

Bosna i Hercegovina

Босна и Херцеговина



**Sud Bosne i Hercegovine**  
**Суд Босне и Херцеговине**  
**The Court of Bosnia and Herzegovina**

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**Case number:** S 11 K 003379 09 Krl  
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**Before the Trial Panel composed of:** Judge Ljubomir Kitić, Presiding Judge  
Judge Šaban Maksumić  
Judge Vesna Jesenković

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

**vs.**

**MOMIR PELEMIŠ**

**and**

**SLAVKO PERIĆ**

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**VERDICT**

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**Number: S 11 K 003379 09 Krl**

**Sarajevo, 31 October 2011**

**IN THE NAME OF BOSNIA AND HERZEGOVINA!**

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Trial Panel composed of Judge Ljubomir Kitić as the Presiding Judge, Judge Šaban Maksumić, and Judge Vesna Jesenković, as Members of the Panel, with the participation of Legal Adviser Sabina Hota Ćatović as the Record-taker, in the criminal case against the accused Momir Pelemiš and Slavko Perić, for the criminal offense of Genocide in violation of Article 171(a), (b), (c) and (d) in conjunction with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina (CC of BiH), deciding upon the amended Indictment of the Prosecutor's Office of BiH number: KT-RZ-74/08 of 24 June 2011, following the main trial which was partly closed to the public, in the presence of the International Prosecutor of the Prosecutor's Office of BiH, Erik Larson, the Accused Momir Pelemiš and his Defense Counsels Miloš Perić and Ratko Jovičić, attorneys from Zvornik, and the Accused Slavko Perić and his Defense Counsels Miodrag Stojanović and Dragoslav Perić, attorneys from Bijeljina, on 31 October 2011 rendered and publicly announced the following:

**VERDICT**

**THE ACCUSED:**

- (1) **MOMIR PELEMIŠ**, son of Živojin, born on 26 September 1949, in Tuzla in the Municipality of Tuzla, JMBG ..., married, citizen of ..., professor, ... by ethnicity, prior military service in the JNA in Ljubljana in 1975 - 1976, Reserve Officer with the rank of Major, no decorations awarded, registered address at ..., no previous convictions, no criminal proceedings pending against him, currently in custody upon the Decision of the Court of BiH, number: X-KRN 07/602 of 6 November 2008; and
- (2) **SLAVKO PERIĆ**, a.k.a. "**Mudonja**", son of Veljko, born on 24 April 1967, in Donja Pilica in the Municipality of Zvornik, JMBG ..., married, graduate of high commercial school, ... by ethnicity, citizen of ..., prior military service in JNA in Belgrade 1987 with the rank of Corporal, no decorations awarded, registered address at ..., previously convicted for ... and ..., Basic Court in Zvornik, case no. K.136/02 dated 28 January 2004, no criminal proceedings pending against him, currently in custody upon the Decision of the Court of BiH, number: X-KRN 07/602 of 6 November 2008,

## ARE FOUND GUILTY

### Inasmuch as

Between 10 July and 1 November 1995, during a widespread and systematic attack conducted by the VRS and MUP RS against members of the Bosniak population in the UN safe area of Srebrenica and in furtherance of a state and organizational policy, which included the operation of permanent and forcible transfer of the entire Bosniak civilian population, capture, detention and summary execution of the able-bodied Bosniak men and boys from the Srebrenica enclave, and the operation of their burial, recovery and reburial at other locations so as to conceal evidence, wherein the group of Bosniak people was destroyed, and the entire Bosniak civilian population of up to 40,000 Bosniak civilians had been removed from Srebrenica enclave and over 7,000 Bosniak men and boys were summarily executed, buried and reburied,

1. the **Accused MOMIR PELEMIŠ**, as Deputy Commander of the 1<sup>st</sup> Battalion, of the 1<sup>st</sup> Zvornik Infantry Brigade (1<sup>st</sup> Battalion), and from 9 to 21 July 1995, the Acting Commander of the 1<sup>st</sup> Battalion, and the **Accused SLAVKO PERIĆ**, as Assistant Commander for Security and Intelligence of the 1<sup>st</sup> Battalion, from 14 to 17 July 1995, knowingly aided and abetted the members of the joint criminal enterprise (JCE), including Colonel Ljubiša Beara, Chief of Security and Intelligence Administration, Main Staff of the VRS, Lieutenant Colonel Vujadin Popović, Chief of Security, Drina Corps, VRS, Lieutenant Drago Nikolić, Assistant Commander for Security, Zvornik Brigade, VRS, having the common plan and purpose to capture, detain and summarily execute and bury the able-bodied Bosniak men from Srebrenica enclave and thereby destroy them as the group, and because:

- a) On 14 July 1995 at the Command of the 1<sup>st</sup> Battalion, Zvornik Brigade, at Lokanj, Zvornik Municipality, after both accused were informed of the imminent arrival in Pilica, Zvornik Municipality, of Bosniak male detainees from the Srebrenica enclave, Momir Pelemiš ordered the redeployment of up to thirty 1<sup>st</sup> Battalion soldiers to the Kula School in Pilica (now known as the *Nikola Tesla* school) to guard the detainees and to secure the area of the Kula School, and for Slavko Perić to supervise, control and coordinate the detention of the Bosniak detainees in the school; wherein by the evening of 14 July 1995, up to 1,200 Bosniak detainees, who had been transported by bus to the Kula School from various temporary detention areas and facilities in the Bratunac Municipality, were being held in buses parked alongside the Kula School, in the school gymnasium and in the classrooms on the first floor of the school, and guarded by unidentified VRS soldiers including those from the 1<sup>st</sup> Battalion who were under the command of Momir Pelemiš and under the control, direction and supervision of Slavko Perić who was at and around the Kula School, during which time, up until 15 July and the time of departure for the Pilica Dom (Cultural Centre) the detainees who were overnight being held in buses parked next to the school, that is, until 16 July and departure for the Branjevo Military Farm, at least 500 detainees who were detained in the gymnasium and the classrooms on the first floor of the school were provided with inadequate supplies of food, no sanitation facilities, insufficient and unsuitable accommodation, beaten, shot at from automatic weapons, with the intention

to cause terror and serious mental and physical harm, and at least two (unidentified) Bosniak detainees were shot and killed by (unidentified) VRS soldiers and later disposed of in an unmarked grave at the Branjevo Military Farm; on 16 July 1995, under the command of Momir Pelemiš and acting under the instructions of and directly tasked by senior VRS officers present at the school, Slavko Perić organized, supervised and instructed 1<sup>st</sup> Battalion soldiers to blindfold the Bosniak detainees, tie ligatures around the Bosniak detainees' hands, then remove the Bosniak detainees from the school, load them on to buses, escort and secure these buses that traveled to the Branjevo Farm, whereupon the Bosniak detainees were unloaded from the buses, lined up and summarily executed by automatic weapon fire by other VRS soldiers including those from the VRS 10<sup>th</sup> Sabotage Detachment; so that, by the end of the day, all detainees transported from the Kula school, at least 500 of them, were killed at the Branjevo Farm, and soon thereafter the executed Bosniak detainees were buried in an unregistered and unmarked mass grave at the Branjevo Farm by other VRS soldiers including those from the Engineering Company, Zvornik Brigade, in circumstances where no steps were taken to determine the identity of the executed Bosniaks and no record kept of their detention or death; no later than 15 July in the afternoon did Momir Pelemiš and Slavko Perić know that the detainees would be executed, for which purpose they requested fuel, ammunition, machinery and men,

- b) On 15 July 1995 and 16 July 1995, at the Pilica Dom (Cultural Centre), Pilica, Zvornik Municipality, with the knowledge of and under the command of Momir Pelemiš, Slavko Perić deployed and instructed 1<sup>st</sup> Battalion soldiers to the Pilica Dom to guard and secure the area surrounding the Dom and the Dom building, in which around 500 to 600 Bosniak detainees were being guarded and detained by other VRS soldiers as well; during which time, within the knowledge and consent of Momir Pelemiš and Slavko Perić, the Bosniak detainees were held in inhumane conditions such that they were not provided with any or adequate supplies of food and water, sanitation facilities, or sanitary accommodation and they were forced into an area that was insufficient given the number of detainees, resulting in a grave overcrowding and thereby causing them serious mental and physical harm; no later than 15 July in the afternoon did both of them know that the detainees would be executed, for which purpose the 1<sup>st</sup> Battalion requested fuel, ammunition, machinery and men from the Zvornik Brigade Command and, on 16 July 1995, the Bosniak detainees were summarily executed inside the Dom building and in its immediate surroundings by (unidentified) VRS soldiers using automatic weapons and hand-grenades; after which, with the knowledge and under the command of Momir Pelemiš, Slavko Perić ensured the presence of and deployed 1<sup>st</sup> Battalion soldiers to the Pilica Dom to secure the premises and to prevent civilians from entering the building full of the deceased Bosniak detainees; and then, on 17 July 1995, he instructed 1<sup>st</sup> Battalion soldiers to carry out the removal and transportation of the bodies of the deceased Bosniak detainees from the Dom building to the Branjevo Military Farm during which time three (unidentified) Bosniak male survivors of the mass summary execution were found inside the Pilica Dom and were immediately summarily executed by VRS soldiers using automatic weapons; thereafter, on the same day, the



executed Bosniak detainees were buried in an unregistered and unmarked mass grave at the Branjevo Military Farm by VRS soldiers including those from the Engineering Company, Zvornik Brigade, in circumstances where no steps were taken to determine the identification of the executed Bosniaks nor was a record kept of their detention or death,

**Therefore**, they aided and abetted the infliction of serious bodily or mental harm and killing of members of a group of Bosniak people, thus assisting in its partial destruction as a national, ethnical or religious group,

**By doing so**

they committed the criminal offense of **Genocide** in violation of Article 171(a) and (b) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) of the same Code,

Thus, for the referenced criminal offense, pursuant to Article 285 of the Criminal Procedure Code of Bosnia and Herzegovina, and by applying Articles 39, 42 and 48 of the Criminal Code of Bosnia and Herzegovina, the Court

## **SENTENCES**

**1. the Accused Momir Pelemiš TO THE PRISON SENTENCE OF SIXTEEN (16) YEARS**

**2. the Accused Slavko Perić TO THE PRISON SENTENCE OF NINETEEN (19) YEARS**

### **II**

Pursuant to Article 56 of the CC of BiH, the time the accused spent in custody from 5 November 2008 onwards shall be credited towards the sentence of imprisonment.

### **III**

Pursuant to Article 188(4) of the CPC of BiH, the accused shall be relieved of the duty to reimburse the costs of criminal proceedings, which shall be paid from the Court budgetary appropriations.

### **IV**

Pursuant to Article 198(2) of the CPC of BiH, all of the aggrieved parties may take civil action to pursue their claim under property law.

## **R e a s o n i n g**

## CRIMINAL PROCEEDINGS

### A. CHARGES AND THE MAIN TRIAL

1. By the Indictment number KT-RZ-47/09 of 20 November 2008, confirmed on 28 November 2008, the Prosecutor's Office of Bosnia and Herzegovina (the Prosecution) charged Momir Pelemiš and Slavko Perić with having committed the criminal offense of Genocide in violation of Article 171(a),(b),(c) and (d) of the CC of BiH, as read with Article 180(1) and Article 29 of the same Code. On 24 June 2011, the Prosecutor's Office filed an amended and specified Indictment pursuant to Article 35(2)(i) and Article 275 in conjunction with Article 227 of the CPC of BiH.

2. The Indictment alleges that the Accused Momir Pelemiš, in his capacity as Deputy Commander, that is, acting Commander of the 1<sup>st</sup> Battalion of the Zvornik Brigade of the Army of Republika Srpska (VRS), and Slavko Perić, in his capacity as Deputy Commander for Security and Intelligence of the 1<sup>st</sup> Battalion of the Zvornik Brigade of VRS, as knowing participants in a joint criminal enterprise with other members of the VRS and the Ministry of the Interior of RS (RS MUP), participated in **(1)** causing serious mental and physical harm to about 1200 Bosniak detainees who were captured after the fall of the UN safe area of Srebrenica and who were being held on the buses parked next to the primary school Kula in Zvornik (the Kula school) and in the school from 14 July 1995, **(2)** the killings of these detainees who were transported by buses from the Kula school and executed at the Branjevo Military Farm on 16 July 1995, **(3)** causing serious mental and physical harm to about 500 to 600 Bosniak detainees who were held in the Pilica Dom on 15 and 16 July 1995, and **(4)** the killings of these detainees inside the Dom building and in its immediate surroundings on 16 July 1995.

3. On 3 March 2009, prior to the commencement of the main trial, the Defense for the First Accused filed a petition for disqualification of Judge Šaban Maksumić, the Panel member, for reasons stipulated in Article 29(1)(a) and (f) of the CPC of BiH. The Defense argued that Judge Maksumić had been aggrieved by the criminal offense due to being a Bosniak and therefore a member of the aggrieved national, religious or ethnic group, considering that the Indictment specifies that the national or religious group of Bosniaks was the object of the attack. Besides, the Defense submits that there exist circumstances that raise a reasonable doubt about impartiality due to the fact that, at the time of the alleged perpetration of the relevant offense, Judge Maksumić was a judge of the Military District Court in Sarajevo and a member of the judicial body of the Army of BiH, thus he was a member of the adverse party to the armed conflict relative to the accused. By the Decision of the Plenum of the Court, the

petition for disqualification was refused as ungrounded since it was found that there existed no reasons to doubt the Panel member's impartiality in this case.<sup>1</sup>

4. At the pre-trial hearing held on 23 February 2009 pursuant to Article 233.a of the CPC of BiH, issues relevant to the main trial were considered.

5. The main trial commenced on 10 March 2009 before the Panel comprising the international Judge Snezhana Botusharova. The mandate of Judge Botusharova ended during the proceedings so Judge Vesna Jesenković was appointed a substitute Panel member. Due to the substituted judge of the Trial Panel, the main trial was recommenced on 9 July 2009.

6. Pursuant to Article 251(2) of the CPC of BiH, considering that the adjournment lasted longer than thirty days, the main trial also recommenced at the hearings held on 12 August 2009, 14 December 2009, 22 January 2010, 24 August 2010 and 6 September 2011.

