes that the person who intentionally helps another to perpetrate a criminal offence may be punished by a reduced punishment. Therefore, the Panel imposed on the accused Pekez a more lenient punishment in relation to the accused Savić, having found that the imposed sentences are appropriate to the extent of criminal liability of each Accused individually.

178. Bearing in mind all the foregoing, and also the extent of individual participation of each Accused and their contribution to the commission of the criminal offense of which they were found guilty, the Court finds that the imposed sentences were meted out pursuant to Article 48(1) of the CC BiH, and also that the purpose of punishment as prescribed in Article 39 of the CC BiH will be achieved by the imposed sentences.

179. On the basis of application of the legal regulation set forth in Article 56 of the CC BiH, the time that the Accused spent in custody starting from 1 November 2007 and further on shall be credited to the imposed sentence of imprisonment.

8. Decision on Costs

180. With regard to the decision relieving the Accused of the duty to reimburse the costs of criminal proceedings, the Court opines that the financial situation of the Accused is not such that they could bear the costs of criminal proceedings, namely that if they reimburse the costs concerned, the support of persons that the Accused are required to support economically would be brought into question. Therefore, pursuant to Article 188(4) of the CPC BiH, the Panel relieved the Accused of the duty to reimburse these costs.

9. Decision on Property Claims

181. In acting pursuant to Article 198(2) of the CPC BiH, the Court instructed the injured parties – the survived victims of the crime, namely Nurija Zobić, Zejna Bajramović, Omer Karahodžić, Fahrija Mutić and Subhudin Zobić that they may take civil action to pursue their claims under property law considering that during the first instance proceedings they could not state the amount of their claims, while the establishment of facts regarding the amount of property claims would require a considerable period of time, whereby these criminal proceedings would be prolonged.

182. Bearing in mind all the foregoing, and pursuant to Article 285 of the CPC BiH, the Verdict was rendered as stated in the operative part herein.

Record-taker:
Medina Hababeh

PRESIDENT OF THE PANEL:
J U D G E
Dragomir Vukoje

NOTE ON LEGAL REMEDY: No appeal lies from this Verdict.