



Case No.: S11K003433 09 Kr1 (X-KR-09/783)

Date: 26 April 2011
22 June 2011

Before the Trial Panel: Judge Jasmina Kosović, presiding
Judge Davorin Jukić
Judge Darko Samardžić

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

D. D.

VERDICT

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina: Sanja Jukić

Counsel for the Defendant: Z.M.

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IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting as a Panel composed of Judge Jasmina Kosović, as the Presiding Judge, and Judges Davorin Jukić and Darko Samardžić, as the Panel members, with the participation of legal officer/assistant Elma Karović as the minutes-taker, in the criminal case against the Defendant D. D. charged with the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), (e) and (f) in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina (“CC of BiH”), all in conjunction with Article 29 of the CC of BiH, under the Indictment of the Prosecutor’s Office of Bosnia and Herzegovina No. KT-RZ 176/06 dated 3 November 2009 (confirmed on 16 November 2009), following the main trial held in the presence of the Defendant D. D. and his Counsel Z.M., and Prosecutor of the Prosecutor’s Office of Bosnia and Herzegovina Sanja Jukić, on 26 April 2010 rendered and on 28 April 2011 publicly announced the following

VERDICT

DEFENDANT D. D., son of J. and M. (mother's maiden name D.), born in M. on, JMB /Citizen Identification Number/, residing in P. at Street bb /no number/, of Croat ethnicity, BiH citizen, married, no occupation, completed elementary school, completed his military service,

Pursuant to Article 284(c) of the Criminal Procedure Code of Bosnia and Herzegovina (“CPC of BiH”),

IS ACQUITTED OF THE CHARGES

That,

During the war in Bosnia and Herzegovina, during the armed conflict between the Army and the Council in the territory of P. Municipality, as a member of the “J.” Sabotage-Reconnaissance Platoon of the R. Brigade of the Council, he acted in contravention of the rules of international humanitarian law and violated the provisions of Article 3(1)(a) and (c) and Article 27(2) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, inasmuch as:

1. In early August 1993, most likely in the late afternoon of 4 August 1993, in D., P. Municipality, together with late Z. Č., he participated in the physical ill-treatment and looting of Muslim civilians: he, dressed in a military uniform and armed with an automatic rifle, ordered all the Muslim civilians who were living in the mentioned village to immediately line up in front of Z.K.’s house, and the following civilians were forced to comply: O.K., S.K., Đ.R., Z.R., Đ.K., A.K., E.K. and her two underage children, Đ.Š., Z.R., Z.Z., F.K. and R.Z.; thereupon, he fired into the air and at the ground in front of S.K. who refused to sing Ustasha songs, cursed

balija's mother and kicked and hit the lined-up civilians with a rifle, particularly Z.R., Z.R. and R.Z. (he vigorously kicked R.Z. in the chest and the latter fell in front of Z.R. and hurt her hip); thereupon, he ordered A.K. whom he had previously hit in the neck and back with a rifle butt and put a hot rifle barrel into her mouth, to tie her husband Z.K. and her son O.K. to a concrete post and then he hit the two tied men all over their bodies, holding a knife to Z.'s throat and making bleeding cuts all over his body; thereupon, together with late Z.Č.,

2. With a view to taking money and gold, he ordered the mentioned civilian to remove their shoes and other clothes so as to make sure that they were not concealing any valuables; he took F.K.'s gold ring off her hand and V.K.'s golden chain off her neck and a ring off her hand; thereupon, threatening Z.R. with a rifle, took her to her house looking for money; after he hit her in the back of her neck with a rifle butt and threw her on the ground, put her head on the doorstep and threatened to slit her throat if she did not hand over money to him, she handed over 2,000 German marks to him,

3. Whereupon, in the same place, in the same house owned by Z.K. where E.K. lived with her husband and children, together with late Z.Č., raped E.K.: he singled her out of the group of lined-up civilians and took her to the floor of the house and, by using force, forced her to a sexual intercourse in one of the rooms; he had previously hit her all over her body and her legs, stripped her clothes and ordered her to put his penis into her mouth, threw her on a bed and raped her,

4. During the first half of August 1993, on a number of occasions, he raped the then underage protected witness "S1" who was interned in H.M.'s house in the village of L., P. Municipality, together with more than 30 Muslim women: he, the late Z.Č. and an unknown soldier in a uniform took protected witness "S1", [REDACTED] and protected witness "S2" (also interned in the mentioned house) out of the house late in the night, drove them to an abandoned house near the house where she was interned, and in one of the rooms forced her to a sexual intercourse by pointing a rifle at her body, ordering her to take her clothes off and telling her that he would kill her if she resisted, and then raped her,

5. In late July or early August 1993, in the village of L., P. Municipality, he raped the protected witness "S3": he, together with four soldiers wearing uniforms (one of whom was late Z.Č.), armed with a switchblade, entered the house of the protected witness "S3" and ordered her to come out; after she came out, he vigorously pushed her against a wall, holding her hands above her head with his hands and telling her to kiss him and relax; as she did not comply with his requests, he slapped her in the face and she fell onto a concrete floor; thereupon, he took her inside the house and threw her onto the bed in the room where her 15-month-old child was asleep, holding a knife to the child's throat and threatening to kill the child if she failed to remove her clothes immediately; she was forced to comply and then he raped her.

Therefore, that he

During the war in Bosnia and Herzegovina, during the armed conflict between the Army and the Council, in violation of rules of international law, he participated in the ill-treatment - deliberate infliction of physical and mental pain on the imprisoned civilians, looting the imprisoned civilians and coercing another person to sexual intercourse by making a threat to directly attack her body,

Whereby he would have committed the criminal offense of War Crimes against Civilians in violation of Article 173, Paragraph 1,

- Subparagraph (c) in relation to the acts described under Section 1 of the Verdict's Operative Part
- Subparagraph (e) in relation to the acts described under Sections 3, 4 and 5 of the Verdict's Operative Part, and
- Subparagraph (f) in relation to the acts described under Section 2 of the Verdict's Operative Part,

as read with Article 29 and Article 180(1) of the CC of BiH.

I

Pursuant to Article 189(1) of the CPC of BiH, the Defendant is hereby relieved of the duty to reimburse the costs of the proceedings and they shall be paid from budget appropriations of the Court of BiH.

II

Pursuant to Article 198(3) of the CPC of BiH, the aggrieved parties O.K., S.K., Đ.K., Đ.R., Z.R., E.K., Đ.Š., Z.R., Z.Z., F.K., R.Z., V.K., Z.Š. and the protected witnesses "S1", "S2" and "S3" are hereby instructed to pursue their claims under property law in a civil action.

Reasoning

I. INTRODUCTION

1. The Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-176/06 dated 3 November 2009 charged D.D. with the criminal offense of War Crime against Civilians in violation of Article 173(c), (e) and (f) of the CC of BiH, all in conjunction with Article 29 and Article 180(1) of the CC of BiH.

2. The Indictment was confirmed on 16 November 2009. On 18 December 2009, the Defendant pleaded not guilty to the criminal offense charged under the Indictment. The main trial in this case commenced on 4 February 2010.

A. PRESENTED EVIDENCE

1. Prosecution

3. The Panel examined the following witnesses at the main trial: O.K., Z.R., Đ.K., V.K., R.Z., F.K., S.K., Z.R., E.K., ■■■■, Z.Š., H.K., A.G., and the protected witnesses S1, S2 and S3.

4. The Prosecutor abandoned the following witnesses at the main trial: Đ.Š., M.K., A.K., M.Z. and L.M..

5. The list of documentary evidence that the Prosecutor presented and tendered into evidence is referenced in Annex 1 of the present Verdict and makes an integral part thereof.

2. Defense

6. The Defense for D.D. examined the following witnesses during the evidentiary proceedings: E.K., S.K., O.K., Z.R., J.D., M.D.2, R.P., S.B., V.B., Lj.G., N.P., A.G., V.K., M.Z., D.Đ. V.B., A.A., M.D., M.K., D.T., protected witnesses S1, S3 and S4; confronted witnesses O.K. and J.D. and examined handwriting expert Z.D. and medical expert D.K., MD.

7. The Defense abandoned the examination of Witness R.Z. and the confrontation between witnesses Z.R. and V.B.

8. The list of documentary evidence that the Defense presented and tendered into evidence is referenced in Annex 2 of the present Verdict and makes an integral part thereof.

3. Court

9. During the evidentiary proceedings, the Panel ex officio examined witness B.H., president of the A. "W.V.W.", and admitted two pieces of documentary evidence; the documentary evidence is referenced in Annex 3 of this Verdict and makes an integral part thereof.

B. CLOSING ARGUMENTS

1. Prosecution

10. In his analysis of the elements of the criminal offense of War Crimes against Civilians, the Prosecutor first of all noted in his closing argument that during the evidentiary proceedings the Defense did not contest the existence of an armed conflict in the territory of Bosnia and Herzegovina between 1992 and 1995, the existence of a direct conflict between the Army and the Council in the territory of P. Municipality in 1993, or the membership of the Defendant D.D. in the R. Brigade of the Council, the Council being one of the parties to the conflict.

11. In particular, in his closing argument the Prosecutor referred to the averments by witnesses examined at the main trial and, by linking their testimony to the Counts of the Indictment, inferred that the Defendant D.D.'s guilt has been proved beyond a reasonable doubt. He believed the testimony by witnesses O.K., S.K. and E.K. to be crucial and stressed that their accounts need to be given special consideration in the process of rendering the decision on the Defendant's guilt. Along the same lines, the Prosecutor believes that the testimony by witnesses Z.R., Đ.K., V.K. and E.K. should also be taken into consideration; they confirmed that they learned the full name of the perpetrator of the crime in the village of D. in 1993 from witness S.K.

12. The Prosecutor gave special attention to witness S.K.'s testimony. This witness was a waiter in a cafe bar in P. and he saw the Defendant D.D. on a daily basis. He knew him, his father and his entire family very well, and he knew that the Defendant's father used the nickname "D." when addressing the Defendant, whereas the Defendant's brother used the nickname "B.". The Prosecutor further contended that witness S.K., as a Defense witness, testified identically as to the circumstances surrounding the relevant event and his relationship with the Defendant and his family. According to the witness's description, the Defendant was thin, had a black hair parted sideways, with two front teeth parted, and he also identified him on some photographs dating back to the relevant period. The Prosecutor did not deny that S.K. gave statements to other institutions as well, mentioning M.D.1 as the perpetrator of the offense (he knew him as well). However, the witness himself acknowledged making a mistake about the name but not the person, maintaining unequivocally that D.D. was the perpetrator of the offense.

13. The Prosecutor also referred to E.K.'s testimony; the witness appeared as a Defense witness as well. The Prosecutor maintained that the witness calmly, without any desire for revenge, once again explained what had happened to her. Each witness account matches the accounts of other witnesses who gave evidence in this case. As regards the discrepancies in the names, the Prosecutor argues that it was an honest mistake because the witness herself confirmed that she gave those statements in a semiconscious state, which the Prosecutor believes to be extremely important in light of the fact that the witness is a rape victim. The fact

that the witness did not seek protective measures but wished to testify in open session about the things that she had experienced suggests that she had no motive to give false evidence.

14. In the Prosecutor's view, witnesses ██████████, S1, S2 and S3 have corroborated the factual allegations in Counts 4 and 5 of the Indictment in their entirety.