## B. PROCEDURAL DECISIONS

### (a) Decision on exclusion of the public from a part of the trial

7. Pursuant to Article 235 of the CPC of BiH, the public was excluded during the main trial on several occasions in the interest of protected witnesses and for a short period of time during which the Presiding Judge was verifying personal details of the protected witnesses and where a motion was filed to have protective measures or additional protective measures granted to a witness.

### (b) Protected witnesses

8. Upon motion by the Prosecution, the Court granted the witnesses under the pseudonyms P-6 and P-18<sup>2</sup> the protection of their personal details and prohibited the disclosure or broadcasting of a photographic or video recording of images of the witnesses through the electronic or print media or otherwise<sup>3</sup>. Having applied Article 3<sup>4</sup> of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, the Court found that P-6 was a witness under threat and vulnerable witness, and that P-18 was a witness under threat, so

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<sup>1</sup> Decision of the Plenum of the Court of BiH, number: Su-01-115/09 of 5 March 2009.

<sup>2</sup> Decision of the Court of BiH, number: X-KR-08/602 of 14 November 2008.

<sup>3</sup> Article 13 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses.

<sup>4</sup> Article 3(1) of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses: "**A witness under threat** is a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony or a witness who has reasonable grounds to fear that such a danger is likely to result from his testimony. (2) **A vulnerable witness** is a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive.....".

the protective measures were therefore granted to them with their consent pursuant to Article 13(1) of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses.

9. Apart from the foregoing measures, the witnesses under the pseudonyms P-6, P-23, P-25, P-26<sup>5</sup> and witness Q<sup>6</sup> were also granted additional measures requiring that they testify in a courtroom from which the public would be excluded, however, the public might be listening to the testimony from a separate room without the possibility to see the witness. These witnesses testified before the ICTY under the same protective measures for it was determined that those were witnesses “under threat or risk”. Therefore, the protective measures granted to them remained effective in these proceedings as well, in accordance with the obligation set out in Rule 75(F)(i) of the *Rules of Procedure and Evidence of ICTY* (Rules of Procedure) which provides that “once protective measures have been ordered in any proceedings before the Tribunal, they shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule”.

10. The Defense for the First Accused objected to ordering additional protective measures for the witness P-6, arguing that the requirements for their imposition had not been satisfied.<sup>7</sup> The attorney noted that the witness had testified under the protective measures on three occasions, and that his last testifying before the ICTY was public and without any protective measure. Considering that this witness survived a mass execution, the Court found him to be under threat because he justifiably believed that there existed a reasonable ground to fear that his testimony would likely endanger him or members of his family. Namely, the witness stated that it was a different situation where he testified in The Hague, 1500 km away from his place of residence. He believes that, should his personal details and image be disclosed, he could face various forms of disturbance once he is back to the place from where he came. The Court also found this witness to be under threat and considerably traumatized by the circumstances surrounding the criminal offense, that is, to be a vulnerable witness<sup>8</sup>, so it therefore accepted the witness’s reasons in their entirety, and evaluated that they justified keeping in force the measures imposed on him in the proceedings before the ICTY on two occasions, notwithstanding the fact that on the third occasion, which was also the last, he testified before the ICTY without any protective measure.

11. At the main trial held on 17 June 2011, upon the Defense’s motion, the Court granted protective measures to the witness under the pseudonym O-1, that is, protection of his personal details and testifying from another room, with his image and voice distorted for the public. This witness was granted the protective measures identical to those imposed on him in the proceedings before the ICTY, pursuant to Rule 75(F)(i) of the *Rules of Procedure*.

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<sup>5</sup> Decision of the Court of BiH, number: X-KR-08/602 of 29 October 2009.

<sup>6</sup> Decision of the Court of BiH, number: X-KR-08/602 of 12 January 2010.

<sup>7</sup> Submission of attorney Miloš Perić of 26 February 2009.

<sup>8</sup> Article 3(1) and (2) of the Law on Protection of witnesses under Threat and Vulnerable Witnesses.

**(c) Decision to partially grant Prosecution Motion to admit facts adjudicated by the ICTY**

12. By its decision of 30 October 2009,<sup>9</sup> the Court granted in part the motion by the Prosecution to admit facts adjudicated by the ICTY Trial Chamber in *Prosecutor versus Radoslav Krstić*<sup>10</sup> (the Krstić case) and *Prosecutor versus Blagojević and Jokić*<sup>11</sup> (the Blagojević case).

13. The admitted facts are stated in **Annex 1** to the Verdict, which constitutes its integral part. Specifically, the Court acted under Article 4 of the *Law on Transfer of Cases*<sup>12</sup>, in conjunction with Rule 94(B) of the *Rules of Procedure* which provides that: at the request of a party or *proprio motu*, a Trial Chamber may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings, if certain criteria for the admittance of these facts have been satisfied.

14. The Court admitted the total of 204 proposed facts. In deciding on the admission of facts, the Court was mindful of whether they have satisfied certain criteria established by the jurisprudence of the Court of BiH and ICTY, that is, if the fact is distinct, concrete and identifiable, relevant to the proceedings, forms part of a judgment which has either not been appealed or has been finally settled on appeal, falls within issues which are not in dispute during the appeal, must not arise out of a plea agreement or a stipulation of fact, is not the subject of (reasonable) dispute between the Parties in the present case, must not relate to the acts, conduct, or mental state of the Accused, restricted to factual findings and does not include legal characterizations.

15. The admission of facts as established constituted a legal presumption of validity of a specific fact, that is, a soundly based presumption of accuracy of the fact has been established and it therefore should not be subject of re-establishment at the trial, unless the other party presents new evidence and successfully contests and denies such a fact at the trial. Pursuant to Article 6(2) of the CPC of BiH, the Defense was provided with the opportunity to present evidence contesting the facts adjudicated in the relevant proceedings before the ICTY. Thus the Court did not deprive the defence of the possibility to contest and raise doubt about any fact established by the Decision of 30 October 2008. The defence made use of the possibility and presented evidence contesting some of the admitted facts during the proceedings.

16. The Defense for the accused already raised certain objections while commenting on the Prosecution's motion to admit the facts. The Defense for the First Accused challenged the

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<sup>9</sup> Also see the Decision on corrigendum to the Decision concerning the date of 6 April 2011.

<sup>10</sup> *Prosecutor versus Radoslav Krstić*, case number: IT-98-33-T, ICTY Trial Chamber, Judgement of 2 August 2001 and the Appeals Judgement of 19 April 2004;

<sup>11</sup> *Prosecutor versus Blagojević and Jokić*, case number: IT-02-60-T, ICTY Trial Chamber, Judgement of 17 January 2005 and the Appeals Chamber of 19 May 2007;

<sup>12</sup> *Law on the transfer of cases from the ICTY to the Prosecutor's Office of BiH and the use of evidence collected by the ICTY in proceedings before the courts in BiH.*

justifiability and legal grounds of the Prosecutor's motion and submitted that it was premature to admit any fact from those judgments prior to completion of the proceedings before the ICTY in *Popović and others*, in which General Vinko Pandurević was also accused, having been a direct superior to the Accused Pelemiš in relation to the same events and the same criminal offense, otherwise the principle of a fair trial would be violated. Regardless of the created presumption of validity of these facts, the Court did not consider them to be binding and did not ground the Verdict solely on these established facts. The Court considered the facts in the light of all pieces of evidence presented by the parties during the proceedings, thus evaluating all pieces of evidence in accordance with Article 15 of the CPC of BiH, and it afterwards rendered a final decision on their relevance for the referenced case.<sup>13</sup> While acting so, the Court did not violate the presumption of innocence of the accused as guaranteed by Article 3(1) of the CPC of BiH and Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

17. The Court refused a certain number of facts from the Prosecutor's motion having found that they were irrelevant to this specific case. As already stated, the Defense for the accused presented evidence by which they contested some of the admitted facts, and the Court shall provide its final conclusion on the contested facts in the section reasoning the Verdict.

(d) **Evidence presented and adduced under Article 273(2) of the CPC of BiH and in accordance with the Law on the Transfer of Cases**

18. At the 19 April 2010 hearing, the Court refused the motion by the Prosecution to have a statement of the witness P-17 read out at the main trial, considering that he, due to his old age and illness, could not appear and testify directly before the Court. The Court found that the requirements of Article 273(2) of the CPC of BiH have not been satisfied because the Prosecution had failed to present evidence based on which the Court could evaluate the witness's being actually unable to appear. It was therefore decided for the witness to be re-summoned. The Prosecution then abandoned the motion to examine the witness.

19. Pursuant to the same provision, upon motion by the Defense for the First Accused, the Court rendered a decision to have witness Dragan Stankić's statement made to the Prosecutor's Office of Bosnia and Herzegovina on 6 May 2008 read and used as evidence at the main trial<sup>14</sup>, because it was considerably difficult, that is, impossible for him to appear before the Court due to his health problems, which the Court found to be proved after reviewing the medical records tendered by the Defense and the witness himself. The Prosecution consented to the Defense's motion.

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<sup>13</sup> Only the facts that were stated and used in the Reasoning of the Verdict have been accepted by the Court as being finally proven and relevant.

<sup>14</sup> **O-I-36-** Witness Examination Record for Dragan Stankić – Prosecutor's Office of BiH, KTN RZ-02/08 of 6 May 2008, containing the transcript of the examination audio recording as its integral part;

20. The Court granted the Prosecution motion to tender into the case file at the main trial the transcripts containing the evidence and testimony of witnesses Miroslav Deronjić<sup>15</sup>, Čamila Omanović<sup>16</sup> and Savo Popadić<sup>17</sup>, considering that those witnesses have passed away. The Defense objected, referring to a violated right to cross examination and because it believed that their testimony was not relevant to the case, that is, that the Prosecution proposed that other witnesses should be examined about the same circumstances.<sup>18</sup> Furthermore, the Defense objected because the transcripts of the testimony of Miroslav Deronjić and Čamila Omanović did not satisfy the formal requirements for admissibility as referred to in Article 273 of the CPC of BiH, considering that they were not obtained during the investigative phase. The Court dismissed these objections and accepted the transcripts as evidence, finding them to be of importance for the matters at issue, pursuant to Articles 4 and 5 of the *Law on Transfer of Cases*, in relation with Article 273 of the CPC of BiH.

21. Pursuant to Article 5 of the Law on the Transfer of Cases, the Court granted the motion by the Prosecution and tendered into the case file the transcripts containing the testimony of witnesses Van Duin Landert<sup>19</sup> and Dražen Erdemović<sup>20</sup>. The Defense objected to the tendering of these transcripts into the case file and requested the witnesses to be heard and cross examined. However, the Court accepted the reasoning by the Prosecution<sup>21</sup> according to which the referenced persons were unable to appear before the Court for important reasons, considering that Van Duin Landert was not available for health reasons and Dražen Erdemović due to being encompassed by the witness transfer program of the ICTY Witness Support Unit and refusing any communication. Besides, the Court inferred that the testimony of these witnesses was of importance for the case concerned.

22. On the same ground, the Court accepted the Prosecution motion to aduce into the case file the transcripts containing the examinations and testimony about the facts and admission of guilt by Momir Nikolić<sup>22</sup> and Dragan Obrenović<sup>23</sup>. The Defense objected<sup>24</sup> to this motion by the Prosecution and moved the Court to refuse the Prosecutor's motion unless the Defense would

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<sup>15</sup> **T-125-** Transcript of the testimony of Miroslav Deronjić in *Prosecutor vs. Momir Nikolić* (attachment: Death Certificate);

<sup>16</sup> **T-127-** Transcript of the testimony of Čamila Omanović of 22 March 2000 in *Prosecutor vs. General Krstić* (attachment: Death Certificate for Čamila Omanović);

<sup>17</sup> **T-128-** Witness Examination Record for Savo Popadić, taken by SIPA on 19 September 2007;

<sup>18</sup> Submission of the Defense for the First Accused of 24 December 2009 and the Second Accused of 22 December 2009;

<sup>19</sup> **T-129-** Transcript of the testimony of Van Duin Landert before the ICTY of 27 September 2006, 28 September 2006 and 29 September 2006 in *Prosecutor vs. Vujadin Popović and others*. IT-05-88 (*Popović and others*);

<sup>20</sup> **T-126-** Transcript of the testimony of Dražen Erdemović of 4 May 2007 in the ICTY case *Popović and others*;

<sup>21</sup> The Prosecution Trial Motion No. 8 of 16 December 2009;

<sup>22</sup> **T-142-** Transcript of the testimony of witness Momir Nikolić in a case tried before the ICTY, number: IT-02-60-T, *Prosecutor vs. Vidoje Blagojević and Dragiša Jokić*, who testified from 19 September to 29 September 2003;

<sup>23</sup> **T-141-** Transcript of the testimony of witness Dragan Obrenović in a case tried before the ICTY, number: IT-02-60-T, *Prosecutor vs. Vidoje Blagojević and Dragiša Jokić*, who testified from 1 October to 9 October 2003;

<sup>24</sup> Defense's Submission of 22 June 2010 and 23 June 2010;

be provided with the opportunity to cross examine the witnesses. The Court summoned the witnesses for cross examination; however, they refused to respond to the summons and the Court could not apply the legally prescribed sanctions against the witnesses considering that they were serving their prison sentences in other countries and under other jurisdictions. Hence the Defense did not have the opportunity to cross examine the witnesses Van Duin Landert, Dražen Erdemović, Momir Nikolić and Dragan Obrenović, and the Court tendered their statements into the case file as documentary evidence. The Court did not ground the Verdict on this evidence to a decisive extent though, but it rather used it as corroborative or back-up evidence. The Court is therefore satisfied that the accused persons' right to a defense has not been violated.

23. Pursuant to Article 5 of the *Law on the Transfer of Cases*, upon the Prosecutor's motion, the transcript of the testimony of Dean Manning<sup>25</sup>, who was crossed examined through a video link by the Defense at the trial of 19 April 2010, and the accompanying evidence, were also tendered into the case file, along with the transcript of the testimony of Vinko Pandurević<sup>26</sup> (direct and cross examination) which was tendered into evidence upon the motion by the Defense for the First Accused, to which the Prosecution also consented.