15. The Prosecutor recalled that Witness ██████████ testified that she and witnesses S2 and S1 were taken to a nearby house where she was raped by Z.Č., whereas the other two women – S1 and S2 – were taken to other rooms with D.D. and another soldier.

16. The Prosecutor pointed out that Witness S1 corroborated ██████████ testimony in terms of her account of the event and the manner in which the Defendant committed the rape. Without knowing his full name, the witness identified the Defendant in the courtroom and confirmed that he was the person who had raped her. She described him as a person who had brown hair and was 1.80 meters tall and was shorter than the other soldier. When she was examined as a Defense witness, her testimony regarding the person who perpetrated the offense in question was not different. Based on the foregoing, the Prosecutor believes that her testimony satisfies the criteria of homogeneity, objectivity and continuity. The Prosecutor believes that Witness S2 confirmed the testimony by witnesses S1 and ██████████ in their entirety. Witness S2 described the Defendant from the relevant period, and then identified him in the courtroom.

17. In the Prosecutor's view, Witness S3's testimony corroborates Count 5 of the Indictment in its entirety.

18. The Prosecutor submits that Defense witnesses were not successful in providing an alibi for the Defendant. According to the Prosecutor, Witness J.D. could not positively specify the whereabouts of his son at the relevant time, who came home only once a week. In the Prosecutor's opinion, Witness J.D., when confronted with O.K., demonstrated great unease and insecurity (by averting his eyes), with the Prosecutor laying great stress on the fact that this witness was the Defendant's father. Witness M.D.2, too, attempted to provide an alibi for the Defendant by alleging that the Defendant was with him for a couple of days engaged in combat operations, without specifying the days or hours or stating what occurred during other days. The Prosecutor challenged the authenticity of evidence, July and August unit deployment records¹, because the witness's statement suggests that he did not keep proper records.

19. In relation to the Report on Perpetration of the Offense by the Defendant D.D., compiled by officers of the M. Regional Office of the Agency, the Prosecutor agreed that the report is defective and lacks information. However, bearing in mind that the report is not a piece of evidence, then that fact should not affect the outcome of the criminal proceedings.

20. The Prosecutor believes that witness Z.K.'s statement cannot be regarded as being decisive in relation to determination of the Defendant's responsibility for the offense charged.

¹ Exhibit O-19a.

21. In the Prosecutor's view, expert D.K.'s report regarding the wounds sustained respectively by M.D.1 and D.D. is consistent with the testimony by witnesses who gave evidence as to the observed traces of injury on the perpetrator of the offense.

22. Believing that the results of the presented evidence clearly show that the Defendant D.D. is criminally liable for the criminal offense of War Crimes against Civilians in violation of Article 173(c), (e) and (f) of the CC of BiH, as read with Article 29 and Article 180(1) thereof, the Prosecutor petitions the Panel to render a decision finding the Defendant guilty on all counts and, pursuant to relevant provisions of the CC of BiH, impose an adequate prison sentence.

2. Defense

23. Counsel and the Defendant presented joint closing arguments on 21 April 2011, pointing out that the first part of the closing arguments pertained to the general consideration of the proceedings against the Defendant D.D., while the second part pertained to an analysis of the presented evidence.

24. The Defense recalled that they announced at the status conference that during the proceedings the Defendant would be proving his innocence as well as the identity of the perpetrator of the criminal offense the Defendant is charged with.

25. Throughout the trial, the Prosecutor prevented the Defense from accessing evidence, concealed evidence she was aware of, failing to act in line with the principle of mutability.

26. Moreover, in the view of the Defense, the procedure of identification of the Defendant in the courtroom by witnesses was inappropriate because all the witnesses could learn the identity of the Defendant on the Internet and in the newspapers, each witness knew where the Prosecutor and the Defendant were sitting respectively. In particular, the Defense contested the identification of the Defendant by protected witness S1. This witness testified from a separate room and during his testimony the camera was pointed at the Panel and the Prosecutor, only to zoom in on the Defendant at the end.

27. In particular, the Defense analyzed the testimonies by key witnesses E.K., S.K. and O.K., emphasizing that the witnesses gave several statements in the period between 1994 and 2009 and provided identical accounts of the events, but changed their respective statements relative to the identity of the perpetrator of the criminal acts. In the view of the Defense, this cannot be regarded as a technical error during the giving of the statements.

28. Counsel, after telling the Defendant to stand up and after the Defendant said that he was 1.86 cm tall, inferred that a person of this height could not be considered a short person because during the main trial the witnesses described Č.Z. as being around 1.85 cm tall, whereas the other soldier in Č.Z. presence was described as a short(er) person.

29. The Defense does not accept Witness E.K.'s explanation that she recognized the Defendant's voice in the courtroom, especially if one bears in mind that the Defendant D.D.

was 19 years old at the time when the criminal offense was perpetrated and he is now 38, “no” being the only word that he uttered during the examination.

30. In particular, the Defense noted that witness O.K. gave three statements: in the first two statements, he said that M.D.1 was the perpetrator, whereas in the statement given to the Prosecutor's Office the witness said that M. was not the perpetrator but D.D., son of J.

31. Witness O.K. stated that he knew both M. and D. However, according to the Defense, over different periods of time the witness mentioned different persons as the perpetrator of the act.

32. In relation to the read-out statement by the deceased witness Z.K. dated 7 March 1994, the Defense referred to the statement by witness O.K. who claimed that Z. knew J., but did not know M. and D.D.. As Z. indicated in his 1994 statement that his daughter-in-law was raped by M. and Z., the Defense infers that Z. learned about the names of the perpetrators from either S. or O.K..

33. According to the Defense, the fact that the witnesses D.K. (O.K.'s wife) and F.K. (E.K.'s sister-in-law) changed their statements as to the identity of the perpetrator after 5 May 2009 suggests that Witness S.K. prepared the witnesses for their testimony from 2009 onwards.

34. The Defense further analyzed the statements by the witnesses S1, S2, S3 and [REDACTED] and found them to be inconsistent.

35. According to the Defense, the Prosecutor advised Witness S1 of the Defendant's name during the 7 October 2010 examination, while the witness herself testified that she had not previously heard about the name D.. Witness S2 testified about learning the names of soldiers Č. Z. and D.D. from H.M., the owner of the house that they stayed in. Witness [REDACTED] described the Defendant as a person whom she knew from before because they were schoolmates.

36. The Defense believes that other witnesses' statements call into question Witness S1's testimony.

37. In the Defense view, Witness S3's identification of the Defendant is disputable because the witness's testimony is not consistent with the statements by witnesses A.G. and H.K. who gave evidence with respect to Count 5 of the Indictment.

38. The Defense submits that it successfully demonstrated during the evidentiary proceedings that the Defendant D.D. could not have been present at the crime scene and that it has been found that the rapes occurred between 27 July 1993 and 3 August 1993.

39. In the view of the Defense, the Prosecutor has failed to call into question the authenticity of the records kept by M.D.2 or the testimony by witnesses who confirmed the Defendant D.D.'s presence in the M. base during his time off, as well as his deployment to the frontline.

40. Commenting on the wounds sustained by D.D. and M.D.1 respectively, the Defense referred to Doctor K. who stated, in response to a Prosecutor's question, that the Defendant had

wounds that could heal within 30 days, noting that the injury on the buttocks could not be seen.

41. The Defense argues that the Report by the M. Regional Office of the Agency No. KU 1/09 dated 14 January 2009, tendered into the case file, is neither authentic nor lawful.

42. Witness R.P., the person who signed the referenced Report, is certain that the identification procedure was carried out, whereas Agency officers, as observed by the Defense, testified that the identification was not carried out in accordance with the law. Witness M.K., a Agency officer, testified before the Court that they received information through a friend/acquaintance that D.D. was the perpetrator of the crime; the witness did not indicate the name of the friend/acquaintance other than saying that it was a registrar in P.. The Defense has learned that the witness referred to I.S., the only registrar in P. and the father of S.S.. Witness K. acknowledged that the filing of the Report based only on one piece of information was a mistake and noted that they would today carry out follow-up checks if a similar situation were to repeat.

43. The Defense recalls that witness S.K. mentioned the name of S.S. during the direct examination and alleged that S. used to hang out with M.D.1 and Z.Č..

44. The Defense claims that Agency officers K. and T. did not tell the truth when claiming that they carried out the identification and that they showed photographs to witnesses, considering that the Agency received scanned photographs seven days following E.K.'s examination.

45. In particular, the Defense commented on Witness S4's testimony, noting that the witness testified at the main trial that he knew the D. very well, he knew them all, M.'s and M.'s family, he knew all of their names, mentioning that during the night when his house was on fire M. and D.D. came for him and his mother and brought them blankets and cigarettes.

46. Witness S4 stressed that he has not heard anything bad about D.D., but he did hear that one M.D.1 raped women.

47. Very few people dared help Muslims, and those who helped them experienced considerable difficulties. In addition to helping Witness S4, D.D. also helped witness A.A. and this witness confirmed it during his examination before the Court.

48. Finally, according to the Defense, a question arises as to how the Defendant D.D. could steal, rape and help people at the same time, inferring that only those who had time and were not deployed to the frontline – such as the military police – could commit rapes.

49. At the end of the closing argument, the Defense petitioned the Court to deliver a verdict acquitting the Defendant D.D. of the charges.

C. PROCEDURAL DECISIONS

1. Decisions granting protective measures to witnesses

50. The Decision of the Court of BiH No. X-KRN-09/783 dated 22 October 2009 ordered protective measures in respect of three witnesses (S1, S2, S3). Under this Decision, the full names and other personal details of the witnesses were declared secret, the witnesses were assigned pseudonyms, and the witnesses' personal particulars were to remain confidential for a maximum period of thirty (30) years following the day the decision becomes final. During the proceedings, the witnesses testified by utilizing electronic means for transferring and distorting image and sound, and the Court prohibited the publication of the witness's photographs in the media.

51. On **19 March 2010** Witness S1, in addition to being assigned the pseudonym during the testimony, was granted additional protective measures by the Panel to testify from a separate room (video link room) with voice and image distortion.

52. On **22 April 2010** Witness S3, in addition to being assigned the pseudonym, was granted an additional protective measure by the Panel prior to testimony, namely the witness's photograph would not be published in the media.

53. On **6 May 2010** Witness S2, in addition to being assigned the pseudonym, was granted an additional protective measure by the Panel, namely the witness's image would not be recorded during the testimony with a view to protecting the witness's intimate and private life since his children and most of his family are not familiar with the case in question.

54. Rule 75(F) of the ICTY Rules of Procedure and Evidence provides that *once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal, such protective measures shall continue to have effect mutatis mutandis in any other proceedings before the Tribunal or another jurisdiction unless they are rescinded, varied or augmented in accordance with the procedure set out in this Rule*. After this Panel became cognizant of the fact that a Defense witness testified as a protected witness before the ICTY in *Prlić et al.*, the Court sought additional information from the Trial Chamber about the measures granted to this witness in the case.

55. The Trial Chamber in *P. et al.* sent a letter on 8 March 2011 notifying that they issued an oral decision in closed session on 10 October 2006 assigning a pseudonym to the witness who is now supposed to testify in the D.D. case, while allowing the utilization of electronic devices to distort the witness's image.

56. Pursuant to Rule 75 (F) of the ICTY Rules, the Trial Panel in the *D.D.* case issued a decision on protective measures on 10 March 2011, ordering that the witness testify from a separate room under the pseudonym "S4", with the utilization of technical means to distort the witness' image.