**(e) Presentation to the witness and the introduction of the witness examination testimony and transcripts from other cases tried before the ICTY and the Court of BiH (Article 273(3) of the CPC of BiH)**

24. During the direct examination of witness Rajko Babić at the hearings held on 28 April 2009 and 29 April 2009, the Prosecution drew the witness's attention to his altered testimony relative to what he stated while testifying before the ICTY in *Popović and others*, which is contained in the transcript<sup>27</sup> of the audio recording of that hearing, and also compared to what he stated in the investigative phase<sup>28</sup> of the same case, and moved the Court to tender the testimony into the case file. The Defense objected to using and tendering it, considering that it was not a *statement given during the investigative phase* in terms of Article 273(1) of the CPC of BiH. The Panel refused the objection and granted the testimony to be tendered, primarily finding that it was a legal evidence pursuant to the provisions of the *Law on the Transfer of Cases* which allows the use of evidence collected by the ICTY, and, furthermore, the Panel found that the presentation and use of the transcripts were required considering the evident discrepancies in the witness's statements. Therefore, for the purpose of a thorough evaluation

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<sup>25</sup> **T-99-** Transcript of the testimony of Dean Manning before ICTY on 10 December 2007, 11 December 2007, and 12 December 2007 in *Popović and others*;

<sup>26</sup> **O-I-41-** CD containing the transcript of the testimonies of Vinko Pandurević of 27, 28 and 29 January 2009, and 2 and 25 February 2009 in the ICTY case number: IT-05-88-T; **O-I-42-** CD containing the transcript of the testimonies of Vinko Pandurevića of 3, 9, 10, 11 and 19 February 2009, ICTY: IT-05-88-T; **O-I-43-** DVD with audio recordings of the testimony of Vinko Pandurević, ICTY: IT-05-88-T; **O-I-48-** CD containing the remaining transcripts of the testimonies of Vinko Pandurević;

<sup>27</sup> **T-15-** Transcript of the testimony of witness Rajko Babić of 18 April 2007 in the ICTY case number: IT-05-88-T *Popović and others*;

<sup>28</sup> **T-16-** Statement witness Rajko Babić made to the ICTY OP on 13 and 14 September 2005;



of the statements and credibility of the witness, it was absolutely justified to use the witness's previous testimony and tender it into the case file, regardless of its not being a statement given during the investigation.

25. The Panel was of the view that the provision of Article 273(1) of the CPC in the cases of Section I for War Crimes of the Court of BiH (wherein one witness testifies on several occasions in various cases about the same criminal event) cannot be restrictively and narrowly construed so as to exclude the possibility of using other statements which the witness did not make during the investigative phase, but which satisfy all formal and legal requirements as the statement given during the investigation does, and even more so, because not only that the witness was instructed of his duty to speak the truth and that false statements constitute a criminal offense, but he also swore an oath (unlike the investigative phase), and the witness, before the Panel composed of three members, Prosecution, defense teams and the public, testified about the things known to him. To that end, the Panel finds that such a testimony of his is even more sound and important than the statement made during the investigation. Therefore, guided by the requirement that the case should be examined thoroughly, it is permitted to use and tender these transcripts, which the Panel only evaluated in the part in which the Prosecution or the Defense drew the witness's attention to the deviation in his present testimony from the previous one, that is, from what he previously stated during his testimony in another case.

26. During the direct examination of the witness Milovan Đokić at the hearing of 1 June 2009, the Prosecution drew the witness's attention to his testimony, which in certain parts differed from the one made in the investigative phase and from what he stated during the direct examination while testifying about the same event in the *Milorad Trbić* case (The Court of BiH, X-KR-07/386), before this Court. To this effect, the witness was presented three statements made during the investigation<sup>29</sup> and the transcript of his testimony in another case<sup>30</sup>, in order to be given the opportunity to explain or deny his previous testimony. The Defense objected to using and tendering the transcript of the testimony, arguing that it was not a *statement given during the investigative phase*, as stipulated in Article 273(1) of the CPC of BiH. The Court refused the objection and, for the reasons detailed in paragraph 25 above, allowed the use of these transcripts and their tendering into the case file.

27. During the direct examination of the witness Cvjetko Stević at the hearing of 24 May 2010, the Prosecutor indicated that the witness had changed his testimony in a certain part, so the witness was therefore presented a different statement which he gave during the

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<sup>29</sup> **T-38**-Witness examination record for Milovan Đokić, Prosecutor's Office of BiH, KT-RZ-132/06 of 28 November 2006; **T-40**- Witness examination record for Milovan Đokić, number: 17-15/3-1-04-188/06 of 26 September 2006. (State Investigations and Protection Agency); **T-41**- Witness examination record Milovan Đokić, Prosecutor's Office of BiH, number: KT-RZ-132/06 of 19 February 2007, which includes the transcript of the audio recording in IV parts as its integral part;

<sup>30</sup> **T-39**- Transcript of the testimony of witness Milovan Đokić in *Trbić Milorad*, the Court of BiH, X-KR-07/386 of 11 February 2008;

investigation phase<sup>31</sup>. The witness was given the opportunity to explain the deviations from his previous statement. The Defense objected to using and aducing this statement, considering that it was made before the provision of the Criminal Procedure Code, pertaining to the manner in which a statement should be taken, was amended. The Defense stated that the Prosecution re-examined the witness after these amendments had come into force, and requested that the second statement of the witness be used and tendered instead of the one dated 20 September 2007 as proposed by the Prosecutor. The Court refused the Defense's motion as it found it to be ungrounded, considering that the statement was entirely made in compliance with the CPC, while the subsequent amendments to the Code did not refer to the procedure for taking a statement from a witness, but to the warnings and instructions for the suspect.

(f) **Decision rejecting the Prosecution Motion to have the statement made by the Accused Slavko Perić in his witness, that is, suspect capacity read and tendered into evidence**

28. On two occasions, the Prosecution moved the Court<sup>32</sup> to tender into the case file the statements of the Accused Slavko Perić given to the ICTY Investigators<sup>33</sup> and his ICTY trial testimony in *Popović and others*<sup>34</sup> (pursuant to Article 5 of the *Law on the Transfer of Cases*). The matter of admissibility and use of the accused persons' statements that incriminate both them and other co-accused persons is a complex legal issue which has not been specifically regulated by the BiH criminal legislation. This matter entails a range of other legal issues pertaining to the fundamental rights of the accused in criminal proceedings. The Panel analyzed the legality of the statements taken, in a formal sense, and refused the Prosecution motion.

29. Namely, in analyzing the witness statements in terms of formal requirements and admissibility, the Panel was mindful of the provision of the CPC of BiH and Article 2(2) of the Constitution of Bosnia and Herzegovina, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Deciding upon this issue, the Panel also took into account the jurisprudence of the European Court of Human Rights (ECtHR).

30. Although Article 6 of the ECHR does not state it explicitly, the ECtHR inferred that this Article also guarantees the right to remain silent<sup>35</sup>. The Court derives that right from the right to

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<sup>31</sup> **T-124-** Witness examination record for Cvjetko Stević, number: 17-04/2-04-2-947/07 of 20 September 2007 (State Investigations and Protection Agency);

<sup>32</sup> Trial Motion of the Prosecutor's Office of BiH, No. 2. of 21 May 2009 and the Trial Motion of the Prosecutor's Office of BiH, No. 15 of 17 March 2010;

<sup>33</sup> Suspect Questioning Record for Slavko Perić, made during the investigation conducted by the ICTY Investigators, of 10 March 2003;

<sup>34</sup> Transcript of the testimony of witness Slavko Perić of 11 May 2007 and 14 May 2007 before ICTY in *Prosecutor vs. Popović*, number IT-05-88-T;

<sup>35</sup> The right to remain silent is enshrined in the second part of Article 6(3) of the CPC of BiH: „The suspect or accused shall not be bound to present his defense or to answer questions posed to him”. This right should

a fair trial in connection with the right of the accused to the presumption of innocence and the right against self-incrimination. As the ECtHR defined it, this right requires the national courts to refrain from establishing criminal responsibility based on the accused's self-incriminating statements inappropriately taken by the state authorities (*Heaney and McGuinness vs. Ireland* (2001) 33 E.H.R.R. 12, paragraph 40; *Allan vs. United Kingdom* (2003) 36 E.H.R.R. 12, paragraph 44).

31. The Court followed the procedure approved by the ECtHR in *Brennan vs. United Kingdom* (2002) 34 EHRR 18<sup>36</sup>; thus, on 15 June 2011, Kazimir Piekos, the ICTY Investigator who had examined Slavko Perić in his capacity as a witness, that is, suspect, testified before the Panel about the manner in which the questioning was conducted and the circumstances surrounding the questioning, mental/physical condition of the suspect during the questioning and other relevant information.

32. Having reviewed all of the circumstances, the Panel concluded that there existed circumstances indicating the inability of Slavko Perić to understand his rights, although he was properly informed of them, after which he waived his right to be examined in the presence of a defense counsel. Namely, it is evident that his comment to that end was confused, so the Court got an impression that Slavko Perić did not understand the warning that as from a certain point in time (when he began to incriminate himself) he was no longer examined in his capacity as a witness, but in his capacity as a suspect. Although his mental and physical capacities were such that he could understand his procedural situation, based on his formulations and sentences uttered while waiving his right to defense counsel, the Panel inferred that he actually did not understand it, that is, the Panel had doubt about these circumstances and, applying the principle *in favorem* in relation to the Accused, decided that the statements taken from Slavko Perić are inadmissible as evidence.

33. Furthermore, the Panel noticed that he could not voluntarily waive the right so as to make a statement related to his defense concerning the criminal offense, because he did not receive appropriate information about the grounded suspicion, that is, he obviously did not understand the information he received. In such a situation, not only that he did not waive his rights, but he also could not make a statement on the waiver that would satisfy the standards of self willingness, as required by Article 6 of the ECHR (*Bulut vs. Austria* (1997) 24 E.H.R.R. 84). Questioning a suspect without his voluntary waiver of the right to remain silent constitutes the violation of international human rights norms, and a court decision may not be based on the evidence obtained contrary to these norms (Article 10(3) of the CPC of BiH).

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be distinct from the wider right to a defense by not presenting evidence. See also Article 78(2)(a) of the CPC of BiH;

<sup>36</sup> The ECtHR approved that the statements of the suspects be used in establishing the guilt of the accused who made those statements, after the Trial Chamber: 1. has heard the testimony of the police officers and other persons who were present at the time of taking the statement; 2. heard the testimony of the neuropsychiatrist about the accused's mental competence whose mental state was disputable; 3. evaluated the statements themselves and the circumstances under which they were made; 4. heard the Defense's arguments; 5. enabled the accused to comment on the circumstances surrounding the statement taking.

34. Considering this fact, the Court did not find that the separation of the proceedings at the time when proposed would be purposeful in terms of Article 26 of the CPC of BiH, and it therefore refused the alternative proposal of the Prosecution to separate the proceedings and allow the statements and transcripts of Slavko Perić to be used in the separate proceedings conducted against Momir Pelemiš.

(g) **Admissibility of Momir Pelemiš's handwritten diary**

35. At the main trial hearing held on 25 May 2010, the Panel accepted the evidence-related motion by the Prosecution to tender into the case file the hand-written diaries of Momir Pelemiš, seized during the search of his house upon the warrant of the Court of BiH. The diaries and the search warrant and the accompanying documents were tendered into evidence under reference number T-130. The Defense objected to the Prosecutor's motion, referring to the violated right of the Accused to defend himself by remaining silent, considering that the diaries were produced at the time when Momir Pelemiš was not a suspect and when he was preparing himself to be examined as a witness. The Court refused the motion by the Defense, finding that the right of the accused to remain silent did not cover the period of time before the charges against him were filed, during which period the diaries were produced; however, the Panel states that these diaries were not written at the relevant time to which the events as charged are linked. Instead, they were written after a certain lapse of time following those events, so the Court evaluated them as such. Anyhow, not much weight was given to this evidence when the Court evaluated evidence in terms of rendering a decision.

36. The Prosecution established the authenticity of the written diaries through expert evaluation performed by the handwriting expert witness Mitar Tešić, who found that the handwriting in which the diaries were written and which was disputable originated from the same author, just like the handwriting of indisputable signatures Momir Pelemiš put on the suspect questioning records of 5 November 2008.<sup>37</sup>

(h) **Recommencement of the main trial (Article 251(2) of the CPC of BiH)**

37. At the main trial hearings held on 9 July 2009, 12 August 2009, 14 December 2009, 22 January 2010, 24 August 2010 and 6 September 2011, considering that the main trial was adjourned for longer than 30 days, the Court rendered a decision for the trial to recommence, pursuant to Article 251(2) of the CPC of BiH. Since the parties and the defense counsels agreed upon this, the Court decided that the expert witnesses and witnesses would not be re-examined but the statements of both witnesses and expert witnesses from the earlier main trial would be used instead.

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<sup>37</sup> **T-102** Findings and opinion of expert witness dated 8 July 2009; Transcript of the audio recording of 22 March 2010; **T-123** – Suspect Questioning Record of 5 November 2008;

(i) **Defense's objections to the documentary evidence – intercepted communications**

38. The Defense for the Second Accused objected to the Prosecution motion to tender into evidence the compilation of all intercepted communications upon completion of the examination of the protected witnesses P-25 and P-26<sup>38</sup>, considering that, during the examination of these witnesses, the Prosecution used only two intercepted communications of 17 July, while other intercepted communications were not written by hand of these witnesses as the authors, and that certain intercepted communications do not originate from the unit of the Army of RBiH deployed on Majeвица (these witnesses were members of this unit), but on Konjuh; therefore, it would be more proper in terms of the procedure that they are tendered after the testimony of the witness Richard Butler. The Prosecution stated that they tendered a huge collection of intercepted communications for the sole purpose to show the manner in which the communications intercepting system functioned and that, from the factual point of view, it was not relevant to the case, while the communications relevant to this case were tendered in a smaller folder<sup>39</sup>. The Prosecution further stated that it was true that not all those transcripts were made by P-26, but they were made by members of the unit to whom P-25 was superior, and the Prosecution was not in a position, nor would it have been cost-effective, to examine all 12 members of that unit who made the transcripts. The Court refused the objection of the Defense and admitted all these pieces of documentary evidence, evaluating them in the context of the objections raised by the Defense, that is, responses by the Prosecution, in a manner that the intercepted communications were deemed to have probative value if corroborated by other evidence.

(j) **Admitting ICTY expert witness reports**

39. The Defense challenged the capacity in which Dean Manning testified, arguing that he was a witness, not expert witness, and that it was not procedurally correct to admit through his testimony the findings of other expert witnesses in the field of anthropology, forensic or other fields who were not examined during these proceedings. However, the Court accepted to tender these findings of the ICTY expert witness into the case file, which transcript was admitted pursuant to Article 6 of the *Law on the Transfer of Cases*. Dean Manning was an ICTY Investigator into the Srebrenica events. He himself stated that he was involved in the Srebrenica investigations in his capacity as a Senior Investigator who coordinated the analysis of scientific evidence and drafting of official reports on the exhumation and examination of the bodies recovered from the graves in the Srebrenica region, reviewed the artefacts and evidence found in the graves and on the victims' bodies and analyzed several crime scenes. Based on that, he produced several reports which were, among other things, also based on the conclusions of expert witnesses who were involved in the investigation. It is for that reason that, when elaborating on his own report, he also elaborates on the reports of those other

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<sup>38</sup> T-85- A big yellow folder with intercepted communications;

<sup>39</sup> T-88- A script with intercepted communications relevant to *Pelemiš and others*;

expert witnesses. Thus, the Court found the testimony to be “indirect” so the extent to which it evaluated the reports was limited.

### C. EVIDENTIARY PROCEDURE

40. On proposal of the Prosecution, the following 43 witnesses were examined: witnesses under the pseudonyms P6, P23, P18, Q, P25 and P26, witnesses Milan Stanojević, Milivoje Todorović, Rajko Babić, Slobodan Đajić, Zoran Gajić, Savo Stević, Mićo Manojlović, Mile Tejić, Bogoljub Gavrić, Milan Jovanović, Milovan Đokić, Dragan Jovanović, Stanko Kostić, Zoran Bojić, Branko Bogičević, Nedeljko Lazić, Radivoje Lazarević, Milenko Tomić, Milorad Birčaković, Milan Kalajdžić, Periša Mičić, Stanko Gajić, Cvijetin Ristanović, Jovan Ilić, Radivoje Lakić, Jakov Stevanović, Tanacko Tanić, Juroš Jurošević, Ivan Perić, Munira Subašić, Nebojša Jeremić, Saliha Đuderija, Cvjetko Stević, Cvjetko Marković, Srećko Aćimović, Matthew Thomas Venemayer and Kazimir Piekos.

41. The statements, that is, transcripts of the testimony of the following persons are tendered into the case file: Miroslav Deronjić, Momir Nikolić, Dragan Obrenović, Dražen Erdemović, Van Duin Landert, Čamila Omanović, Savo Popadić and Dean Manning (who was also cross examined).

42. The Prosecution presented evidence obtained by virtue of expert evaluation provided by the military expert witness Richard Butler, who was examined via a conference link, considering that, for important reasons (long distance of his place of residence and the travel expenses, and also due to the work commitments of the expert witness, that is, long-lasting and complex procedure for securing his presence in Sarajevo), it was not possible for him to testify directly in the courtroom; expert evaluation by forensic expert witness Rifat Kešetović, Mitar Tešić, handwriting expert, and Michael MacQueen, expert witness in history, who was also examined via video-conference link and whose findings and opinions are tendered into the case file.

43. In their capacity as witnesses for the Defense for the First Accused Momir Pelemiš, the following eighteen witnesses were examined: Witness O-1, Milica Milovanović, Dragan Milovanović, Pero Petrović, Ilija Ristić, Novica Đerić, Petar Jurošević, Borislav (Cvjetko) Nikolić, Slavko Stević, Vujadin (Simo) Savić, Miladin (Trifko) Đurić, Đorđo Vidaković, Jovan Gajić, Dragan Manojlović, Stjepan Mitrović, Miladin Radovanović, Pero Pavlović, Davorin Pelemiš, while the testimony of witness Dragan Stankić was tendered into the case file, and so was the transcript of the testimony of Vinko Pandurević. The Defense presented evidence obtained by virtue of expert evaluation provided by the military expert witness Radovan Radinović, and Svjetlana Radovanović, expert witness in demography, whose findings and opinion are tendered into the case file.

44. The Defense for the Second Accused Slavko Perić examined the following seventeen witnesses: Božidar Stankić, Milan Lazarević, Ratko Tesić, Milivoje Nikolić, Stevo Petrović, Branko Jevtić, Zoran Radosavljević, Ratko Simić, Milan Pantić, Zoran Jović, Slobodan Jović, Neđo Manojlović, Milan Đurić, Dragan Pantić, Duško Vukotić, Radivoje Matić and Radislav

Đorđić. The Defense presented evidence by virtue of expert evaluation provided by the military expert witnesses Stefan Karganović and Petar Vuga, and a forensic expert witness Ljubiša Simić, whose findings and opinions have been tendered into the case file.

45. A list of documentary evidence of both the Prosecution and the Defense is entered into **Annex 2** to this Verdict, being its integral part.

46. In order for the Trial Panel to make known the locations referred to in the indictment and during the trial, the Panel and the parties to the proceedings visited the relevant locations in the region of the Zvornik Municipality on 7 July 2009.

47. The Court evaluated the witness examination records as referred to in Article 273(1) of the CPC of BiH, only where there were discrepancies relative to the witness's testimony at the main trial, and only in the part in which the difference in the testimony was raised as an issue by either the Prosecution or the Defense for the Accused.

48. Pursuant to Article 15 of the CPC of BiH, the Court is entitled to a free evaluation of evidence.<sup>40</sup> The Panel evaluated all pieces of presented evidence with due caution and it shall provide its evaluation of them, particularly those on which it grounded its decision, in the part of the Verdict in which it reasoned the factual and legal analysis of the charges against the accused.

## **D. CLOSING ARGUMENTS**

### **(a) Prosecution**

49. The Court entertained the closing arguments of the Prosecution on 6 September 2011. The Prosecution divided its closing arguments and the Final Brief into six sections.<sup>41</sup> Section One provides a legal analysis of the criminal offence of Genocide. Section Two explains factual findings. Section Three presents legal findings against Momir Pelemiš and Section Four legal findings against Slavko Perić. Section Five deals with the liability of the Accused while Section Six elaborates on the sentencing. The Prosecution's legal analysis will not be presented here, for the purpose of clarity of the Verdict. Considering the length and volume of the closing arguments and the Final Brief consisting of 150 pages, a summary of other arguments presented in the closing speech is given below.

50. In their closing arguments, the Prosecution provided a thorough analysis and comments on the evidence from their point of view. The Prosecution submits that the factual

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<sup>40</sup> Article 15 of the CPC provides that "... the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules".

<sup>41</sup> Prosecution Final Brief of 29 August 2011;

substratum of the Indictment in its entirety has been proved by a voluminous and diverse body of evidence.

51. In relation to the liability of the Accused, the Prosecution submits that the laws and practices of warfare impose upon every soldier the duty to protect prisoners. Therefore, it is irrelevant that members of the First Battalion did not participate in the capturing of the Srebrenica men. The Prosecution argues that the failure to undertake measures to protect the prisoners, regardless of the presence of senior officers, constitutes a criminal offence, if the failure to act significantly affects the crimes against prisoners. The Prosecution further submits that it managed to prove that the two Accused had communicated with each other and actively cooperated in relation to the prisoners who they guarded in the school and the Dom, during which time the prisoners were detained and killed following the same established pattern in the broader area of Zvornik Municipality. The Prosecution submits that the actions undertaken by the Accused provide the foundation for their conviction as co-perpetrators in a joint criminal enterprise, which in addition to the killing of prisoners and concealing evidence had the purpose of forcible transfer of women and children or the entire population of the Srebrenica enclave, all with the intention to destroy in part or in whole a group of people, namely Bosniaks of eastern Bosnia.

52. The Prosecution submits that the two Accused acted as key players in the genocide following the fall of Srebrenica in July 1995 and that crimes at the Branjevo Farm, Kula School, and the Cultural Center (Pilica Dom) could not have happened without their involvement. In this context, the Prosecution submits that the effects of the actions of the two Accused on the Bosniak community were immeasurable. The Prosecution accordingly moved the Trial Panel to find the Accused guilty and sentence the Accused Momir Pelemiš and Slavko Perić to imprisonment of 40 and 45 years respectively.

(b) **Defense for Momir Pelemiš**

53. Closing arguments of the defense for the first Accused Momir Pelemiš were entertained on 8 September and 13 September 2011. In the closing speech and the Final Brief<sup>42</sup> the Defense points out that the Prosecution presented the charges broadly and included description of the alleged acts or omissions by the Accused Pelemiš, but failed to tender reliable and compelling evidence to prove them. The Defense submits that the Prosecution failed to prove the participation of the Accused in the joint criminal enterprise, the plan and purpose of which was to permanently destroy a group of Bosniak people by killings, forcible transfer, and inflicting conditions of life. According to the judgments of the ICTY and the Court of BiH rendered to date, the masterminds of such plan were some officers of the Main Staff of the Army of the Republika Srpska and it was implemented and managed by officers from the security sector. The Defense submits that there is no evidence of communication between these individuals and the accused Pelemiš prior to, or after the events in the Kula School and

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<sup>42</sup> Final Brief of the Defense for the Accused Momir Pelemiš, attorney Miloš Perić, dated 8 September 2011;



the Pilica Dom, or the Branjevo Farm. There is also no evidence that Momir Pelemiš made any contribution to the execution of that plan and purpose or that soldiers under his command contributed to such plan and purpose. Even if they did contribute, they did so upon orders of high ranking officers who were present at the scene, but without knowledge, supervision or command of Momir Pelemiš. He was not at the scene, and was never informed of such activities by Slavko Perić who was at the scene and maintained contact with high ranking security officers from the Main Staff of the VRS who were present at the scene.

54. The defense strongly argued that there was no evidence that the Accused issued any orders pertaining to the guarding and securing of the prisoners. He did not have any reason to do so, since the prisoners were under the control and supervision of the units that had captured and escorted them. The Accused Pelemiš was only informed that the prisoners would spend the night in the Kula school and go for exchange to Tuzla the next day. He did not have any information on prisoners in the Cultural Center. The 1<sup>st</sup> Battalion was never issued an order for any activities regarding the prisoners in the Cultural Center.

55. The defense particularly focuses on the fact that Pelemiš joined the VRS only in mid 1994. He was frequently on sick leave. He was not an authority figure or an important player in the command of the 1<sup>st</sup> Battalion. Therefore, he was not considered eligible as a commanding officer to communicate with the main players in the joint criminal enterprise in relation to the criminal plan of the killing of the prisoners. Defense counsel expressed his belief that the Prosecution failed to prove the guilt of Momir Pelemiš for the criminal offence charged and moved for acquittal.

56. The Accused Momir Pelemiš also gave his closing speech at the hearing on 20 September 2011. He joined the submissions made by his defense counsel. He also pointed out that he had never in his life acted as the Prosecution tried to portray him to the Panel. He added that no charge was proven during the trial. The Accused believes that the account of his role in the war is a result of blowing his abilities at the time out of proportion. He is an amateur, rather than a professional as the Prosecution tries to portray him. He believes that everyone expects the end of the trial hoping that justice will be served, especially for the benefit of the families of innocent victims from the Srebrenica enclave, who at the time of their killing posed no danger to their executors or those who had planned and eventually approved such atrocious crime. Wanton killings of common people inflicted immeasurable pain on their family members. Once normal and civilized human and inter-ethnic relationships were thus destroyed with long-term consequences. He hopes that these relationships will become normal again in the near future with a significant help of the Court of BiH. He emphasizes his deep empathy for the pain and suffering of all war victims, no matter what side they were on. He underlines that this was not his war and that he planned to spend his life peacefully with his family in Tuzla. Unfortunately, ugly, evil things that he did not wish for, happened. He states that after the exchange and his arrival in Zvornik he did not report to the Secretariat of People's Defense but was apprehended by the Military Police without any explanation and taken to the First Battalion of the Zvornik Brigade. Upon his arrival in the Battalion he was not welcomed, because of the superior rank he had over all other locals in the command. He did not get any respect from them and he could not impose himself as an authority figure in the

village. As a result, he had no decision making authority. He requested a transfer to work under compulsory work order and he submitted his resignation from the position of the deputy commander to the Brigade and Battalion commanders. He believes that he was deceived into provisional takeover of the command from Milan Stanojević in July 1995, because he was not aware of the real reasons for Stanojević's absence. In that regard, the Accused also refers to the fact that the then commander did not delegate authority to him in accordance with the rules of service. This was also pointed out by the renowned expert Richard Butler, and expert witness Radovan Radinović. He believes that the real transfer of command authority from the commander to the deputy could only be done by the commander of the Zvornik Brigade, Vinko Pandurević. He claims that the prisoners were not arrested in the Kula School in Pilica, but much earlier in the area of Bratunac Municipality, wherefrom they had been initially brought. He states that he did not select the place where the prisoners were brought, because the Kula School and the Pilica Dom were civilian facilities under the control of the school principal and local community president who were elected by the people from the top of the VRS security organs.

57. In relation to the Kula School and the Pilica Dom, the Accused notes that he was not aware of such a large number of prisoners being in Kula. He had no information on the events and around the Dom at all, coming either from the Brigade or from his subordinates. He states that he could not issue orders to military policemen, because in terms of organization and formation they belonged to the military police company, rather than the 1<sup>st</sup> Battalion. Their superior by the principle of unity of command and subordination was Miomir Jasikovac, rather than someone from the First Battalion. He claims that the telegram sent to the Zvornik Brigade pertained to the lack of men on the front line and had no connection with the situation in front of the Kula School. He never knew, or met Popović, Beara, and Nikolić, nor did he coordinate with them during the capturing, execution and burial of Bosniaks. The Accused concludes that the Prosecution failed to prove the existence of any specific agreement between him and other participants in the JCE who were at the Kula school and on other locations at the time.

58. He emphasizes that he never issued any orders to anyone, he was not at the crime scene and he never inflicted any physical or mental pain to anyone. In addition, he claims that it was never his intention and purpose to destroy Bosniaks. Finally, the Accused wonders why Milan Stanojević and his platoon did not return to the barracks of the First Battalion, since he came to the Standard barracks as early as 15 July 1995 and there was a clear message that everyone must return to their respective units due to lack of manpower and that the absence of commanders from the Battalion is forbidden. Accordingly, Pelemiš underlines that he does not feel guilty under any count of the Indictment, either in terms of command or individual responsibility. He particularly emphasizes that he regrets every life lost. He adds that he has utmost confidence in the professionalism, independence and impartiality of the Court and that the Court will judge exclusively based on evidence tendered and render a legal and just decision, deciding on facts pursuant to Article 281(1) and (2) of the CPC of BiH.