57. Throughout the proceedings, the Court was mindful not to mention any piece of identifying information with a view to protecting the identity of the witnesses, thus the Verdict does not mention the full names of the witnesses but the pseudonyms assigned to the witnesses. All the information pertaining to the protected witnesses is in the case file and under special protection.

2. Decision on Exclusion of the Public

58. The Panel ex officio excluded the public from portions of the main trial in application of Article 237 of the CPC of BiH, providing that “*the judge or the Panel of judges shall issue a decision on exclusion of the public. The decision in question must be explained and publicly announced*”. The decision was adopted in order to protect the interests of the witnesses as mandated under 235 of the CPC of BiH, and took effect at main trial hearings held on 11 March 2010, 19 March 2010, 22 April 2010, 6 May 2010, 8 July 2010 and 17 February 2011.

59. The Panel issued the decision to exclude the public in order to rule on additional protective measures in respect of witnesses S1, S3 and S2 and on the ordering of protective measures in respect of Witness S4. The Panel also excluded the public during the examination of Witness ██████████; the witness did not seek protective measures, but she wished that her testimony is not made available to the public for the purpose of protecting the interests of her family, children and husband who was holding a public office.

60. In all the cases referenced above, the Panel, upon consideration of the case law suggesting that it is not always possible to anticipate and have full control over the dynamics of submissions regarding legal and factual issues, decided to exclude the public from portions of the main trial when discussing additional protective measures to be assigned to witnesses under the given circumstances. Once the Trial Panel would resume sitting in open session, the public would be advised of the reasons for which they were excluded and of any decision issued.

3. Expiration of the thirty (30) day deadline

61. According to Article 251(2) of the CPC of BiH, “*The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defence attorney, the Panel may decide that in such a case the witnesses and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene investigation and the testimony of the witnesses and experts given at the prior main trial be used instead*”. As more than thirty days elapsed between the main trial hearings held on **15 July 2010 and 26 August 2010** respectively, the Panel, by applying the cited provisions and with the consent of the parties and defense attorney, decided not to commence the main trial anew but use the previously presented evidence.

4. Exceptions from the Direct Presentation of Evidence – Accepting a Witness Statement pursuant to 273(2) of the CPC of BiH

62. At the proposal by the Defense for D.D., the Court accepted to have the statement by the deceased witness Z.K. read out at the main trial on 1 July 2010.

63. Article 273(2) of the CPC of BiH – relating to exceptions from the direct presentation of evidence – provides that “*records on statements given during the investigative phase, and if judge or the Panel of judges so decides, may be read or used as evidence at the main trial only if the persons who gave the statements are **dead**, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons.*”

64. As a death certificate to the name of Z.K. was tendered in the case file² and as the Prosecutor did not oppose the Defense motion, the Court allowed the reading out of the statement the deceased witness Z.K. gave to officers of the P. Station, No. 35/94 dated 7 March 1994³.

65. The Court did not consider the deceased witness’s statement as decisive evidence.

5. Decision to Refuse the Prosecution Motion for Acceptance of Established Facts⁴

66. Pursuant to Article 4 of the Law on the Transfer of Cases, the Prosecution filed a Motion on 3 November 2009 seeking acceptance of facts established in the trial judgments of the ICTY in the following cases: *Prosecutor v. Z.D., Z.M., H.D. and E.L. (IT-96-21-T dated 16 November 2008)*, *Prosecutor v. M.N.- T. and V.M.- Š. (IT-98-34-T dated 31 March 2003)*, *Prosecutor v. S.H. (IT-01-48-T dated 16 November 2005)*, as well as appeal judgments in the following cases: *Prosecutor v. Z.D., Z.M., H.D. and E.L. (IT-96-21-A dated 20 February 2001)*, *Prosecutor v. D.T. (IT-94-AR72 dated 15 July 1999)*, *Prosecutor v. M.N.- T. and V.M.- Š. (IT-98-34-T dated 3 May 2006)*, *Prosecutor v. D.K. and M.Č. (IT-95 14/2 – A dated 17 December 2004)*. For each of the ICTY judgments, the Prosecutor specified relevant paragraphs and facts contained therein as the basis for the motion to accept those facts as being proven for the purpose of the current proceedings.

67. The Defense petitioned the Trial Panel to refuse the Prosecution Motion for the Acceptance of Established Facts in its entirety, submitting that the facts are not relevant to this case, whereas some facts do not pertain to the area of P. at all but to the areas of K. and M. respectively.

68. Upon a detailed consideration of the arguments advanced by the parties to the proceedings, the Panel issued a decision on 2 March 2011 refusing the Prosecution Motion for the Acceptance of Established Facts.

² Exhibit T-52.

³ Exhibit O-25.

⁴ Decision of the Court of BiH No. X-KR-09/783 dated 2 March 2011.

69. In rendering its decision, the Panel took into consideration Article 4 of the Law on the Transfer of Cases⁵ providing that: “*At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.*”

70. The Panel also took into consideration that the Law on the Transfer of Cases is a *lex specialis* and that, as such, is applicable in proceedings before the courts in Bosnia and Herzegovina, and that the basic purpose of Article 4 of the Law on the Transfer of Cases is efficacy and judicial economy.

71. As neither the Law on the Transfer of Cases nor the CPC of BiH defines criteria to be met to accept facts from ICTY judgments as established in the current proceedings, the Panel, in ruling on this issue, was guided by its duty to observe the right to a fair trial guaranteed under the European Convention and the CPC of BiH and applied the criteria determined by the ICTY in *Prosecutor v. M.K.* (IT-00-39-T⁶) as well as the ones that are supported by the case law of the Court of BiH⁷.

72. Having evaluated the proposed facts against the said criteria, the Panel has found that the facts do not meet the necessary requirements because by their nature they constitute conclusions, findings and opinions of the ICTY Trial Chamber, facts that cannot be clearly identified for the purpose of this case, the cited witness statements are insufficiently clear and concrete and cannot be regarded in isolation from the remaining part of those witness's statements, the facts constitute elements of the criminal offense (“armed conflict”) of war crimes against civilians and, finally, they contain essentially legal characterizations.

73. By applying the fact acceptance test, the Panel refused the Prosecution Motion as the proposed facts do not meet the required criteria to be accepted as proven for the purposes of this case.

74. The Panel observes that accepting established facts at the stage of the proceedings in which the Prosecutor examined all the witnesses and the Defense examined almost all of its witnesses would not be and is not in accordance with the fundamental principles of judicial economy and efficacy foreseen under Article 4 of the Law on the Transfer of Cases. This is all the more so as almost all the witnesses who have been examined testified with respect to the same circumstances referred to in the Motion for the Acceptance of Established Facts, so the Panel had ample evidence at its disposal to establish the circumstances in question.

⁵ According to Article 4 of the Law on the Transfer of Cases: “*At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.*”

⁶ ICTY decision on adjudicated facts in *M. K.*, IT-00-39-T dated 28 February 2003.

⁷ Case law of the Court of BiH: Decision of the Court of BiH No. X-KR-07/394 dated 13 November 2008, Decision of the Court of BiH X-KR-06/202 dated 3 July 2007, Decision of the Court No. X-KR/06/165 dated 26 June 2007.

II. RELEVANT LAW

75. Under the Indictment of the Prosecutor's Office, the Defendant is charged with the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), (e) and (f) of the CC of BiH as read with Article 180(1) thereof, namely that he, in violation of rules of international law in time of war and armed conflict, perpetrated the following acts:

- c) [...] Inhuman treatment, [...].
- e) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), [...].
- f) Property confiscation, [...], pillaging [...].

76. Article 173 incorporates the following general elements required for the criminal offense of War Crimes against Civilians.

- the perpetrator's act must be perpetrated in violation of rules of international law;
- existence of a state of war, armed conflict or occupation;
- a nexus between the acts of the physical perpetrator and the war, armed conflict or occupation; and
- the defendant must order or perpetrate the offense

77. The Prosecution bears the burden of proving the Defendant's guilt beyond a reasonable doubt that in early August, most likely on 4 August 1993, in the village of D., P. Municipality (as described in Sections 1, 2 and 3 of the Verdict's Operative Part), and in late July or early August 1993, in the village of L., P. Municipality (as described in Sections 4 and 5 of the Verdict's Operative Part), the Defendant D.D. perpetrated acts of inhuman treatment, pillaging and rapes, aware that he perpetrated those acts as part of an armed conflict, in violation of the rules of international law.

78. In considering the general elements of the criminal offense of War Crimes against Civilians, the Panel found on the basis of Prosecution and Defense witness testimony and documentary evidence that at the time when the crime was committed, in July and August 1993, there was an armed conflict between the forces of the Army and the Council in BiH in the villages of D. and L., P. Municipality. As the parties to the proceedings did not challenge this issue, the Panel accepted this fact as indisputable and found it to be established that there was an armed conflict in those areas at the referenced time.

79. Having evaluated all the pieces of evidence individually and in correspondence with other evidence, the Panel has found beyond any reasonable doubt that the Defendant was a member

of the armed forces of the Council, more specifically, the J. Sabotage-Reconnaissance Platoon of the R. Brigade (J. Platoon) at the relevant time.

80. However, as the Prosecutor did not succeed in proving beyond a reasonable doubt that the Defendant D.D. perpetrated the acts described under Sections 1, 2, 3, 4 and 5 of the Verdict's Operative Part, as indicated in the results of the analysis of the Prosecution and Defense evidence, the Panel has found that it is not necessary to separately dwell on the issue of existence of other elements of the criminal offense; rather, the Panel has analyzed in detail the witness statements and the documentary evidence that brought about the Trial Panel's finding that the Defendant D.D. did not perpetrate the criminal offense that he is charged with under the Indictment.

81. For those reasons, the Panel has found that it is not necessary to separately dwell on the issue of substantive law and its applicability to the case in question.

A. GENERAL CONSIDERATIONS RELATIVE TO EVIDENCE EVALUATION

82. The Prosecution and Defense examined a large number of witnesses in this case. The Panel evaluated evidence in the proceedings in accordance with applicable procedural law. The presumption of innocence under Article 3 of the CPC of BiH embodies a general principle imposing an obligation on the Prosecution to determine the defendant's guilt beyond any reasonable doubt.

83. In addition to being sincere, a witness testimony needs to be reliable as well. Bearing that in mind, the Panel was mindful throughout the proceedings that the accounts of facts that occurred long before the statements were being given show insecurity resulting from the variability of human perception of traumatic events as well as recollection of those events. When assessing testimony by witnesses who gave evidence in this case, the Panel paid special attention to their attitude, conduct and character and, in that regard, other evidence and circumstances pertaining to the case. Moreover, the Panel took into consideration the passage of time since the relevant events occurred; as a result, witness memory has undoubtedly undergone certain changes, that is, it is impossible to recall all the details and circumstances that existed at the time when the criminal acts were perpetrated.

84. Inconsistency in a witness's testimony need not be, of itself, a basis for a Trial Chamber to reject the testimony as unreliable without a careful evaluation.⁸ Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took

⁸ Appeal Judgment in Č., paras. 485 and 496 – 498.

place do not automatically exclude the Trial Chamber from relying on the evidence. However, the Trial Chamber should consider such factors as it assesses and weighs the evidence.⁹

85. Regarding indirect evidence (second-hand information), the Panel notes that such evidence has been found to be admissible in this Court's case law. Naturally, the probative value of such evidence depends on the context and nature of testimony in question and if the testimony is corroborated by other evidence. Furthermore, the Panel recalls that the Court is free in evaluating evidence (in accordance with Article 15 of the CPC of BiH).