(c) **Defense for Slavko Perić**

59. The closing arguments of the defense for the second Accused Slavko Perić were entertained at the hearing on 20 September and 27 September 2011. The Defense also submitted their Final Brief.<sup>43</sup> The Defense primarily pays deepest respect to all victims on their own behalf and on behalf of the Accused. The Defense apologizes if they hurt anybody by any action, evidence or argument. A considerable part of the closing arguments of the Defense analyzed the issue whether requirement of intent for the criminal offence of Genocide has been proven. In particular, this pertained to the part about destruction of a *considerable* part of the protected group. The Defense notes that it tendered six pieces of documentary evidence which directly contradict the allegation in the Indictment that “over 7,000 men and boys were summarily executed”. Defense counsel notes that the Prosecution expert, Richard Butler, accepted that the Safe Area of Srebrenica was not demilitarized; that the plan of “Krivaja 95” operation was legitimate, that all victims in the column attempting a breakthrough were soldiers and members of the 28<sup>th</sup> Division and civilians who had joined them and were a legitimate military target as such; that the combat with the column attempting to breakthrough was a regular military activity. In that regard, the Defense moves the Court to state in the Verdict if the estimate that 2500 members of the column were killed is correct. They should not be calculated in the number of people captured and subsequently killed in an organized and planned fashion.

60. The Defense further submits that Slavko Perić did not participate, either in terms of his function, or *de facto* in any operation relative to the attack on Srebrenica. He did not know of any decision on forcible transfer of the population, if any, or the extent of the conflict and the number of prisoners. The Prosecution failed to prove beyond a reasonable doubt the genocidal intent of Slavko Perić to kill someone or inflict serious mental suffering or inflict living conditions that would bring about complete or partial destruction.

61. Finally, the Defense submits that even if the Court finds that genocide was committed, the charge pertaining to Slavko Perić’s participation as a co-perpetrator in terms of Article 29 of the CC of BiH is unacceptable.

62. In relation to the factual allegations in the Indictment, the Defense states that it does not dispute the presence of the members of the First Battalion around the school in Pilica between 13 and 16 July 1995. However, their task was to secure the village and local population, rather than guard the prisoners. In that regard, the Defense submits that the Prosecution called all members of the Battalion who were in front of the Kula School at the relevant time. Some of them were also called by the Defense. All these witnesses have stated that their task was to secure the local population and that the arrival of a large number of prisoners posed a security risk to the village, which was confirmed by expert witnesses of the Prosecution and the Defense. The Defense further emphasizes that Slavko Perić had no

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<sup>43</sup> Final Brief of the Defense for the Accused Slavko Perić, attorney Miodrag Stojanović, dated 20 September 2011.

command duty, nor could he order, control, manage or coordinate anyone. The Defense also submits that apart from witness Mile Tejić, no witnesses testified that Perić ordered and supervised the blindfolding and hand tying of the prisoners and that members of the First Battalion escorted and secured buses to the Branjevo Farm. The Defense submits that this statement of the witness is contrary to the established fact from *Blagojević and Jokić* that members of the Military Police Battalion of the Drina Corps escorted the buses.

63. The Defense further submits that the guarding of prisoners is not a crime *per se*. Even if they guarded the prisoners, members of the Battalion would not have committed a crime if they did not know that the prisoners would be killed. In that regard, the Defense quotes statements of witnesses to the effect that they thought that the prisoners would be exchanged. Defense counsel emphasizes that no healthy, sane person could even dream, or think that some twisted mind could order to kill all those people out of the blue. The Defense asked whose prisoners they were and who was in charge of taking care of them in the given circumstances. In that regard, the Defense pointed to the opinions of the expert witnesses.

64. In relation to the Count charging the Accused with the events in the Pilica Dom, the Defense submits that while the prisoners were in the Dom, Slavko Perić did not go there, nor deploy any of the members of the First Battalion around the Dom. The Defense argues that this charge mainly rests on the testimony of witness Zoran Gajić, which abounds in contradictions and thus cannot be trusted. In relation to the role of the Accused in the removal and transportation of the bodies of those killed in the Dom, the Defense submits that it is aware that the burial of dead bodies in unmarked graves and without identification of the dead is participation in the crime. However, twisted logic is at issue here, because all witnesses have testified that they do not consider their activities to be a crime. This had to be done because of the extreme heat, risk of an outbreak and sanitary disaster. Under the final judgment of the ICTY, the responsibility for the burial contrary to the Geneva Conventions lies on the Engineering Company of the Zvornik Brigade, namely the chief of the engineering, Dragan Jokić, and the Brigade commander Vinko Pandurević, rather than the Battalion whose members did not bury, but load dead bodies in the Dom.

65. Finally, the Defense points out that Slavko Perić did not kill anyone, order to kill anyone, imprisoned or captured anyone, nor did he in any way contribute to this situation. It was a situation that he could not prevent, or punish anyone for it. In the current circumstances when many criminals who were direct perpetrators of this crime are yet to face justice and those who ordered the crimes remain far beyond its reach, trying Slavko Perić seems like mocking justice.

## II. APPLICATION OF SUBSTANTIVE LAW

66. Considering the time of perpetration of the criminal offence and the provisions of the substantive law applicable at the time, the Court finds two legal principles to be relevant, to wit

the principle of legality and the principle of time constraints regarding applicability.

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

68. Article 7(1) of the European Convention also provides for the principle of legality. Pursuant to Article 2.2. of the BiH Constitution, the European Convention on Protection of Human Rights has priority over all laws in BiH. Furthermore, this provision of the European Convention provides for the general principle which prohibits the sentence that is more stringent than the one prescribed at the time of the commission of the criminal offence. However, this provision does not provide for the application of the most lenient law.

69. Article 4a of the CC of BiH provides that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, “was criminal according to the general principles of international law”.

70. Article 7(2) of the European Convention provides for the same exception stating that paragraph 1 of the Article “...shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations.” (See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights which contains similar provisions. Bosnia and Herzegovina has ratified this Covenant).

71. This allows for departure from the principles set forth in Articles 3 and 4 of the CC of BiH (and Article 7(1) of the European Convention) and from the application of the criminal code that was in force at the time of the commission of the criminal offence under the circumstances described.

72. The Court emphasizes that the criminal offence of which the Accused has been found guilty is a criminal offence under customary international law and thus is a part of “general principles of international law” referred to in Article 4a of the Law on Amendments to the CC of BiH and “general principles of law recognized by civilized nations” pursuant to Article 7(2) of the European Convention. Therefore, the CC of BiH may be applied in this case, pursuant to the foregoing provisions.

73. Genocide was prescribed as a criminal offence in the CC of SFRY and the adopted CC of SFRY which was applied in BiH in 1995. The maximum sentence for the criminal offence of Genocide was death penalty pursuant to both the CC of SFRY and the adopted CC in BiH in 1995. In certain circumstances a prison sentence of 20 years could be imposed instead of

death penalty.

74. Pursuant to the Criminal Code of Bosnia and Herzegovina from 2003, this criminal offence carries the sentence of long-term imprisonment of at least ten years or a long-term imprisonment ranging between 21 and 45 years. The Court finds that the sentences prescribed under this Code are more lenient than the death penalty which was applicable under the adopted CC of SFRY which was in force at the time of the commission of the offence in 1995. Accordingly, the 2003 CC of BiH is more lenient for the perpetrator and the Court has applied it in this case.

### **III. FINDINGS OF THE COURT**

#### **C. KEY ELEMENTS OF THE CRIMINAL OFFENCE OF GENOCIDE**

75. The Indictment charges the Accused with the criminal offence of Genocide in violation of Article 171(1)(a), (b), (c), and (d) of the CC of BiH, which reads as follows in the relevant part:

Whoever, with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group, orders perpetration or perpetrates any of the following acts:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;

76. The Accused are charged with committing the offences qualified in the foregoing subparagraphs a), b), c), and d) by their actions described in the operative part of the Indictment, with the intention to destroy a protected group of people in whole or in part. In this case, that group were Bosnian Muslims of eastern Bosnia, that is, the Srebrenica enclave, who lived there until July 1995.

77. Since the Accused are charged with co-perpetration of genocide, which requires the actual commission of genocide and does not encompass association in an attempt or any

other preparatory act which does not result in the commission of the crime<sup>44</sup>, the Trial Panel has first considered if genocide was committed following the fall of Srebrenica in July 1995, as charged under the Indictment. The Trial Panel notes that this Verdict finds the Accused guilty of aiding and abetting in genocide and that “criminal liability for aiding [and abetting] cannot exist if the criminal offence with which the accused is charged as an aider [or abettor] has not been committed”<sup>45</sup>.

78. Accordingly, the Trial Panel first considered factual findings relative to the general context of the events in Srebrenica in July 1995 and the elements of the criminal offence of Genocide. Even though three tribunals (International Court of Justice, International Criminal Tribunal for Former Yugoslavia and the Court of Bosnia and Herzegovina) have qualified the events in Srebrenica in July 1995 as the criminal offence of Genocide, the defense argued against this qualification and tendered evidence in that respect.

79. Considering that the place of commission of the acts charged against the Accused is not in the area of the then Srebrenica enclave but in the region of Zvornik Municipality, Pilica settlement, the Verdict will not go into detailed explanations of the background of the events. Rather, the Verdict will explain the context only to the extent relevant to the events that are the subject of this case, or relevant to the finding of the elements of the criminal offence of Genocide in light of the body of evidence adduced in the course of the main trial.

#### **D. UN SAFE AREA OF SREBRENICA**

80. As noted above, the events in Srebrenica in July 1995 have been the subject of many court proceedings before international and national criminal courts. As explained in the part of the Verdict about procedural decisions, the Trial Panel granted the motion of the Prosecution and admitted some facts established by the ICTY Trial Chambers. The factual findings in this part of the Verdict will mostly be based on the facts admitted or generally known.

81. The Municipality of Srebrenica is located in eastern Bosnia and Herzegovina, 15 kilometers from the river Drina and border with Serbia.<sup>46</sup> In 1991 Srebrenica had a population of 37,000 of which 73% were Bosnian Muslims and 25% were Bosnian Serbs.<sup>47</sup> In the first month of the war, Bosnian Serb paramilitary forces took over control over the Municipality of Srebrenica. Several weeks later the area was regained by Bosnian Muslim forces.<sup>48</sup> On 12

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<sup>44</sup> *Blagojević and Jokić* Trial Judgment, para. 638, *Stakić* Trial Judgment, para. 561; *Akayesu* Trial Judgment, para. 527, 530; *Musema* Trial Judgment, para. 171, 172. Both *Akayesu* and *Musema* Trial Judgments note that *travaux préparatoires* of the Convention on Genocide confirm this interpretation because they show that “that only complicity in the completed offence of genocide was intended for punishment and not complicity in an attempt to commit genocide, complicity in incitement to commit genocide nor complicity in conspiracy to commit genocide, all of which were, in the eyes of some states, too vague to be punishable under the Convention.” *Akayesu* Trial Judgment, footnote 105; *Musema* Trial Judgment, para. 172.

<sup>45</sup> *Aleksovski* Appeals Judgment, para. 165;

<sup>46</sup> T-3- Report of the Secretary-General, para. 33, p. 38;

<sup>47</sup> T-3- Report of the Secretary-General, para. 33, p. 38;

<sup>48</sup> T-3- Report of the Secretary-General, paras. 33 and 34, p. 38;

may 1992, the People's Assembly of the Serb People in Bosnia and Herzegovina passed a "Decision on Strategic Goals of the Serb People" which inter alia contains a goal pertaining to the area around Srebrenica "to establish a corridor in the Drina valley and eliminate the Drina as the border between the Serb countries".<sup>49</sup>

82. In April and May 1992, the Bosnian Serb forces expelled Bosnian Muslims from a large part of eastern Bosnia, including inter alia Bijeljina, Bratunac, Vlasenica, and Zvornik. The expelled population sought refuge in enclaves around Srebrenica, Žepa, and Gorazde.<sup>50</sup> Witness Munira Subašić with her husband, two sons and relatives was among Muslim refugees who fled from Vlasenica to Srebrenica. She testified about these events before the Trial Panel.<sup>51</sup>

83. Following the attack of the Serb forces in March 1993, the Žepa Enclave was separated from the Srebrenica Enclave and the population fled from those villages to the area of about 150 square kilometers centered on the town of Srebrenica, where at one point there were between 50,000 and 60,000 people.<sup>52</sup> Witness P6 was among the population that fled to Srebrenica after this attack. He testified about fleeing from a village in the surroundings of Srebrenica.<sup>53</sup> The 8<sup>th</sup> Operative Group of the Army of BiH was active in the Enclave. It was later renamed to 28<sup>th</sup> Division of the Army of BiH.<sup>54</sup>

84. In March 1995, Radovan Karadžić, the President of Republika Srpska, reacting to the pressure from the international community to end the war and the ongoing efforts to negotiate a peace agreement, issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as "Directive 7", specified that the VRS was to: [C]omplete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.<sup>55</sup>

85. Due to a humanitarian crisis<sup>56</sup> in that area and the possibility of the Bosnian Serbs capturing the enclave, the UN Security Council passed Resolution 819 on 16 April 1993, proclaiming Srebrenica and its surroundings "a safe area which should be free from any armed attack or any other hostile act". The Security Council also requested the Secretary-General "to

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<sup>49</sup> The decision was preceded by the discussion at the session held on 25 February 1992, where Radovan Karadžić stated that "*the Serb people will not rest, until they get their state*". – verbatim record of the Session tendered into evidence as exhibit No. **T-103**;

<sup>50</sup> **T-3** Report of the Secretary-General, p. 281, Part II.