86. The Panel took into consideration the case law of the European Court of Human Rights¹⁰ according to which courts, although obliged to give reasons for their decisions, are not required to provide a detailed answer to every argument put forward by a party to the proceedings.

87. The Panel finds it necessary to underline that criminal law systems in many countries acknowledge the need to be extremely wary before convicting a defendant on the basis of testimony by a witness who identified the defendant under the circumstances that cannot be considered normal. The Appeals Chamber in *K.* listed factors identified by courts in many jurisdictions as relevant to an appellate court's determination of whether a fact finder's decision to rely upon identification evidence was unreasonable or whether it renders a conviction unsafe. Courts in many jurisdictions have identified the following factors: *"identifications of defendants by witnesses who had only a fleeting glance or an obstructed view of the defendant; identifications occurring in the dark and as a result of a traumatic event experienced by the witness; inconsistent or inaccurate testimony about the defendant's physical characteristics at the time of the event; misidentification or denial of the ability to identify followed by later identification of the defendant by a witness; the existence of irreconcilable witness testimonies; and a witness' delayed assertion of memory regarding the defendant coupled with the clear possibility from the circumstances that the witness had been influenced by suggestions from others"*.¹¹

88. Bearing all that in mind, through a thorough assessment of all the presented evidence individually and in correspondence, the Panel analyzed and evaluated this contentious and extremely important issue of the identity of the perpetrator of the criminal offense through the following aspects: 1) the name of the Defendant; 2) the physical appearance of the perpetrator of the offense; 3) Agency's Report on the Perpetrated Criminal Offense No. KU 1/90 dated 16 January 2009; 4) the wounding; 5) the uniform worn by the perpetrator of the offense; 6) the presence of the Defendant at the time and in the place of perpetration of the criminal offense; 7) statements by witnesses S4 and A.A. regarding the personality of the Defendant.

B. THE NAME OF THE DEFENDANT

⁹ *K. et al.*, IT-95-15-A, Appeal Judgment dated 23 October 2001, p. 12, para. 31.

¹⁰ European Court of Human Rights, *Garcia Ruiz v. Spain*, no. 30544/96, 21 January 1999.

¹¹ *K. et al.*, IT-95-15-A, Appeal Judgment dated 23 October 2001, p. 15, para. 40.

89. As noted above, in its analysis and evaluation of the witness testimony the Panel was guided by the criteria laid down in *K.*, including the one instructing the panel to pay special attention to *a witness' delayed assertion of memory regarding the defendant coupled with the clear possibility from the circumstances that the witness had been influenced by suggestions from others.*

90. The Prosecution based its case on the testimony of witnesses who are aggrieved parties in this case. Some of the Prosecution witnesses were called by the Defense in order to prove inconsistencies in their statements. In that regard, the Defense tendered documentary evidence, primarily investigative records of witness interviews given before an investigative judge of the Court of J. (Branch of the Court of M.) in 1995¹² as well as statements by witnesses given to the Agency in 2008 and 2009¹³.

91. A review of the submitted investigative records of witness interviews from 1995 and 2008 has showed that the witnesses identified M.D.1 (and not D.D.) as the perpetrator of the criminal offense. In their statements given to the Prosecutor's Office of Bosnia and Herzegovina in 2009, the witnesses changed their statements in the way that they identified the Defendant D.D. as the perpetrator.

92. In the Panel's view, this circumstance is particularly disputable because there exists a person by the name of M.D.1 and he is only one year older than the Defendant D.D., and that person lived in the area of P. Municipality at the relevant time period and still often stays in that area.

93. Witnesses S. and O.K. are the only witnesses who confirmed to have known M.D.1 and D.D. from before. The other witnesses-aggrieved parties mentioned soldiers not known from before, learning their names from S.K. in the woods or subsequently, that is, following the relevant events, from H.M. and A.G.. Regarding the identification of the perpetrator of the offense, the Panel finds the respective statements by witnesses O. and S.K. disputable, especially because both of them knew M. and D.D. very well. A question arises: in 1995 and 2008, when their memory was better, how and why did they identify M.D.1 as the perpetrator, whereas in 2009 and during the main trial before the Court they claimed that D.D. was the perpetrator of the offense?

94. Witnesses S.K., O.K. and E.K., prior to giving evidence before the Court, had given three statements: the first one before the Court of M., then to Agency officers and the Prosecutor's Office, whereas E.K. gave a fourth statement to the A. "W.V.W.". In the context of determining the full name of the perpetrator of the offense in the village of D. in early August 1993, the Panel has analyzed the testimony of the referenced witnesses as well as other witnesses who

¹² Witness S.K.'s statement dated 28 July 1995 before the Court of M., Exhibit O-5; Witness E.K.'s statement dated 21 July 1995 before the Court of M., Exhibit O-2; Witness O.K.'s statement dated 21 August 1995 before the Court of M., Exhibit O -11.

¹³ Witness E.K.'s statement No. 17-13/3-1-04-2-185/08 dated 15 October 2008, Agency, Exhibit O-3; Witness S.K.'s statement No. 17-13/3-1-04-2-225/08 dated 16 December 2008, Agency, Exhibit O-6; Witness O.K.'s statement No. 17-13/3-1-04-2-222/08 dated 14 December 2008, Agency, Exhibit O-10.

gave statements to the cited authorities and who indirectly learned the perpetrator's full name from S.K. and then gave statements based on such information.

95. The Court has duly analyzed the statements by Witness S.K. who was first examined as a Prosecution witness and then as a Defense witness. He claimed that he knew D.D., his father J. and brother M. from the cafe bar where he worked as a waiter, adding that they frequently visited that bar. Based on that, he knew that M. sometimes addressed D. by the name D. and sometimes by calling him B..

96. In his initial statement given before an investigating judge in J. in 1995, witness S.K. identified M.D.1 and Z.Č. aka "Z." as the perpetrators of the offense referred to in Sections 1, 2 and 3 of the Verdict's Acquitting Part; the witness did not make a single mistake as to the name of M.D.1 but in the last name of Z.Č. by calling him Č. and P.. In his statement given to Agency officers in 2008, witness S.K., consistently with his initial statement, mentioned the name M., but was uncertain and said "or D.D.", that is D. or D. In his interview before the Prosecutor's Office in 2009, S.K. altered his prior statements and claimed that D.D. aka "D." was the perpetrator of the offense; the witness then maintained this claim of his at the main trial when examined first as a Prosecution witness and then as a Defense witness. The witness was explicit regarding the perpetrator's identity during his testimony at the main trial and was positive that it was D.D.. According to the witness, the evident discrepancies and inconsistencies in his account – namely that he mentioned M.D.1 instead of D.D. in his earlier accounts – was but an honest mistake, noting that he may have accidentally made a mistake about the name, but he never forgot the facial features.

97. Witness O.K., an eyewitness to the event and the person who identified the perpetrator of the offense, had no dilemma about the perpetrators' names in his initial statements in 1995 and 2008 respectively, and maintained that they were M.D.1 and Z.Č., except that he added in his 2008 statement to the Agency that the person in question was M.D.1, son of J.. In his statement given to the Prosecutor's Office on 2 June 2009, Witness O.K. stated the following when describing the perpetrator of the offense: *"At one point he saw in front of his house a uniformed soldier approaching, a camouflage uniform, and when he came closer, he saw and recognized the son of his friend J.D. with whom he had worked with before the war, from D. near P.. His son's name was D.D."* When he was heard at the main trial first as a Prosecution witness and then as a Defense witness, O.K. identified the Defendant D.D. in the courtroom as the perpetrator of the offense and, just like witness S.K., he testified that he may have forgotten the name, but he remembered the face well. He explained that the evident discrepancies in the name of the perpetrator were a result of subsequent checks and enquiries in the town because the witness observed that M. had a darker complexion and he realized that he mistook M. for D.. At the proposal of the Defense, witnesses O.K. and J.D. (the Defendant's father) were confronted with respect to their friendly relations, in accordance with Article 85(2) of the CPC of BiH. J.D. was adamant that he did not know O.K. or that the two of them ever performed any construction work together and that D. brought meals on such occasions. O.K. maintained his contention.

98. Witness J.D. testified that his son D. did not hang out with Z.Č., M.D.1 or the deceased S.S., but he did see the three of them often together. Almost everyone knew his son D. by the nickname B., and S.S. had the same nickname. The Panel acknowledges the fact that Witness J.D., as a father, was interested in giving evidence to the effect of alleviating the Defendant's

position in the criminal proceedings. However, upon an assessment of prior statements by Witness O.K. as well as the ones given many years following the perpetration of the offense and, as he put it, making enquiries in the town about the perpetrator's name, the Panel concludes that the witness is uncertain about the important issue of identity of the perpetrator of the offense.

99. Witness D.K. gave statements before, respectively, the Court of M. in 1995 and the Agency in 2008¹⁴, maintaining therein that “D.” by the name of M. was the perpetrator of the offense. In contrast, when examined as both Prosecution and Defense witness at the main trial, she altered her statement and said that her husband O.K. told her that it was D.D..

100. Witnesses E.K., R.Z., V.K., Z.R. and F.K. all confirmed that Witness S.K., upon arrival to the woods, told the names of the perpetrators to everyone from the village of D. who witnessed the event in front Z.K.'s house. The witnesses were also unison in saying that S.K. told them that one of the perpetrators was Z.Č., but what proved to be disputable was if S.K. mentioned that the second perpetrator unknown to them was D.D. or M.D.1.

101. It ensues from Witness E.K.'s respective statements given to the Court of M. in 1995 and to the Agency in 2008 that M.D.1 was the perpetrator of the offense, the very same name that Witness S.K. mentioned in his respective statements to the same bodies in 1995 and 2008. For these reasons, the Panel does not accept the contention that following the relevant event the witness heard from S.K. that the second perpetrator of the offense was D. (son of J.) D., as subsequently claimed before the Prosecutor's Office in her Statement No. KT-RZ-176/06 dated 5 May 2009 and at the main trial when she was first heard as a Prosecution witness and then as a Defense witness. The witness explained her inconsistency with her uncertainty, claiming that she identified the Defendant as the perpetrator of the offense by his voice. However, taking into consideration that the Defendant, responding to the Presiding Judge's question if he had any questions for the witness, answered „no“, it is very difficult to infer a reliable conclusion based only on one word. The witness's uncertain and unreliable account is further supported by the fact that she said in her statement to the Prosecutor's Office that the two young men used the names “M.” and “G.” in addressing one another, adding at the main trial that they also used the names “D.”, “D.”, B.” and “V.”.

102. Witnesses R.Z., V.K. and Z.R., in their respective statements given to the Agency officers in 2008 and 2009, indicated that the perpetrator of the offense was “D.”, without specifying if it was M. or D.D..

103. Witnesses R.Z. and V.K. testified at the main trial that S.K. told them that D.D. was the perpetrator of the offense, whereas Witness Z.R. testified that the perpetrators identified themselves as D. and Č. respectively. Witness Z.R. reiterated during the trial that she did not know the Defendant D.D. and that she learned about him from S.K., maintaining that she recognized him in the courtroom because he had come to her house looking for a girl and that is how she knew it was him. Witness F.K. confirmed during the trial that she learned in the

¹⁴ Exhibit O-24 – Agency Report on the Perpetrated Offense No. 17-13/3-2-04-2-3-372-17-09 dated 16 January 2009, enclosed therewith: 11 witness interview records, two death certificates and an official note.

woods that the perpetrators were “D.” and “Đ.”. However, all this did not constitute convincing reasons for the Trial Panel to arrive at a reliable conclusion as to the actual perpetrator of the offense.