<sup>51</sup> Transcript of the audio recording of the trial hearing of 15 February 2010;

<sup>52</sup> **T-3** Report of the Secretary-General, para. 37, p. 39; **Munira Subašić**, transcript of audio recording of the main trial hearing of 15 February 2010;

<sup>53</sup> Transcript of audio recording of the main trial hearing of 16 March 2009

<sup>54</sup> **T-3** Report of the Secretary-General, paras. 34 and 35, pgs. 51 and 52;

<sup>55</sup> **Pelemiš Established Fact No. 26** – Decision on established facts of 30 October 2009; **T-159 (O-I-5)** - Directive 7, see also Directive for further activities No. 7/1- tendered into evidence as exhibit No. **T-105**;

<sup>56</sup> Regarding living conditions in Srebrenica **Subašić Munira**, *ibid*, pgs. 5 and 6, and witness **P6** transcript of the audio recording of the main trial hearing of 16 March 2009, p. 16;



take immediate steps to increase the presence of the UNPROFOR in Srebrenica and its surroundings<sup>57</sup>.

86. At the same time a cease fire was signed between the Army of the Republic of Bosnia and Herzegovina (ARBiH) and the VRS. The parties agreed on demilitarization of Srebrenica.<sup>58</sup> In the course of the proceedings, the Defense tendered evidence to prove that the safe area was not actually fully demilitarized and that the Army of BiH attacked the surrounding area inhabited by Bosnian Serbs from the enclave. This is further discussed below.<sup>59</sup>

## E. ATTACK ON THE SAFE AREA

87. At the meeting of the UNPROFOR commander and General Mladić on 7 March 1995 in Vlasenica, General Mladić expressed dissatisfaction with the regime of the of the safe area and indicated that he could launch a military attack on the protected enclaves. However, he guaranteed safety for the population of the enclaves.<sup>60</sup>

88. On 2 July 1995, the commander of the Drina Corps, General Živanović, issued an order for active combat operations under the code name of “Krivaja 95” which states that the aim of attack on the Srebrenica enclave is to narrow down the enclave to its “urban area” and specific orders were issued to the units of the Drina Corps, Bratunac, Zvornik, and Milići Brigades, and parts of the Skelani Brigade.<sup>61</sup>

89. There were around 40,000 inhabitants in the enclave at the time, of which 80% were refugees.<sup>62</sup> The attack on Srebrenica started on 6 July 1995.<sup>63</sup> By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometers deep into the enclave, halting just one kilometer short of the Srebrenica town<sup>64</sup>. Late on 9 July 1995, emboldened by this military success and the surprising lack of resistance from the Bosnian Muslims as well as the

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<sup>57</sup> T-3 Report of the Secretary-General, paras. 55 and 56- p. 50; T-109- UN Security Council Resolution 819 of 16 April 1993;

<sup>58</sup> T-3 Report of the Secretary-General, paras. 59 and 60-pgs. 51 and 52; T-157- Agreement on Demilitarization of 18 April 1993; T-158 Agreement on Demilitarization of 18 May 1993;

<sup>59</sup> Defense exhibits O-I-17 through O-I-24; exhibit D-2-12 – Assembly of the Republic of BiH of 30 July 1996– military causes of the fall of Srebrenica in July 1995; D-2-13- Statement of Ramiz Bećirević of 11 August 1995;

<sup>60</sup> T-3 Report of the Secretary-General, para. 180, p. 107;

<sup>61</sup> Pelemiš Established Fact No.- Decision on Established Facts of 30 October 2009; T-101- Butler's Report p. 85 para. 5 and p. 115 para. 3.5; see also O-I-7- Command of the 1<sup>st</sup> Bratunac Brigade, Order for active combat activities “Krivaja 95” of 5 July 1995.

<sup>62</sup> T-3 Report of the Secretary-General, para. 380, p. 200.

<sup>63</sup> Pelemiš Established Fact No.33.- Decision on Established Facts of 30 October 2009; T-101- Butler's Report p. 85 para. 6; T-3- Report of the Secretary-General p. 135, para. 239;

<sup>64</sup> Pelemiš Established Fact No.38- Decision on Established Facts of 30 October 2009; T-3- Report of the Secretary-General p. 149, para. 272;

absence of any significant reaction from the international community, President Karadžić issued a new order authorizing the VRS Drina Corps to capture the town of Srebrenica.<sup>65</sup>

90. On 10 and 11 July refugees started coming to the UN compound in Potočari.<sup>66</sup> The Report of the General Staff of ARBiH dated 12 July 1995 contains an excerpt from the meeting held in the command of the 2<sup>nd</sup> Corps of the ARBiH with deputy commander of UNPROFOR, colonel Brantz, who informed them that on the evening of 11 July General Ratko Mladić set an ultimatum demanding the termination of air strikes and surrendering of weapons by ARBiH fighters, threatening to otherwise subject the civilians in Potočari to a heavy shelling, or torch the entire compound, massacre civilians and kill all Dutch soldiers.<sup>67</sup>

91. As the situation in Potočari escalated towards crisis on the evening of 11 July 1995, the word spread through the Bosnian Muslim community that the able-bodied men should take to the woods, form a column together with members of the 28th Division of the ARBiH and attempt a breakthrough towards Bosnian Muslim-held territory to the north of the Srebrenica enclave.<sup>68</sup> At around 22:00 hrs on 11 July, the "division command", together with the Bosnian Muslim municipal authorities of Srebrenica, made the decision to form the column. At around midnight on 11 July 1995, the column (of Bosnian refugees) started moving along the axis between Konjević Polje and Bratunac.<sup>69</sup> The head of the column was comprised of units of the 28th Division, then came civilians mixed with soldiers and the last section of the column was the Independent Battalion of the 28th Division.<sup>70</sup> These facts follow from Butler's Report which refers to a number ranging between 10,000 and 15,000 persons, mainly men, who attempted a breakthrough towards Tuzla and Kladanj.

92. Witness Q testified that on 11 July his family went to Potočari, while he did not dare to do so for security reasons and that he went to Jagličići, wherefrom he departed towards Tuzla in the column on the following day, 12 July.<sup>71</sup>

93. On 12 and 13 July 1995, following the arrival of (Bosnian) Serb forces to Potočari, Bosnian Muslim refugees who sought refuge in and around the base were subjected to terror campaign consisting of threats, insults, looting and torching nearby houses, beatings, sexual assaults and killings.<sup>72</sup> On 12 and 13 July, Bosnian Serb soldiers

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<sup>65</sup> **Pelemiš Established Fact No.39**- Decision on Established Facts of 30 October 2009; **T-101** Butler's Report p. 117 para. 3.13;

<sup>66</sup> **Pelemiš Established Fact No. 51**- Decision on Established Facts of 30 October 2009; **Subašić Munira** transcript of audio recording of the main trial hearing of 15 February 2010; witness **P6** transcript of the audio recording of the main trial hearing of 16 March 2009 pgs. 21 and 22; **T-127**, Witness Čamila Omanović, *Prosecutor v. Krstić*, IT-98-33-T, Testimony of 22 March 2000;

<sup>67</sup> **T-129**;

<sup>68</sup> **Pelemiš Established Fact No. 93**- Decision on Established Facts of 30 October 2009; **T-3** Report of the Secretary-General p. 165, para. 310 and p. 168 para. 316;

<sup>69</sup> **Pelemiš Established Fact No.96**- Decision on Established Facts of 30 October 2009; **T-101** Butler's Report p. 119 para. 3.21;

<sup>70</sup> **Pelemiš Established Fact No. 97**- Decision on Established Facts of 30 October 2009; **T-3** Report of the Secretary-General p. 168, para. 316;

<sup>71</sup> Transcript of the audio recording of 22 January 2010, p. 12.

<sup>72</sup> **Pelemiš established fact number 56**-Decision on Established Facts of 30 October 2009; **T-3** Report of the UN Secretary General, p. 212, para. 404, p. 182, para. 342 and p. 184, para. 345, p. 181, para. 340;

systematically separated able-bodied Bosniak men (aged between 16 and approximately 60 or 70) from women and sent them to various locations; however, most of them were sent to a building in Potočari also known as the White House, near the UNPROFOR command.<sup>73</sup>

94. Witness P-6, who was separated from his family in Potočari, says that he arrived there with his daughter-in-law and grandchildren, and that, when the soldiers separated him from them, he managed to leave them the canister of water he was carrying, so that the children would have water in the truck. Women, children and elderly were bussed from Potočari, which was under the control of VRS forces, to the territory near Kladanj, held by Bosnian Muslims.<sup>74</sup>

95. On 13 July 1995, the Drina Corps Command issued an order to all subordinated units to, inter alia, “engage all men fit for military service in detecting, blocking, disarming and capturing the spotted Bosniak groups and in preventing them from going over to the Bosniak territory, and organize ambushes along the Zvornik – Crni Vrh – Šekovići – Vlasenica road.” An order was also issued that “those captured and disarmed be placed in the facilities suitable for that purpose that can be secured with the minimum of forces, and inform the relevant HQs promptly.”<sup>75</sup>

96. Between 12 and 18 July 1995, Drina Corps Brigades, more specifically, the Bratunac and Zvornik Brigades, were engaged in fighting against the column of Bosnian Muslims forcing its way through to the territory held by Bosnian Muslims.<sup>76</sup> On 12 July, intense shooting at the column began. Bosnian Serb armed forces, including many MUP units that were patrolling the road between Kravica and Konjević Polje and between Konjević Polje and Nova Kasaba, started shooting at the column using artillery, automatic rifles and hand grenades, and continued in the same fashion for the whole day and night.<sup>77</sup>

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Butler's report, p. 132, para. 5.28; **T-127-** Transcript of Čamila Omanović's testimony of 22 March 2000 in the ICTY case no. IT-98-33-T, *Prosecutor vs. Krstić*.

<sup>73</sup> **Pelemiš established fact number 67-** Decision on Established Facts of 30 October 2009; Witness **P-6**, transcript of the audio recording from the trial held on 16 March 2009; **T-3** Report of the UN Secretary General, pgs. 175 and 176, para. 324; **T-101** Butler's report, p. 86, para. 9, p.129, para. 18, p. 130, para. 5.19; **T-127-** Transcript of Čamila Omanović's testimony of 22 March 2000 in the ICTY case no. IT-98-33-T, *Prosecutor vs. Krstić*; **T-129-** Transcript of Van Duin Landert's testimony in the ICTY case no. IT-05-88-T, *OTP vs. Popović et al*; **T-112-** Report of 2 August 1995, Judicial Service – records of examination of Dutchbat witnesses in the investigation conducted by the Royal Marechaussee.

<sup>74</sup> **Pelemiš established fact number 79-** Decision on Established Facts of 30 October 2009; **T-101** Butler's report, p. 131, para. 5.25; **Subašić Munira**, transcript of the audio recording from the main trial held on 15 February 2010; **T-127-** Transcript of Čamila Omanović's testimony of 22 March 2000 in the ICTY case no. IT-98-33-T, *Prosecutor vs. Krstić*.

<sup>75</sup> **T-163 and O-I-13-** Drina Corps Command – order to prevent passing of Muslim groups towards Kladanj and Tuzla of 13 July 1995.

<sup>76</sup> **Pelemiš established fact number 105-** Decision on Established Facts of 30 October 2009; **T-101** Butler's report, p. 86, paras. 10, 11 and 12 and p. 123, para. 4.10, p. 144, para. 6.40.

<sup>77</sup> **Pelemiš established fact number 99 -** Decision on Established Facts of 30 October 2009; Witness **Q**.

97. Around one third of (Bosniak) men from the column managed to cross the asphalt road (en route to the free territory), resulting in the column being divided in two.<sup>78</sup> By noon or by the early evening hours of 12 July 1995 at the latest, Bosnian Serb forces captured a large number of people who were at the rear.<sup>79</sup> Witness Q was also captured on 13 July near Nova Kasaba in a group of 15 men who tried to cross the road.

98. Bosnian Muslim men who were separated from women, children and elderly in Potočari (around 1000 of them), were transferred to Bratunac, and were thereafter joined by Bosnian Muslim men who were captured as part of the column.<sup>80</sup> Thus, for example, witness P6 also says that at one moment, while he was transported by bus along with other men from Potočari, the bus stopped in Konjević Polje and shooting was heard, and Muslims who were captured at that location in an ambush in the woods were put on the bus:

“...I noticed there that some were captured during that shooting, those of our men who had gone through the woods. There were fierce ambushes set up there... and so they pushed them on the bus with us. I saw that those who had arrived, they basically acted like crazy... one was shouting ‘kill me, kill me’...”

99. Most of the Bosnian Muslim men who were separated in Potočari and captured coming from the woods were held in Bratunac one to three days prior to being transferred to other detention facilities and execution sites.<sup>81</sup> Following his capture, witness Q was first taken to the school, and then to the football field in Nova Kasaba, where, in his estimate, there were around two to three thousand captured men, and thereafter, on 13 July, they were transported to Bratunac. Witness P6 was also transported to Bratunac from the White House in Potočari.

100. As established on the basis of the evidence presented during the proceedings, one of the locations to which the captured men were taken from Bratunac and detained is the school in the village of Pilica in Zvornik, as well as the Cultural Centre (Dom) in the same village; the events at those locations were the subject of these proceedings and will be explained in the verdict in more detail.

101. In the string of mass executions that followed after the taking of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men.<sup>82</sup> The Defense

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<sup>78</sup> **Pelemiš established fact number 106** - Decision on Established Facts of 30 October 2009; **T-3** Report by the UN Secretary General, p. 173, para. 343.

<sup>79</sup> **Pelemiš established fact number 101**- Decision on Established Facts of 30 October 2009; **T-119 and T-120** Intelligence Section of the Drina Corps Command, 12 July 1995.

<sup>80</sup> **Pelemiš established fact number 87**- Decision on Established Facts of 30 October 2009; **T-101** Butler's report, p. 86, paras. 9 and 10.

<sup>81</sup> **Pelemiš established fact number 114** - Decision on Established Facts of 30 October 2009; **T-101** Butler's report, p. 86, paras. 10 and 11;

<sup>82</sup> See established facts in Annex 1 from **125 to 184**; **T-101** Butler's report, pgs. 86 and 87; **Pelemiš established fact number 48** - Decision on Established Facts of 30 October 2009; **T-3** Report by the UN Secretary General, p. 243, para. 468 and p. 248, para. 479. Decision on Established Facts of 30 October 2009.

contested the Prosecution's argument and the fact established in ICTY proceedings that there were around 7000 men executed, being of the view that a considerable part (at least 2500) of the present number of casualties was made of those killed during the fighting with VRS forces the column was engaged in while forcing its way through to the territory controlled by the Army of RBiH, and claimed that the column was a legitimate military target.

102. The defense presented the expert analysis prepared by the military expert Radovan Radinović who, in relation to the column, stated that it was a legitimate military target, further concluding that the decision to have the column force its way through, without elementary prerequisites to carry out such an operation, had actually been a "sacrifice" that, in the absence of a "higher cause" had clearly been pointless, and that "those members of the column who reached Tuzla should thank commander Vinko Pandurević for opening a corridor for the passage of the rest of the Division towards Tuzla on 16 July 1995".

103. In addition to its considerable impact on the credibility of the expert witness, this conclusion on the part of the expert witness is in disconcert with the testimonies of witnesses who took part in the actual event. Thus, witness Duško Vukotić, Deputy Commander of the Zvornik Brigade, testified on the nature of circumstances surrounding the "opening" of the corridor, that is, how long it took to persuade commander Pandurević to open the corridor for the column to pass through. He overheard the conversation via radio between Pandurević and Šemso Muminović, assistant commander for intelligence in the 2<sup>nd</sup> Corps, and in reference to the conversation said the following:

"When Vinko Pandurević finally decided to open the corridor and when he said 'I'm opening it', Šemso told him openly – I already opened it and Naser Orić with his unit already entered the zone of our defense from the territory of the 2<sup>nd</sup> Corps".<sup>83</sup>

Further on, before the ICTY trial panel, Dragan Obrenović gave evidence that, at the moment when the corridor was opened, the 28<sup>th</sup> Division had already taken control over the command post at Baljkovica and set it on fire, while a unit of the 2<sup>nd</sup> Corps gained control over a position of the 4<sup>th</sup> Battalion and fought its way through the narrow section of the frontline. Obrenović claims that he warned Pandurević of the danger and the potential fall of Zvornik, and made suggestions that the column be allowed to pass through even before the "hand-to-hand" fighting between the VRS forces and the column broke out in the area of Baljkovica, suggesting that the column be allowed to pass, but Pandurević was

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<sup>83</sup> Page 30 of the transcript of 28 January 2011.

against letting the column to pass through. Before that, General Miletić too told him to use all means available to destroy the column.<sup>84</sup>

104. Further on, in the document originated from the Zvornik Brigade, dated 18 July 1995, which the Court examined, commander Vinko Pandurević commends and expresses gratitude to his units engaged in the fighting on 15, 16 and 17 July with “furious hordes of criminal Turks of Srebrenica” and “fought blood-thirsty criminals and raging beasts that fought life-and-death”.<sup>85</sup>

105. Was the attempt to break free from the enemy’s encirclement a sacrifice, and how pointless it was, as the expert witness says, is illustrated by the destiny of all those men who decided not to go with the column but instead went to Potočari, and whose end was worse than the end met by those who were killed in the column. The manner of execution of all those men whom the VRS forces managed to get hold of alive and what those men faced in the days prior and immediately before the execution is probably far more terrifying and “worse” than the death of the men who died in combat while “fighting their way” to the territory controlled by the Army of BiH.

106. The “higher causes” that expert witness Radinović referred to are visible in the tendered Prosecution exhibit that represents a part of the findings and opinion of this expert witness in the *Krstić* case<sup>86</sup>, where this expert witness gives the opinion that “Srebrenica was an ominous gift of the cunning Muslim strategy, which was supervised by NATO and USA”, and that the “execution of civilians and prisoners of war was prepared and carried out by the French and Muslim intelligence services with the aim to impute the crime to Serbs and say that the Serb military and political strategy is a criminal one, and that Republika Srpska is a political result of a global crime”, and such conclusions, as presented by this expert witness, put into question his credibility.

107. Defense expert witness Stefan Karganović produced findings and opinion about the legitimacy of the attack on the column and the losses the column sustained due to mine fields, combat activities and other causes, and he presented data according to which a large number of men who were fighting their way out of Srebrenica were killed in fighting with the VRS forces and in mine fields. The expert witness said that such kind of losses could not be subsumed under executions and that therefore “that part of those killed must be treated differently when viewing the human tragedy in Srebrenica in total”. According to the testimony of Richard Butler, a reasonable figure indicating the number of men killed in the column would be 1000 to 2000.<sup>87</sup>

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<sup>84</sup> Pages 85 and 93 of the transcript of testifying at the ICTY in the case no. IT-02-60-T of 2 October 2003- **T-141**.

<sup>85</sup> **T-137-** Command of the 1st Zvornik Brigade strictly confidential number 01-262 of 18 July 1995, Comendation by Colonel Vinko Pandurević.

<sup>86</sup> **T-166-** excerpt from the findings and opinion and **167-** ICTY judgement in the *Krstić* case.

<sup>87</sup> **O-2-24**.

108. The panel overruled these objections put forward by the defense, and accepted that the number of all men killed in the context of everything that happened in Srebrenica in July 1995 was around 7000. The Court finds the discussion on the number of those killed in the column to be irrelevant in the present case, in view of the fact that the number of those killed in the column (even if it was known precisely) does not in any way significantly change the fact on the total number of men who were killed by the Bosnian Serb forces after the taking of Srebrenica, and can in no way affect the qualification of the offense (as explained further in the verdict). The subject of the proceedings, in view of the charges against the Accused, was not the column or the legitimacy of the attack on the column, but the fate of the men who were captured either as members of the column who surrendered or were captured in another way, or were separated from their families in Potočari, and a large number of whom were thereafter transported to the area of Pilica, where, according to what the Indictment alleges, they were guarded by, among others, members of the 1<sup>st</sup> Battalion of Zvornik Brigade until the execution.

109. The killings of men in the column (regardless of whether the column was a legitimate military target or not – this was not the subject of consideration by the Panel) and the subsequent killings of all those who were captured as part of the column, were undoubtedly part of the same murder operation taking place at various locations. In simple words, those who were not killed (or injured) in the fighting, were killed later, in a series of mass executions aimed at killing “each and every” Bosnian Muslim male from the Srebrenica enclave, including a small number of individuals who survived mass executions and managed to flee the site of slaughter only to be captured again and killed, or go missing. The number of captured Srebrenica men who survived by being exchanged after the capture is irrelevant.<sup>88</sup>

110. The testimony of Momir Nikolić also leads to such a conclusion; he said that the capturing on the road and the killing of the men had been part of a single operation and that he had known that those men too would share the destiny of the men who had been separated in Potočari.<sup>89</sup> Testimony of Dragan Obrenović supports this conclusion too, since he confirmed that after the closure of the corridor at Baljkovica on 17 July, several groups of the 28<sup>th</sup> Division that had not managed to pull out through the corridor with the column had remained in the area of responsibility of the Zvornik Brigade and that extensive search of the terrain for those men had continued until the end of the month. Commander Pandurević’s order was that once they were found, no prisoners should be taken and they should be executed on the spot, which was done.<sup>90</sup> When asked by the

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<sup>88</sup> According to the testimony of Ljubomir Mitrović, there were around 190 such prisoners (part of the transcript from an ICTY case tendered into the case file as defense exhibit number **D-II-28**, the Panel notes that the number of men from Srebrenica who were left “to live” approximately equals the number of prisoners from the VRS forces that VRS wanted in exchange

<sup>89</sup> Page 49 of the transcript of testifying before the ICTY in the case number IT-02-60-T of 22 September 2003 - **T-142**.

<sup>90</sup> Pages 56 and 57 of the transcript of testifying before the ICTY in the case number IT-02-60-T of 2 October 2003 - **T-141**.

prosecutor if he meant improper execution or execution during fighting, Obrenović said that he had meant both.

111. Bodies of executed men were buried immediately, either at the execution site or somewhere nearby.<sup>91</sup> Primary mass graves were later opened and the bodies exhumed and reburied in secondary unmarked mass graves, and while this was done, decaying bodies in some cases ended up in three or four different mass graves, whereas reburials continued until 30 November 1995.<sup>92</sup> Search for the missing and the identification process continue till the present day; this was the subject of testimony by Munira Subašić, one of the mothers still looking for her son and wondering: “Lord, will I find my Nerko’s bones, will I bury him, will I have a place marked? If I don’t find them, it’s as if I never had him, as if he never existed...”

(a) **Attack on the Safe Zone Represented the Execution of a Wide-spread and Systematic Attack against Civilians**

112. Although existence of a widespread and/or systematic attack against civilians is not an element of the criminal offense of Genocide, for which the Prosecution pressed charges against the Accused, the Panel analyzed the circumstances under which the criminal offense from the description of facts presented in the Indictment was perpetrated. In that respect, the Panel believes that the presented evidence beyond a doubt confirms the Prosecution’s argument about the existence of such an attack carried out by members of the VRS and RS MUP in the period between 10 July 1995 and 1 November 1995, as alleged in the Indictment.

113. To wit, attack is in practice defined as “a course of conduct involving the commission of acts of violence”.<sup>93</sup> The CC of BiH defines attack as “a course of conduct involving the multiple perpetrations of acts referred to in Article 172(1) of the CC of BiH”, that is, multiple perpetration of acts such as murder, extermination, enslavement, deportation, persecution, etc. The notion of ‘attack’ is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.<sup>94</sup>

114. The phrase “widespread” refers to the large-scale nature of the attack and the number of victims, while the phrase “systematic” refers to the organized nature of the acts of violence and the improbability of their random occurrence”.<sup>95</sup> The large number of

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<sup>91</sup> **Pelemiš established fact number 186** – Decision on Established Facts of 30 October 2009; **T-3** Report by the UN Secretary General, p.194, para. 370; **T-101** Butler’s report, p. 87, paras. 14 and 15 and p. 88, para. 21; Witness P-23, transcript of the audio recording of 6 October 2009; Cvjetin Ristanović, transcript of the audio recording of 27 October 2009.

<sup>92</sup> **T-3** - Report by the UN Secretary General, p.194, para. 370; **T-99-50 to T-99-92** Satellite shots of the locations were earth was clearly disturbed; **T-99-6 Dean** Manning’s report and testimony.

<sup>93</sup> *Blagojević and Jokić*, (Trial Panel judgement), 17 January 2005, para. 543.

<sup>94</sup> *Vasiljević* (Trial Chamber judgement), 29 November 2002, paras. 29 and 30; *Kunarac*, (Appeals Chamber judgement) para. 86.

<sup>95</sup> *Tadić*, (Trial Chamber judgement) para. 648, *Kunarac et al* (Appeals Chamber judgement) para. 94.



civilian casualties and the level of destruction of Srebrenica is such that no other conclusion can be reached but that it was a wide-spread attack that encompassed extensive shelling of Srebrenica and the surrounding villages over the course of several days, ill-treatment of the population by unbearable conditions in Potočari, its forcible transfer, by shelling the column of men, by setting up ambushes and, ultimately, by mass executions.

115. The systematic nature of the attack was reflected in the fact that even before the military attack activities were undertaken aimed at creating unbearable living conditions in Srebrenica by denying humanitarian aid, by lack of electricity, water and health care. Activities undertaken after the military taking of town indicate the systematic nature of treatment of women and children, as well as men, who were captured, transferred to temporary detention facilities, and then killed in an identical manner, buried in mass graves and then transferred to secondary mass graves.

116. No action by the VRS or RS MUP was an isolated incident, including actions that the Accused were charged with. All the killings were committed in accordance with the plan, with the systematic carrying out of mass executions, which is best illustrated by the fact that several thousand people were killed in the same manner, that is, those persons were executed by fire-arms after being brought and detained in temporary large-scale detention facilities such as school buildings etc.

117. No attack can consist of one separate part, but of the manner of conduct, while the phrase “directed against” is a phrase meaning that the civilian population is not an incidental target of the attack.<sup>96</sup>

118. The Defense claimed that the attack was of exclusively military character and directed against the forces of the 28<sup>th</sup> Division.<sup>97</sup> However, the estimated number of the Army of RBiH members in the enclave and the column was not as big as to affect the civilian characteristic of the population, because the overwhelming majority of the population in the enclave and later of the column was made up of civilians. The Panel notes that the “presence within a population of members of resistance groups or former combatants, who have laid down their arms, does not alter its civilian characteristic”.<sup>98</sup>

119. The Defense claimed that the aim of the “Krivaja 95” operation had been the exclusively military aim to “reduce the enclave”, that is, to separate the Srebrenica and Žepa enclaves and take control over the area between the enclaves so as to render impossible any offensive military operation of the 28<sup>th</sup> Division; however, encouraged by

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<sup>96</sup> *Kunarac et al* (Appeals Chamber judgement), para. 91.

<sup>97</sup> The Panel examined the Defence exhibits **O-I-17 to O-I-24**, which refer to the supply of war materiel and technical equipment to the Žepa and Srebrenica enclaves, and about the successes and sabotage operations of the 28th Division; in that respect, defence expert witness, professor Radovan Radinović, Ph.D, concluded that it was a limited-scale operation, that it was forced and briefly planned.

<sup>98</sup> *Blaškić*, (Appeals Chamber judgement) paras. 112-113.

the initial success and lack of resistance, the VRS and RS MUP forces continued the attack until the final taking of the enclave.<sup>99</sup>

120. However, such arguments by the Defense appear irrelevant in view of the events that followed after the “reduction of the enclave”, that is, after the military attack that continued through 10 July 1995. To wit, even if until that time their only goal was to “reduce the enclave” (whereas the ample evidence presented so far proves the opposite, for example, the order by the Drina Corps Command of 16 May 1995, which refers to “the liberation of the enclaves”<sup>100</sup>), after the initial attack and the lack of resistance that the VRS and RS MUP forces had expected, it was apparent that there was a predominantly civilian population left in the enclave, as well as soldiers who, due to the years-long exhaustion in their conditions and with the materiel technical equipment they had, which was very limited as a result of de-militarization, were not in a position to offer resistance in military terms.<sup>101</sup>

121. In spite of that realization, the attack continued, so there is no room for any other conclusion but that the actions taken after the “reduction of the enclave” had all aspects and characteristics of a wide-spread and systematic attack against civilians. The wide-spread and systematic attack against civilians was a direct result of the military attack on Srebrenica and the taking of it; both the VRS forces and RS MUP units that were engaged in the area of Srebrenica from 10 July 1995 participated in the attack.