104. Pursuant to Article 273(2) of the CPC of BiH, the Defense read out a statement given with respect to the relevant event by the deceased witness Z.K. in the P. Station of the M. CSB /Security Services Center/ on 7 March 1994.¹⁵

105. In that record, Z.K., as a direct participant in the event referred to in Section 1 of the Verdict's Acquitting Part, mentioned soldiers Z.Č. aka “Đ.” and M.D.1 who raped his daughter-in-law, S.'s wife (E.K.).

106. Bearing in mind that Z.K. gave the statement seven months following the event that took place in early August 1993, whereas the other witnesses gave their statements two and more years thereafter, a legitimate question arises as to the possibility of putting the Defendant D.D. in the context of the aforesaid, that is, of identifying him as the perpetrator of the offense if Z.K. did not mention his first name, his last name or even his nickname. If one correlates the statement by this witness that is, timewise, closest to the event with the initial statements by S. and O.K. (in 1995 and 2008) mentioning the name M. and thus confirming Z.K.'s factual averments, all with the mentioning of the name D.D. several years later before the Prosecutor's Office and the Court in 2009, the Panel is not satisfied beyond any reasonable doubt that the Defendant D.D. is the person that can be identified as the perpetrator of the offense in question.

107. Witnesses ██████████, protected witnesses S1 and S2, as Prosecution witnesses and rape victims, testified relative to the events that occurred in the village of L. in the first half of August 1993 in the manner described in Section 4 of the Verdict's Acquitting Part. All the witnesses spoke about the raid of three soldiers in H.M.'s house where they were singled out and raped.

108. Witness ██████████ testified that the soldiers addressed one another by names Đ., D., K., and that “D.” raped S1, and she described him as being shorter than “Đ.” who raped her. As for the third unknown soldier who raped S2, the witness said that he was of medium height. The witness said in the courtroom that “D.” was the Defendant, explaining that she knew him by sight because they went to the same school. She also alleged that she identified D. from among several photographs in the album shown to her by the Agency police officers.

109. Protected Witness S1 confirmed witness ██████████ averments regarding the names used by the soldiers to address one another and their height, explaining that ██████████ told her on the following day that the taller, stouter and darker person was Z., whereas the shorter one was D.D.. When pointing at the Defendant D.D. in the courtroom, the witness testified that she was positive that he was the one who had raped her on the relevant day and that she would never forget his face. Witness S2, too, testified that she learned the names of the perpetrators from ██████████ based on their height. She pointed at the Defendant D.D. in the courtroom, but she could not explain why she identified him as the perpetrator of the offense.

¹⁵ Exhibit O-25.

110. However, in the situation in which witness [REDACTED] knew the Defendant only by sight and referred to him as “D.”, and the Prosecution did not tender evidence of police identification of the Defendant on the photographs to support the witness's averments, that protected witnesses S1 and S2 did not know the Defendant but whom they identified as the perpetrator of the offense by the same nickname used by [REDACTED], that Witness S2 could not explain how she identified the Defendant as the rapist, the Trial Panel, in the context of the other evidence presented, could not accept the referenced testimony beyond any reasonable doubt, especially if one takes into consideration that the Defendant was young adult (20 years old) at the time of the event, and 16 years later his physical appearance has changed and he is now 36 years old. This also because at the relevant time period, according to three reports by the Hague Wartime Investigation Commission relative the events in the village of L.¹⁶, statements by expelled residents of that village (audio-video recordings with statements given by women)¹⁷ and Witness S4, no one ever mentioned the name of the Defendant D.D. as the perpetrator of the offense; rather, they mentioned a person by the name of M.D.1.

111. Prosecution witnesses Z.Š., protected witness S3, H.K. and A.G., in the manner referred to in Section 5 of the Verdict's Acquitting Part, were examined relative to the events that occurred in the village of L. in late July or early August 1993.

112. Witness Z. testified at trial that S3 told her on the relevant day that she had been raped by D.. Witness S3 testified during her examination that the rapist mentioned that name by saying: *“You’ll see how D. f..”*, and that while staying at her sister's place she was once looking through a window and thought she saw the rapist among the soldiers passing by, which is when A.G. said it was D.D.. Witness Z.Š. confirmed that A. recognized the Defendant from a window, that he was J.'s son and that she has known D. since childhood. When asked by the Defense at the 26 August 2010 hearing if D.D. had raped her, Witness S3 answered: “It may have not been him, but it may have been his brother... for me it was the same back then”. Witness H.K. testified that she was with S3 the whole time when the rape was being reported and the statement given to the police, and she heard that S3 reported that she had been raped by D.. However, notwithstanding the fact that S3 and A.G. pointed at the Defendant and stated that they were positive that he was the perpetrator, the Panel is unclear as to which of the D. was reported by S3. This in particular because no reliable evidence has been presented to the Panel in this regard. The remaining presented evidence assessed in the context of events in the village of L. could not serve as a basis for the Trial Panel to infer that the Defendant was indeed the perpetrator.

113. In the context of determining the identity of the perpetrator of the crime in the villages of D. and L. in July and August 1993, the Panel also took into consideration the testimony by Protected Witness S4, CD with audio and video recordings of statements by expelled residents

¹⁶ Report by the Hague Wartime Investigation Commission relative to the events in the areas of D. and L. in 1993. Rapes of women and young girls from the village of L. – O44; Report by the Hague Wartime Investigation Commission relative to the events in the areas of D. and L. in 1993 – Rape of Z.K.'s daughter-in-law – O-45; Report by the Hague Wartime Investigation Commission relative to the events in the areas of D. and L. in 1993 - Inflicting serious injuries on Z.K.– O-46;

¹⁷ Exhibit O-22.

114. Witness S4 testified that she took refuge in B. on 21 August 1993 after she was expelled from P. and started working in a state-level institution, taking statements from women who had been rape victims expelled to the area of B.. Protected Witness S3 was among the thirty women that she took statements from, and the witness believed that Witness S1 was among those women as well. Witness S4 also confirmed that all the interviewed women-rape victims mentioned M.D.1 as the perpetrator, adding that she never heard the name D.D. being mentioned in the negative context or else she would not have appeared to testify before the Court. She claimed that she heard that M.D.1 raped women and beat up camp inmates, and some complained that he also plundered houses.

115. Furthermore, the Defense presented and tendered as evidence in the case file a CD with audio and video recording (the issue of authenticity and credibility of the CD was not raised) containing statements by expelled residents of the village of L. (and the village of V.) who, among other things, spoke about the rapes of women and mentioned M.D.1 and Z.Č. as the perpetrators of the offense, but not, as the Panel has been satisfied, the name of the Defendant D.D..

116. Moreover, the Defense tendered into evidence three certified reports by The Hague Wartime Investigation Commission relative to the events in the areas of D. and L. in 1993, clearly indicating that Z.Č. and M.D.1 – and not D.D. – are the subjects of an investigation as possible perpetrators of the offenses.¹⁸

117. In addition, the Court of M.'s Decision to Conduct an Investigation No. Ki.14/95 dated 26 June 1995¹⁹ shows that there was a grounded suspicion that Z.Č. aka "Đ". and M.D.1 aka "D." were among the persons suspected of committing rapes in the area of P. Municipality (the village of D. included) at the relevant time, while the name D.D. is not among the 99 persons referenced in that decision.

B. PHYSICAL APPEARANCE OF THE PERPETRATOR OF THE OFFENSE

118. In clarifying the dilemma regarding the identity of the perpetrator of the crimes committed in D. and the village of L., the Panel addressed the issue of physical appearance of the Defendant and analyzed witness testimony given at trial as well as prior statements given to the Prosecutor's Office and the Agency respectively.

119. There are obvious discrepancies in the accounts relative to the Defendant's physical characteristics at the time of the events in question. All witnesses agreed that Z.Č.. was the

¹⁸ Defense Exhibits O-44, O-45 and O-46.

¹⁹ Book – Extracts from the book entitled *Prozor - 1992/1995, a chronicle of crimes*, authored by Mesud Hero, p. 235.

taller and sturdier soldier, whereas the other soldier the witnesses associated with the Defendant was shorter than Č., had a dark complexion, black hair and was rather stout, with the exception of witnesses V.K. and S1 who described him as a thin person. Defense Witness M.D.2 described him as an exceptionally thin person of dark complexion (a trait shared by most members of the D.), whereas Defense Witness Lj.G. testified that the Defendant had a strikingly boyish face. Witnesses S.K. and R.Z., Witness S1 and Witness ██████████ testified that soldier Z.Č. was of average height, about 185 cm tall, whereas the soldier who was with him was shorter, about 175 cm tall. During the presentation of closing arguments, the Defendant stood up at the request of his Counsel and the latter noted that the Defendant D.D. is 186 cm tall.

120. In addition to the issue of physical appearance of the Defendant D.D. at the time of perpetration of the offense, the issue of physical appearance of one M.D.1 at the same time period is also raised. Witnesses S. and O.K. claimed that they knew both D.D. and M.D.1 very well. When describing the physical characteristics of those individuals, witnesses S. and O. testified that the physical appearance of D. and M. was almost the same: they both had dark complexion, similar facial features and were of almost the same age; M.D.1's complexion was a bit darker and he was shorter and more stout than the Defendant D.D.. Witness O.K. testified that M. was about 172/3 cm tall, whereas the Defendant D.D. was about 5/6 cm taller than M.D.1.

121. Bearing in mind that witnesses described the perpetrator of the offense as a shorter, more stout soldier, about 175 cm tall, with dark complexion, dark hair, that witnesses S. and O.K. confirmed that D. and M.D.1 had a similar physical appearance (M. was shorter, darker and more stout than D.D.), that the Panel saw first hand that the Defendant is obviously more than 180 cm tall, then it is quite clear that the described physical appearance criterion – especially since witnesses spoke about the resemblance between the two persons, but did not say much about their individual distinctive and identifying features – cannot serve as the basis for a reliable inference that the Defendant D.D. has been identified as the perpetrator of the offense in question.

C. AGENCY REPORT NO. KU 1/90 DATED 16 JANUARY 2009

122. Officers of the Agency Regional Office M., too, faced the same dilemma regarding the identity of the perpetrator of the offense. They filed a Report to the Prosecutor's Office on 16 January 2009, noting therein that D.D. was the perpetrator of the offense although the name M.D.1 is mentioned in the enclosed Witness Interview Records. In order to clarify this inconsistency, the Defense called witnesses D.T. and M.K. who were involved in the case as official persons and who interviewed witnesses whose statements were analyzed in detail by the Court. When asked by the Defense about the manner of identification of the perpetrator of the offense, witnesses T. and K. testified that after witnesses (in particular, S. and E.K.) were not sure, they determined the perpetrator's identity on the basis of a piece of information received through a friend/acquaintance that a possible perpetrator of the crime in D. was a person by the name of M.D.1; as the friend/acquaintance subsequently changed the perpetrator's name and

said it was D.D., witness S.K. was shown a photograph of D.D. and he confirmed that that was the person who committed the criminal offense in the village of D. in 1993. The witnesses testified that the referenced Report was compiled in this regard.

123. Witness K. testified that E.K. was shown a file with a photograph of M.D.1, but she was not sure if that was the person who had raped her. S.K. testified that the person on the photograph did not perpetrate the offense.

124. The witnesses further confirmed that once they obtained five CIPS photographs marked 1 through 5 respectively (there were no M.D.1's photographs among those photographs) they showed them to S.K. and the latter pointed to photograph no. 3 and said it was M.. Subsequent operational checks confirmed that the person on the photograph was not M. but D., son of J.. Witness K. testified that the photographs were not shown to E.K. because she stated that she could not recall the perpetrator's face.

125. R.P., Head of the Agency Regional Office in M., testified as a Defense witness at the main trial that he received information from the department head about the level and results of investigations and that the department head, by affixing his signature, guaranteed that the case file was complete and done in accordance with the law. After he received information that two names – M. and D. - are mentioned as perpetrators in the case in question, he requested that the matter be investigated in the manner defined by law. The identification was carried out on the basis of photographs, but the required and standard identification record was not compiled, nor were the photographs tendered in the case file as attachment to the criminal report and the witness statements. Witness P. further testified that he believed that M.D.1's statement was not enclosed with the eleven witness statements because standard procedure did not include suspect interviews. He does not know if the photographs were shown to all the witnesses, but it is desirable that several persons confirm the identity of the person to be identified. He was advised that a positive identification of the Defendant D.D. was carried out.

126. However, if one bears in mind that witnesses S.K. and E.K., in their prior and subsequent statements analyzed herein, were uncertain and inconsistent in terms of identification of the perpetrator of the offense, that witnesses M.K. and D.T., as they put it, made mistakes in the procedure of collecting and verifying evidence, particularly during the identification procedure and drafting a record in that regard (in violation of Article 75(1) of the then valid CPC of FBiH²⁰ and Article 76(3) thereof), then it is quite clear that the unlawfully conducted actions cannot serve as the basis for the Trial Panel to make a reliable inference about the actual perpetrator of the offense in the villages of D. and L..

D. WOUNDS

127. In order to determine the identity of the perpetrator of the offense, the Panel also analyzed witness statements and documentary evidence relative to the wounds sustained by,

²⁰ *Official Gazette of FBiH*, No. 43/98.

respectively, the Defendant D.D. and M.D.1 in 1992, with witnesses seeing a scar, that is, a “wound dressing” on the perpetrator of the offense in the village of D. at the relevant time. To wit, witness Z.R. testified that the shorter soldier had “a wound” on his stomach, whereas witness V.K. said in her initial statement given to the Agency in 2009 that the person in question showed her “a scar” on the stomach; during her testimony at trial, she explained that it was a “dressing” on the stomach. Witness E.K. was unable to recall if any of the soldiers had a wound or if a wound was dressed. Defense Witness Lj.G., who met the Defendant D.D. on M. on 1 August 1993, testified that the Defendant showed him scars resulting from a wound in the area of the buttocks as well as a scar from a surgical wound on the stomach; according to this witness, those wounds heal within four to five weeks provided that they are sterile. The Defense also called a medical expert to state his opinion regarding the issue of the type and time of healing of the wounds sustained by the Defendant D.D. and M.D.1 in 1992.

128. According to the report by expert D.K.²¹, all D.D.'s wounds healed within one month after they were inflicted. In his written report dated 16 October 2010, the expert stated that the Defendant D.D. sustained a gunshot wound to his left posterior, a surgical wound on the abdominal wall resulting from the opening of the abdominal cavity, a wound on the abdominal wall due to drainage and a surgical wound in the right posterior through which a foreign metal object was removed; the surface of the wounds resulting from the surgery healed within 7-10 days following the injury, whereas the gunshot wounds in the posterior healed within 15-20 days following the injury. Explaining his report, the expert said that D.D. was injured on 10 September 1992 and had no injury traces as early as October 1992. In relation to M.D.1's wounds, the expert testified that he sustained them on 27 April 1992 as a result of a shell blast and was hit in the right temporal area, in the right chest, the right upper arm, the right fist and the right upper leg. The healing of the wounds was estimated in the medical documents as healing by secondary intention, implying slow healing with complications. Expert witness K. could not specify the time when the wounds healed, but he did clarify that secondary healing can last much longer than primary healing because foreign objects that remain deep inside wounds may sustain an infection that prevents full healing of the wounds on a long-term basis, sometimes lasting for months and years.

129. Having reviewed pertinent documents and the expert's report to which the Prosecutor did not object, the Panel has found that D.D. and M.D.1 were wounded in 1992, that D.D. had a surgical wound on the abdominal wall whereas M.D.1 was wounded in the right part of the chest with a theoretical and practical possibility, as stated by the expert at trial, that the wound covered a part of the abdominal wall. By correlating this with the respective accounts of witnesses Z.R. and V.K. concerning the scar and the dressing that they observed, a legitimate question arises as to whether the Defendant who was wounded on 10 September 1992 (and his wounds healed within one month) could be identified as a perpetrator of the offense committed in 1993 or if the offense was perpetrated by M.D.1 with respect to whom expert K. said it was possible that his wound took more time to heal but could not specify that time or if that time stretched to include the time of the relevant event. Under such circumstances, the Court could

²¹ Medical expert report by mr. sc. dr. D.K. dated 16 October 2010, Exhibit O-61.

not reliably conclude beyond any reasonable doubt that the Defendant was the perpetrator of the offense.

F. UNIFORM

130. The witnesses and eyewitnesses to the perpetrated offense claimed that D.D. wore a camouflage uniform, with E.K. and S.K. adding that the soldiers wore white belts as well. In addition to the uniform color, in their testimonies the witnesses described the color of the belts, the type of rucksacks, the weapons carried by the soldiers, as well as the insignia on their sleeves indicating unit membership. Responding to a Prosecutor's question, witness S.K. testified that Z.Č. wore a camouflage uniform and a white belt, with a white military police band and the Council patch on his arm. As for the second soldier identified by witnesses as the Defendant, he said that he did not have a patch, but he did have a white belt and a rucksack. However, the same witness altered his testimony before the Court, alleging that Z.Č. wore a black uniform and D.D. a camouflage uniform, Z, had military police insignia whereas D. had the Council patch.

131. Regarding the insignia-emblems on the uniforms, other witnesses testified that Z.Č. had military police insignia, whereas witness statements concerning the emblems worn by the other soldier (the Defendant) are not consistent. Some witnesses contended that they could not recall if the Defendant had an emblem, and some could not recall the emblem's physical appearance, whereas S.K., V.K. and ██████ testified that the other soldier had the Council patch.

132. During the proceedings the Defense tendered into the case file photographs showing that members of the J. Platoon never wore camouflage uniforms or Council patches. In that regard, Defense Witnesses M.D.2, M.Z. and V.B. testified that from the beginning of May 1993 the unit had uniforms with a round-shaped emblem depicting a hawk and a mountain, whereas as of May 1993 they wore green uniforms with black belts and a coat-of-arms of Herceg-Bosna, or they had cloth American belts and insignia on the sleeves.

133. The Prosecutor did not furnish evidence to prove the Defendant's membership in a military unit on the basis of the insignia and uniform that he wore.

134. During the trial the Defense also presented and tendered into the case three emblems (Exhibit O-26). The Panel notes that the three emblems vary in shape, color and markings, with the green emblem containing a noticeable Council designation. Among other things, the round-shaped emblem has a noticeable inscription J., whereas the other one is heptagonal with the inscription D.V. "I.P.-I."; both of these emblems bear an inscription "Council -R." that is less noticeable than the Council inscription on the green emblem.

135. Defense witnesses consistently confirmed that they started wearing the Council R. "I.P.I." emblem following the death of their deputy commander I.P. on 22 October 1993. In connection therewith, the Defense tendered photographs taken at I.P.'s funeral on 24 October 1993 showing members of the J. Platoon in green uniforms, with D.D. among them wearing the same uniform. According to consistent witness accounts, up to that time the unit members wore J. - Council R. emblem.

136. As it is a fact that witnesses of/participants in these dramatic events could not agree over the description of the uniform and the markings worn by the other soldier associated by the witnesses with the perpetrator of the offense, then this criterion, in combination with the fact the witnesses provided different names and descriptions of the perpetrator, could not lead to a clear conclusion as to the identification of the Defendant as the perpetrator of the offense.

E. PRESENCE OF THE DEFENDANT AT THE TIME AND IN THE PLACE OF PERPETRATION OF THE OFFENSE

137. According to Counts 1, 2 and 3 of the Indictment, the time of perpetration of acts referenced therein was *early August, most likely on 4 August 1993*; Count 4 of the Indictment specifies *the first half of August*, whereas Count 5 specifies *late July or early August 1993*.

138. The witnesses could not agree over the exact date when the concrete events occurred, and as the Prosecutor failed to specify the time of perpetration of particular criminal acts in the Indictment or referenced it vaguely, the Panel considered the presence of the Defendant D. D. in the areas of D. and L. based on documentary evidence and, in connection therewith, witness statements. With respect to these circumstances, the Defense presented and tendered into evidence the J. Platoon Deployment Records for July and August 1993²² and examined witnesses M.D.2, S.B., Lj.G., M.Z., N.P., V.B., M.D., D.Đ. and V.B.. Pursuant to Article 95 of the CPC of BiH, the Defense called Mr. Z.D., a handwriting expert.

139. The Prosecutor challenged the authenticity of the Records of Deployment of the J. Sabotage Platoon of the R. Brigade for July and August 1993. However, following the examination of Witness M.D.2 who kept those records, a review of the report (dated 18 February 2010) by handwriting expert Z.D. to which the Prosecutor did not object, the expert's examination at trial and the examination of the Defense witnesses mentioned above, the Trial Panel accepted the unit deployment records as an authentic document kept and, according to the expert's report, signed by Witness M.D.2. Witness M.D.2 testified that he kept the records as Commander of the J. Sabotage Platoon of the R. Brigade numbering ten men, including the Defendant D.D..

140. Based on the presented evidence, the Panel accepts that the Defendant D.D. and the Sabotage Detachment were engaged in combat activities on the C. V. on 31 July 1993; on 1 and 2 August 1993 the Defendant and his unit were deployed to canvas a terrain in search for soldier D.B., whereas on 3 August 1993 at the deployment of the L. Battalion to positions facing the Army. According to Defense witness testimony, members of the Battalion had several days off and stayed within the M. base and slept there; no soldier could leave the base without the approval of the commander or deputy commander and none left the base. The witnesses maintained that D.D. was with them in the base the whole time.

²² Exhibit O-19.

141. According to the referenced records, the Defendant D.D. was deployed to the frontline (“C”) during the whole period of July and August, with the exception of three days in July (26, 27 and 28 July 1993) when all members of the J. Unit, including the Defendant D.D., had the time off, which, according to M.D.2's account, meant that during that time the soldiers were in the reserve (on the alert) on the M. base and did not leave it.

142. In the context of the presented evidence, the Panel also took into consideration and paid special attention to the kinship between the Defendant and Witness M.D.2 as well as the fact that the witness did not make daily entries in the records but every 10-15 days based on the notes in his diary. However, if one bears in mind that this witness's factual allegations have been corroborated by Defense witnesses, then it is quite clear why the Panel gave full credence to witness M.D.2's account and, on the basis of that account combined with other statements and documentary evidence, found that the Defendant D.D. was not in the areas of the villages of D. and L. at the time when the indisputable crimes occurred. This in particular because witness M.Z., R. Brigade Commander as of 13 May 1993, corroborated witness M.D.2's averments that the J. Platoon was never engaged in any operation in the areas of the villages of D. and L., and the Prosecutor failed to offer evidence to the contrary.

143. The Court did not separately examine a Defense document entitled “*Northeast H. Operations Zone – T. Military District*” to which the Prosecutor objected on the grounds of authenticity. The Defense intended to show with this document that there was an armed attack on C. v. on 31 July 1993 and that control of that area was regained in the evening. As the document bears no seal or signature and its author is unknown, and the Defense failed to offer any proof of authenticity of the document, the Trial Panel could not accept it as evidence proving the said fact that was proved during the proceedings by consistent statements of the aforementioned Defense witnesses.

F. ACCOUNTS OF WITNESS S4 AND A.A. ABOUT THE PERSONALITY OF THE DEFENDANT

144. In the context of the presented evidence, the Defense examined Witness S4 and Witness A.A. to show that the Defendant was helping Muslims at the time of the armed conflict and that for that reason he cannot be associated with the identity of the person who committed crimes in the areas of the villages of D. and L. in July and August 1993.

145. Witness S4 described D.D. as a person who helped him and his mother after they were expelled from P. and were given accommodation in the house of the D. family; M. and D.D. provided them with blankets, cigarettes and food.

146. Defense witness A.A., too, spoke positively about the Defendant's relationship towards the Muslim population during the conflict between the Army and the Council, citing his personal example in that regard. The witness testified that he knew all members of the D. family because he was a school teacher, adding that the Defendant D.D. and Z.D. did him a favor by taking the goods from his store and then returning all of it to him after the war. J.D.,

the Defendant's father, also helped the witness when the latter was hiding in F.T.'s house during the conflict.

III. CONCLUSION

147. Upon examination of the witnesses referred to by the Court in the reasons for finding that there is no proof that the Defendant committed the offense charged, the Panel, in rendering its decision, and acknowledging the passage of time, the dramatic circumstances under which the events unfolded, the totality of acts involving a large number of aggrieved parties, their family members, neighbors and friends, found that the level of discrepancies in the witness statements, individually and in mutual correspondence, was so high to the extent of affecting the credibility of their testimony with respect to a decisive fact – the identity of the perpetrator of the offense, ultimately resulting in the acquittal.

148. The Court has found that the present case involves discrepancies in the witness testimony in terms of the name, physical characteristics and appearance of the Defendant at the time of the relevant event. Bearing this in mind, as well as the fact that witnesses demonstrated insecurity and inconsistency by altering their statements regarding the identity of the perpetrator of the offense, that most of the witnesses did not know the perpetrator or knew him superficially, that they had a fleeting glance during the traumatic event or saw him 18 years after the incident and that they learned his name(s) from others, then it is quite clear that the evidentiary procedure has not resulted in a clear conclusion beyond any reasonable doubt that the Defendant D.D. committed the offense charged under the Indictment.

149. Therefore, in light of the inconsistency in the testimony by Prosecution witnesses, particularly the witnesses who did not mention the Defendant as the perpetrator of the offense in their initial statements to authorized bodies, the testimony by the Agency investigators who failed to cite a single legitimate reason for mentioning the Defendant D.D. as a perpetrator in their Report, the fact that the Court is satisfied that the Defendant never wore a camouflage uniform or a Council emblem as claimed by witnesses-aggrieved parties, that the Defendant never socialized with Z.Č. nor were they in the same unit, that the Prosecution rather imprecisely indicated the date of perpetration of the offense whereas the Defense precisely demonstrated the Defendant's presence in the unit at the time the offense was perpetrated, the Court concludes that the Prosecution did not prove beyond a reasonable doubt that the Defendant committed the offenses described in detail in all Counts of the Indictment. It should also be noted that Witness S4's testimony has seriously challenged all the Prosecution contentions because this witness adamantly claimed that none of the aggrieved witnesses from the area of P. who gave their statements to Witness S4 mentioned the Defendant as the perpetrator of the offenses. On the contrary, the witness mentioned the Defendant in a positive context, quite different from the one portrayed in the Indictment. And, finally, Witness S3 was imprecise and unconvincing on the issue of identification of the Defendant, stating, among other things, that she may have been raped by the Defendant or his brother and that it was all the same to her back then. While the Panel fully understands Witness S3 in light of the traumas that she had experienced, the Court finds her testimony unacceptable in relation to the

identification of the Defendant. Under such circumstances, and in the absence of other evidence and factors, the Court acquitted the Defendant pursuant to Article 284(c) of the CPC of BiH due to lack of evidence.

150. All the facts detrimental (in peius) to a defendant must be proved with certainty; otherwise, they are regarded as nonexistent. In contrast, all the facts favoring (in favorem) a defendant exist even if they are established with probability. If dilemmas are not solved following a thorough evaluation of evidence “individually and in correspondence with other evidence”, then, according to Article 3(1) of the CPC of BiH “a person shall be considered innocent of a crime until his/her guilt has been established by a final verdict”. Paragraph 2 of the same Article introduces the principle of in dubio pro reo, according to which “a doubt with respect to the existence of facts constituting elements of a criminal offense on which the application of certain provisions of criminal legislation depends shall be decided by the Court verdict in the manner more favorable for the accused”. In a situation with a dilemma over some legally relevant facts or elements of the offense a defendant is charged with, this principle implies the application of not only a more lenient sentence but also an acquittal. Moreover, Article 284(c) of the CPC of BiH provides that “the Court shall pronounce the verdict acquitting the accused of the charges if it is not proved that the accused committed the criminal offense with which he is charged”.

151. As the Prosecution did not prove beyond a reasonable doubt that the Defendant D.D. perpetrated the criminal offense in question, the Panel, guided by the aforementioned statutory provisions and principles, decided to acquit the Defendant D.D. of the charges due to lack of evidence.

IV. DECISION ON COSTS OF THE CRIMINAL PROCEEDINGS AND CLAIMS UNDER PROPERTY LAW

152. Pursuant to Article 189(1) of the CPC of BiH, the Defendant D.D. is relieved of the duty to reimburse costs of the criminal proceedings referred to in Article 185(2)(a) through (f) of the CPC of BiH, and the costs and the necessary expenditures of the Defendant and the necessary expenditures and remuneration of Defense Counsel shall be paid from budget appropriations of the Court.

153. Claims under property law – Having deliberated on the aggrieved parties’ claims under property law, the Court, pursuant to Article 198(3) of the CPC of BiH, instructed O.K., S.K., Đ.K., Đ.R., Z.R., E.K., Đ.Š., Z.R., Z.Z., F.K., R.Z., V.K., Z.Š. and protected witnesses “S1”, “S2” and “S3” to pursue their claims under property law in a civil action.

Elma Karović
MINUTES-TAKER

/signed and stamped/
Jasmina Kosović
PRESIDING JUDGE

LEGAL REMEDY: An appeal from this Verdict may be filed with the Appellate Panel of the Court of BiH, within fifteen (15) days after service of the written Verdict.

V. ANNEX 1 – LIST OF PROSECUTION EVIDENCE

| <u>No.</u> | <u>Exhibit</u> |
|------------|--|
| T1 | Photo documentation no. 17-02/8-04-1-26/09 compiled on 29 October 2009 – Crime Scene Identification by Witness O.K. in Case No. KT-RZ-176/06 |
| T2 | Prosecutor's Office of Bosnia and Herzegovina Record of Interview of Witness O.K., No. KT-RZ-176/06 dated 2 June 2009 |
| T3 | Photo documentation no. 17-02/8-04-1-28/09 compiled on 29 October 2009 – Crime Scene Identification by Witness Z.R. in Case No. KT-RZ-176/06 |
| T4 | Prosecutor's Office of Bosnia and Herzegovina Record of Interview of Witness S.K., No. KT-RZ-176/06 dated 5 May 2009 |
| T5 | Photodocumentation no. 17-02/8-04-1-25/09 compiled on 29 October 2009 – Crime Scene Identification by Witness S.K. in Case No. KT-RZ-176/06 |
| T6 | Prosecutor's Office of Bosnia and Herzegovina Record of Interview of Witness Z.R., No. KT-Rz-176/06 dated 27 August 2009 |
| T7 | Photo documentation no. 17-02/8-04-1-24/09 compiled on 30 October 2009 – Crime Scene Identification by Witness Z.R. in Case No. KT-RZ-176/06 |
| T8 | Prosecutor's Office Record of Interview of Witness E.K., No. KT-RZ-176/06 dated 5 May 2009 |
| T9 | Photo documentation no. 17-02/8-04-1-24/09 compiled on 29 October 2009 – Crime Scene Identification by Witness E.K. in Case No. KT-RZ-176/06; |
| T10 | Confidential exhibit |
| T11 | Decision Declaring an Imminent Threat of War entered into force at the moment of its adoption "forthwith" and was published in the <i>Official Gazette of RBiH</i> , No. 1/92 dated 9 April 1992 |
| T12 | Presidency of the Republic of Bosnia and Herzegovina Decision Declaring a State of War published in the <i>Official Gazette of RBiH</i> No. 7/92 dated 20 June 1992 |
| T13 | Presidency of the Republic of Bosnia and Herzegovina Decision Abolishing the State of War published in the <i>Official Gazette of RBiH</i> No. 50/95 |
| T14 | Decree Law on the Republic of Bosnia and Herzegovina Armed Forces, published in the <i>Official Gazette of RBiH</i> No. 4/92 dated 20 May 1992 |
| T15 | Decision Forming the Council No. 2/92 dated 8 April 1992, published in the <i>Official Gazette of the Croatian Community of Herceg-Bosna</i> No. 1/92 |
| T16 | Peace Agreement and an Annex thereto in Zagreb between the Council and the Army, entered into force on 25 February 1994 at 12 o'clock (certified photocopy enclosed with the case file of the Court of BiH no. X-KR/05/42) |
| T17 | Certificate on the wounds sustained by D.D. issued by the P. – R. Department of the M. Administration, No. 22-08-41-1-174/04-75 dated 2 November 2004 |
| T18 | Letter from the P. - R. Municipality Service, No. 02/2 – 43-1459/09 dated 15 June 2009 – delivery of information from official records; Decision of the P. – R. Municipality Service, No. 03-43-1507/06 dated 31 January 2007, forwarded by the Service no. 02/2-43-1459/09 dated 15 June 2009 |
| T19 | Certified photocopy of VOB 1 book, unit file VOB 3, parent unit file VOB 1 to the name |

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| | of D.D., with a cover letter from the Ministry, No. 07-03-20/09 dated 14 September 2008 |
| T20 | List of soldiers of the Council R. P. from the J. Sabotage-Reconnaissance Platoon, ICTY numbers 00923139 and 00923140 |
| T21 | Letter from the Command fo the 44th Mountain Brigade of the Army dated 15 August 1993, ICTY number 04035183 |
| T22 | Report by the J. Sabotage Platoon of the Council R. Brigade dated 18 October 1993, ICTY number 01527595 |
| T23 | P. dossier, ICTY numbers 02915257 through 02915266 |
| T24 | Report by the SIS /Security and Information Service/ of the Council R. Brigade P., No. 03-02-79/93 dated 14 July 1993, ICTY number 0420-0097-0098 |
| T25 | Area of responsibility of the Council R. Brigade P., ICTY numbers 02146203 and 02146204 |
| T26 | Situation and Assessment in the HR HB /extension unknown/ by Prof. M.T., No. 03/94-058 dated 28 March 1994, ICTY numbers 02131302 through 02131304 |
| T27 | Official note by the SIS „R.“ Sub-center, Ministry /, No. 02-4/2-7-102/94 dated 22 January 1994, ICTY number 01570224 |
| T28 | Council R.-P. Military Police Report for 16 July 1993, dated 17 July 1993, ICTY number 01548971 |
| T29 | Council R.-P. Military Police Report for 21 July 1993, dated 22 July 1993, ICTY number 01548967 |
| T30 | Council R. Brigade P. SIS Report No. 03-02-83/93 dated 31 July 1993, ICTY numbers 01525297 and 01525298 |
| T31 | Council Northwest H. Operations Zone SIS Class:1-76/93 no. 443/93 dated 15 July 1993, ICTY number 01515379 |
| T32 | Report by the SIS of the HZ HB R. Brigade P. No. 03-02-66/93 dated 27 June 1993, ICTY number 01514134 |
| T33 | Report on the activities of EU observers in the area of R. Municipality, No. 03-02-94/93 dated 21 August 1993, ICTY numbers 01514130 and 01514131 |
| T34 | Report by the Council SIS R. Center No. 02-4/2-7-61/93 dated 10 November 1993, ICTY numbers 01514074 and 10514075 |
| T35 | Report „A“ - Council SIS R. Sub-center No. 02-4/2-7/177/93 dated 12 December 1993, ICTY numbers 01511207 through 01511227 |
| T36 | Official note by the Security Sector of the Council Department of Defense No. 02-4-1-1109/93 dated 13 August 1993, ICTY numbers 01505907 and 01505908 |
| T37 | Council R. Brigade SIS Report No. 03-02-29/93 dated 14 August 1993, ICTY numbers 01505692 and 01505693 |
| T38 | Council R. Brigade SIS Report No. 02-88/93 dated 10 August 1993 |
| T39 | Report on the position of the Muslim people, P. Municipality War Presidency, No. 1-01-114/93 dated 14 August 1993, ICTY number 01034318 |
| T40 | Letter from the J. Office of the International Red Cross no. 1-01-99-4/93 dated 17 August 1993 - Request to save the Muslim population of P. and of the villages in P. Municipality |
| T41 | Certificate issued by the R. Defense Section No. 23-08-34-1-05/02/02-19 dated 28 May 2002 |
| T42 | Certificate issued by the R. Defense Section No. 02-52/95-757 dated 28 November 1995 |
| T43 | Extract from a decision of the Minister No. 02-01-95-1 dated 11 July 1995 |

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| T44 | Certificate attesting to the circumstances surrounding the injuries sustained by D.D., issued by the Ministry, No. 37-04-99-40 dated 1 July 1999 |
| T45 | Certificate issued to D.D. by the Ministry, No. 1421-07/99-135 dated 30 June 1999 |
| T46 | Letter from the Ministry No. 29-26-4/34-1/122-169/03 dated 15 September 2003 |
| T47 | Council military card to the name of D.D. No. 1210/92 dated 21 September 1992 |
| T48 | Military card to the name of D.D. No. 2160 dated 9 March 1994 |
| T49 | Military card to the name of D.D., No. 0050281 |
| T50 | Record of Search of Dwellings, Other Premises and Movable Property, Agency, No. 17-04/2-5-04-2-34/09 dated 20 October 2009 |
| T51 | Receipt on Temporary Seizure of Objects, Agency, No. 17-04/2-5-04-2-2309 dated 20 October 2009 |
| T52 | Death Certificate (Z.K), No. 03/1-12-15-3-03/09 dated 9 January 2009 |
| T53 | Death Certificate (Z.Ć.), No. 1/09 dated 7 January 2009 |
| T54 | Police Certificate (Suspect D.D.), No. 02-02/5-2-12-504/09 dated 29 October 2009 |
| T55 | Photo documentation compiled by Agency, No. 17-13/1-7-04-1-48/09 dated 27 October 2009 - photographs of the house used by D.D. |
| T56 | Photo documentation compiled by Agency, No. 17-02/8-04-1-29/09 dated 30 October 2009 |
| T57 | Final judgment of the ICTY Trial Chamber (IT-96-21 dated 16 November 1998) in <i>Z.D., Z.M., H.D. and E.L.</i> – paras. 186, 187 and 192 |
| T58 | Final judgment of the ICTY Trial Chamber (IT-98-34-A dated 31 March 2003) in <i>M.N. and V.M.</i> , para. 15 fn. 24, paras 17, 177 through 179 |
| T59 | Final judgment of the ICTY Trial Chamber (IT-01-48-T dated 16 November 2005) in <i>S.H.</i> , paras. 162, 163 fns. 524, 525 and 526 |

VI. ANNEX 2 – LIST OF DEFENSE EVIDENCE

| <u>No.</u> | <u>Contents</u> |
|------------|--|
| O1 | Prosecutor's Office Record of Interview of Witness E.K., No. KT-RZ-176/06 dated 5 May 2009 |
| O2 | Record of Examination of Witness E.K. before the J. Branch of the Court of M., No. KI 14/95 dated 21 August 1995 |
| O3 | Record of Interview of Witness E.K., Agency, No. 17-13/3-1-04-2-185/08 dated 15 October 2008 |
| O4 | Prosecutor's Office Record of Interview of Witness S.K., No. KT-RZ-176/06 dated 5 May 2009 |
| O5 | Record of Examination of Witness S.K. before the J. Branch of the Court of M., No. KI 14/95 dated 28 July 1995 |
| O6 | Record of Interview of Witness S.K., Agency, No. 17-13/3-1-04-2-225/08 dated 16 December 2008 |
| O7 | CD with pictures |
| O8 | Photographs taken at I.P.'s funeral on 24 October 1993 |
| O9 | Prosecutor's Office Record of Interview of Witness O.K., No. KT-RZ-176/06 dated 2 June 2009 |
| O10 | Record of Interview of Witness O.K., Agency, No. 17-13/3-1-04-2-222/08 dated 14 December 2008 |
| O11 | Record of Examination of Witness O.K. composed before the J. Branch of the Court of M., No. Ki14/95 dated 21 August 1995 |
| O12 | M.D.3 photograph |
| O13 | Obituary to the name of M.D.3 |
| O14 | Death Certificate (M.D.3) dated 28 October 2009 |
| O15 | Death Certificate (M.D.3) dated 5 February 2010 |
| O16 | M.D.4's photograph |
| O17 | Birth Certificate (M.D.1) dated 5 February 2010 |
| O18 | S.S. photograph |
| O19 | Report by handwriting expert Z.D. dated 12 February 2010 |
| O19-a | List of members of the J. unit |
| O19-a | Unit deployment records for July and August 1993 |
| O-20 | Photograph - D.D.'s photographs |
| O21 | Death Certificate (D.B.) dated 29 October 2009, Death Certificate (I.P.) dated 16 March 2010 |
| O22 | Video cassette – recorded by... |
| O23 | CD - photographs – expulsion of Bosniacs from the village of V. in 1993 – V. |
| O24 | Agency Report on Perpetrated Offense No. 17-13/3-2-04-2-3-372-17-09 dated 16 |

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| | January 2009, enclosed therewith 11 witness interview records, two death certificates and an official note |
| O25 | Record of Interview of Witness Z.K. No. 35/94 dated 7 March 1994 |
| O26 | Three emblems of the Council / Council R. - D.V. "I.P. - I." - J. - Council - R. |
| O27 | Prosecutor's Office Record of Interview of Witness A.G. No. KT-RZ-176/06 dated 4 September 2009 |
| O28 | Photographs - |
| O29 | Record of Interview of Witness S3 No. 08/25/94 dated 11 May 1994 |
| O30 | Record of Interview of Witness S3 No. KT-RZ-176/06 dated 15 September 2009 |
| O31 | Prosecutor's Office Record of Interview of Witness M.Z., No. KT-RZ-176/06 dated 28 September 2009 |
| O32 | Record of Interview of Witness V.K., Agency, No. 17-13/3-1-04-2-04/09 dated 7 January 2009 |
| O33 | Record of Interview of Witness S1 No. KT-RZ-176/06 dated 19 May 2009 |
| O34 | Two sheets of paper containing photographs |
| O35 | Certificate issued by P. Secondary School No. 149/10 dated 12 March 2010 to the name of D.D. |
| O36 | Confidential exhibit - Certificate issued by P. Secondary School No. 243/10 dated 17 May 2010 to the names of [REDACTED], Š.M. and S1's brother |
| O37 | Birth Certificate No. 456/2010 dated 12 May 2010 to the name of S1's brother |
| O38 | Northwest H. Operations Zone, T. Military District |
| O39 | List of persons wanted by the Court of M. in connection with the criminal offenses referred to in Article 141 of the adopted CC of SFRY |
| O40 | List of war criminals and criminals in Muslim military units in northern H. |
| O41 | Official note by the Security Sector of the Council Department of Defense, no. 02-4-1-1109/93 dated 13 August 1993 |
| O42 | Military Security Sector of the 6th Corps Command K., dated 15 August 1993 |
| O43 | List of soldiers of the Council R. P. J. |
| O44 | Report by the Hague Wartime Investigation Commission relative to events in the areas of D. and L. in 1993 - rapes of women and girls from the village of L. |
| O45 | Report by the Hague Wartime Investigation Commission relative to events in the areas of D. and L. in 1993 - rape of Z.K. daughter-in-law |
| O46 | Report by the Hague Wartime Investigation Commission relative to events in the areas of D. and L. in 1993 - inflicting serious injuries on Z.K. |
| O47 | List of persons in attendance at the main trial on 18 February 2010 |
| O48 | A.P. statement |
| O49 | Notification by the "P." Independent Battalion dated 4 August 1993, No. 1-01-385 -1/93 |
| O50 | Council R. Brigade Order No. 01-1528/93 dated 13 August 1993 |
| O51 | Council R. Brigade Order No. 01-1673/93 dated 26 August 1993 |
| O52 | Council R. Brigade Order No. 01-1652/93 dated 24 August 1993 |
| O53 | Record of Interview of Witness M.K., No. KT-RZ-176/06 dated 18 June 2010 |
| O54 | Record of Interview of Witness D.T., No. KT-RZ-176/06 dated 28 June 2010 |
| O55 | Official Note No. 17-13/3-2-04-2-253/08 dated 14 November 2008 |
| O56 | Letter from M. Regional Office of Agency, No. 17-13/3-2-04-2-372-7/08 dated 10 |

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| | November 2008 – Request to scan file-cards of old ID cards for information purposes dated 10 November 2008 |
| O57 | Crime intelligence report dated 7 August 2008 |
| O58 | File-card of a new/replaced ID card to the name of M.D.1 |
| O59 | Photocopies of five photographs |
| O60 | Book – extracts from the book “Prozor - 1992/1995, a chronicle of crimes”, authored by Mesud Hero, p. 268, AD17 and p. 292, AD47 |
| O61 | Medical expert report by mr. sc. D.K., dated 16 October 2010 |
| O62 | Photograph/picture of D.D. and M.D.1 picture |
| O63 | Letter from the A. W.V.W. dated 10 November 2010 |
| O64 | Witness S4’s testimony before the ICTY - confidential exhibit |

VII. ANNEX 3 – LIST OF COURT EVIDENCE

| <u>No.</u> | <u>Contents</u> |
|------------|---|
| S1 | Information about a victim and a witness, A. W.V. W. dated 22 July 2008, E.K. |
| S2 | A. W.V. W file dated 1 February 2011 |

I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian language.
Sarajevo, 14 July 2011.

E.Š.

Certified Court Interpreter For The English Language