(b) **Population from the Srebrenica Enclave was Forcibly Transferred**

122. In July 1995, following the taking of Srebrenica, Bosnian Serb forces devised and carried out the plan of transferring all women, children and elderly Bosnian Muslims from that area.<sup>102</sup> During the proceedings, the Defense presented evidence contesting the forcible nature of the transfer. For example, along those lines, defense expert witness, Professor Radovan Radinović, PhD, said that “the very idea of separation of the military and the civilians on the Muslim side, implicated the decision to transfer the population”.<sup>103</sup> Further on, there is an interesting theory according to which this expert witness actually attributes the responsibility for the forcible transfer of the population to the members of the 28<sup>th</sup> Division, and he says the following:

“...the decision reached by the 28<sup>th</sup> Division Command to surrender the town to the VRS forces with hardly any resistance predetermined the destiny of the

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<sup>99</sup> Defense exhibits **O-I-17 to O-I-24**.

<sup>100</sup> **T-171**- Order by the Command of the Drina Corps, Strictly Confidential number 04/112-15 of 16 May 1995, in relation to **T-172** Order by the Drina Corps of 16 May 1995, no. 04/112-14: Annex to the order to stabilize the defense around the Žepa and Srebrenica enclaves and create conditions for the liberation of the enclaves.

<sup>101</sup> In his testimony before the ICTY, Momir Nikolić confirmed that civilian targets were also targeted during the artillery attack on Srebrenica – pp. 1638 and 1639- **T-142**.

<sup>102</sup> **Pelemiš established fact number 47**- Decision on Established Facts of 30 October 2009; **T-101** Butler's report, p. 124, para. 4.12 and p. 129, paras. 514 to 517.

<sup>103</sup> Page 20 of the findings and opinion.

civilian population and its decision to leave the town without reservations, seek refuge in the UN base in Potočari, and then go to the territory of the Army of BiH... It is hard to believe that the military authorities in Srebrenica were not able to foresee that the population will want to move out if the forces of the 28<sup>th</sup> Division fail to defend the town...”

123. When assessing whether the displaced persons had a genuine choice to stay or leave, and whether the resultant displacement was unlawful, a trier of fact must take into account the prevailing situation and atmosphere, as well as all the relevant circumstances, including in particular the victims’ vulnerability.<sup>104</sup>

124. Naturally, when they found themselves in the situation as it was after the Safe Area was taken and after they realized that no one, not even the international community, that is UNPROFOR, can guarantee their safety, Bosnian Muslims from Srebrenica decided to leave the town and go. However, under the circumstances, such a decision is by no means a matter of free choice and deciding. Before them and on their behalf, the decision that they would have to leave their homes and that they would be permanently relocated from the area was made by the civilian and military leadership of the Bosnian Serb forces, which is clear from the numerous documents ordering the preparation of the attack on the Safe Area.<sup>105</sup>

125. This was also clear from the speech and messages made by Ratko Mladić to the people of Srebrenica in the meeting held in the Fontana Hotel on 12 July, on the basis of which Čamila Omanović, who attended the meeting, reached a conclusion that if they agreed to go the people of Srebrenica might live, but that if they tried to stay, they would simply cease to exist.<sup>106</sup> The instruction to the civilian commissioner<sup>107</sup> Miroslav Deronjić to give the civilian population a free choice of place of residence was simply incompatible with what the VRS and RS MUP forces were doing in reality, it was obvious that the true order on the ground was opposite to the one written on paper; Miroslav Deronjić testified about it before the ICTY and said that the order by Radovan Karadžić had been that the “principle of Western Slavonia” should be applied to Srebrenica.

126. This was also confirmed by Momir Nikolić in his testimony before the ICTY, when he said that the promises and guarantees to civilians that General Mladić had given in the

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<sup>104</sup> *Blagojević and Jokić*- ICTY trial chamber judgement of 17 January 2005, para. 596.

<sup>105</sup> Thus, the report of the 1<sup>st</sup> Bratunac Light Brigade Command of 4 July 1994 reads that everything needs to be done on order to make impossible the temporary stay and make the population to leave the enclave en masse as it realizes that it cannot survive there – exhibit **T-104**; In the Statement of Facts and Acceptance of Responsibility signed by Momir Nikolić, Chief of Intelligence and Security in the Bratunac Brigade, he states among other things that the intention of the VRS forces during the attack on the Srebrenica enclave and its taking by the VRS forces in July 1995 was to cause forcible transfer of the entire Muslim population from Srebrenica to the territory controlled by Muslims - **T-142**.

<sup>106</sup> **T-127**- Transcript of the audio recording of Čamila Omanović's testimony of 22 March 2000 in the ICTY case no. IT-98-33-T, *Prosecutor vs Krstić*, p.1101; **T- 167** – CD containing video recording of the meeting held in the Fontana Hotel.

<sup>107</sup> **O-I-8** – Decision on Appointment of the Civilian Commissioner for the Srpska Srebrenica Municipality, President of Republika Srpska, ref. no. 01-1350/95 of 11 July 1995.

meeting held in the Fontana Hotel in the evening of 11 July had been a mere theory that could not be implemented in reality since Colonels Popović and Kosorić had given him the assignment to coordinate the separation of men from women, evacuation of women, and the temporary detention and killing of men.<sup>108</sup>

127. President of the UN Security Council reported the concern “because of the current forcible transfer of tens of thousands civilians from the Srebrenica Safe Area to the Tuzla area by the Bosnian Serbs”, thus confirming that such a forcible transfer represents a clear violation of human rights of civilians.<sup>109</sup>

128. Exceptions that allow transfer under the international law are “if the security of the population or imperative military reasons so demand” and in such cases the term “evacuation” is used (Article 49(2) of the 4<sup>th</sup> Geneva Convention and Article 17(1) of the Protocol 2 Additional), while persons thus evacuated shall be transferred back to their homes as soon as the hostilities in the area in question have ceased, while the party carrying out evacuation shall ensure that members of the same family are not separated and that the population is properly taken care of in terms of accommodation, safety, hygiene, health, and nutrition. In view of everything that was going on in Srebrenica in July 1995, one cannot say that it was an evacuation for humanitarian reasons; instead, the intention of the perpetrators was actually to permanently transfer the victims, and there were no grounds in the international law to do so.

129. The Panel refused all arguments of the Defense in this respect as ungrounded and concluded that on 12 and 13 July 1995, Bosnian Muslim civilians from Srebrenica who were transferred by buses from Potočari did not have the freedom of choice as to whether or not to leave the territory of the former enclave.<sup>110</sup>

(c) **Mass Killings of Men and Boys Were Carried out**

130. A major effort was made to capture all able-bodied men. As a matter of fact, among those who were arrested there were many boys who were not even near that age, as well as elderly men who were older than that and who remained in the enclave after the taking of Srebrenica.<sup>111</sup> Men and boys who fled from the Srebrenica enclave were the target, regardless of whether they chose to seek refuge in Potočari, as for example witness P6 did, or join the column of Bosnian Muslims, as witness Q did.<sup>112</sup> One of the men who were separated in Potočari was Ahmo Mehmedović, born in 1950 (his name was registered by the Dutch Battalion officers in Potočari on the list of man who were handed over from the

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<sup>108</sup> **T-142-** page 18 of the transcript of 22 September 2003 in the ICTY case number IT-02-60-T.

<sup>109</sup> **T-111-** Statement of the UN Security Council President of 14 July 1995.

<sup>110</sup> **Pelemiš established fact number 92** - Decision on Established Facts of 30 October 2009; On “mobilization” of buses, documents **T-114, T-115, T-116, T-118**.

<sup>111</sup> **Pelemiš established fact number 49-** Decision on Established Facts of 30 October 2009.

<sup>112</sup> **Pelemiš established fact number 50-** Decision on Established Facts of 30 October 2009; Testimonies of witnesses **Q and P6**.

UN base to the VRS forces), and whose body was exhumed from the secondary mass grave Čančari Road (CR12) and identified; bodies transferred from the primary mass grave at the Branjevo farm, which is also the subject of these criminal proceedings, were buried there.<sup>113</sup>

131. Men were executed at the Jadar River, in the Cerska Valley, in Nova Kasaba, in the Kravica warehouse, in and around the Grbavci school near Orahovac, in the Petkovci school and on the Petkovci Dam, in Kozluk and in the Pilica Cultural Center, in the Pilica school and at the Branjevo Farming Cooperative.<sup>114</sup>

(d) **Forcible Transfer and Mass Killings of Men were Carried out within Two Joint Criminal Enterprises Whose Goal Was Destruction of Bosnian Muslims from the Srebrenica Enclave**

132. The Prosecution outlined the Indictment in such a way that the Accused in these proceedings were charged with the participation in a “wider” joint criminal enterprise aimed at, among other things, a forcible transfer of the population and systematic killing of men (therefore, they are accused as co-perpetrators). As will be explained below in more detail, the Panel is of the view that the Prosecution failed to prove the facts presented in the Indictment in this way. The Panel maintains that the Accused did not act as co-perpetrators inside any joint criminal enterprise, but that their actions can more appropriately be characterized as aiding and abetting, and their responsibility determined in that respect.<sup>115</sup>

133. The Panel maintains that the wide-spread and systematic attack against the civilian population of the Srebrenica Safe Area was carried out as two narrower joint criminal enterprises, in which members of one enterprise acted with the task and goal of forcible transfer of the population, mostly women and children, while members of the other criminal enterprise acted with the task and goal of killing all Muslim men from the Srebrenica enclave. It is indisputable that a certain number of persons acted and contributed to the implementation of both these goals, actually acting within the “extended” joint criminal enterprise.

134. However, the presented evidence did not yield any ground for conclusion that the Accused Momir Pelemiš and Slavko Perić in any way participated in or contributed to the forcible transfer of population. In addition, the Panel established that the Accused in no

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<sup>113</sup> T – 99 - Transcript of the ICTY Trial Chamber session in the case number IT-05-88-T (*Prosecutor vs. Vujadin Popović et al*) of 10 December and 11 December 2007, examination of witness Dean Manning and Dean Maning's report.

<sup>114</sup> See established facts in Annex 1 from **125 to 184**; See portion of the verdict O- the accused persons' knowledge and intention – which describes the chronology of killings in the Zvornik Brigade's Area of Responsibility in more detail.

<sup>115</sup> See part IV of the verdict dealing with the responsibility of the accused.

way whatsoever participated or contributed to the separation of men, attack on the column and capturing of men from the column. That is why the operative part of the verdict was changed with respect to the facts outlined in the Indictment, according to which the Accused were charged with the “wider” joint criminal enterprise, part of which were these criminal acts, so the first-instance panel, in reference to the responsibility of the Accused, considered only one of the “narrower” joint criminal enterprises within which action was taken towards killing the men from the Srebrenica enclave, which are the specific actions charged against them by the counts of Indictment. In that respect, the Panel primarily analyzed the following elements of this joint criminal enterprise: (1) existence of the common plan and goal and (2) plurality of persons.

135. (1) To wit, the Trial Chamber in the *Blagojević and Jokić case* found that the [murder] operation was carried out within a short period of time, with a similar pattern of killing, at locations close to each other and by the perpetrators who were active participants at more than one of those locations<sup>116</sup>, and this is the same conclusion that the First-Instance Panel reached following the completion of the proceedings. In such a situation, there is no room for any other conclusion than that there was a plan to carry out the operation of killing men from Srebrenica. (2) Further on, a conclusion offers itself that several persons, that is, perpetrators, participated in devising such a plan and in carrying it out, some of whom are listed in the operative part of the verdict, which meets and proves the second element of existence of this joint criminal enterprise.

136. However, the evidence presented at the main trial did not provide sufficient ground for the First-Instance Panel to be able to conclude beyond a reasonable doubt that the plan or agreement to kill the prisoners was as such agreed between the accused Pelemiš and Perić and some of the members of this joint criminal enterprise, nor that they shared with them the same special *mens rea* for the group destruction, although they were aware of it.<sup>117</sup> In view of the lack of this element in case of the accused Pelemiš and Perić, the Panel was not satisfied that the two Accused themselves were members of the joint criminal enterprise, that is, co-perpetrators of a criminal offense.

137. Nevertheless, the Panel found sufficient ground in the actions of the Accused to reach a conclusion on the significant contribution to the perpetration of the offense<sup>118</sup>, and that by acting in that manner, with the knowledge of the special *mens rea* of the members of the joint criminal enterprise, they aided and abetted them. In reaching such a conclusion, the Panel also had in mind the jurisprudence according to which “the aider and abettor contributes to the perpetration of a criminal offense either by aiding the perpetrator

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<sup>116</sup> **Pelemiš established fact number 193** - Decision on Established Facts of 30 October 2009.

<sup>117</sup> See part N of the verdict, dealing with the knowledge of the Accused and the principal perpetrators.

<sup>118</sup> See parts M and N of the verdict, dealing with the actions of the Accused, that is, actions of the soldiers from the 1<sup>st</sup> Battalion under the supervision, control and command of the Accused.

who physically committed the criminal offense or by aiding a member of the joint criminal enterprise who is not necessarily the actual perpetrator”<sup>119</sup>.

138. In that respect, it is not necessary to prove, nor does the “aider have to know who the perpetrator of the criminal offense is”.<sup>120</sup> In addition, “person(s) who committed the criminal offense did not necessarily have to be on trial, nor did their identity necessarily have to be established, even when the criminal offense requires specific intent”.<sup>121</sup>

139. Accordingly, the Panel did not have to establish who the persons, members of the joint criminal enterprise, whom the Accused aided, exactly are, but, in view of the fact that there are proceedings pending at the ICTY in which Colonel Ljubiša Beara, Chief of Security and Intelligence Administration of the VRS Main Staff, Lieutenant-Colonel Vujadin Popović, Chief of Security of the Drina Corps of the VRS, Lieutenant Drago Nikolić, Assistant Commander for Security of the Zvornik Brigade of VRS are, among others, charged with being members of the joint criminal enterprise and in view of the fact that the evidence presented during the proceedings so suggests, the Panel accepted the Prosecution’s claim that these persons, among others, as well as Milorad Trbić, Security and Intelligence Officer who was found guilty by a final verdict, devised and participated in the joint criminal enterprise whose aim was to kill men from Srebrenica.

140. Considering the responsibility of the accused Pelemiš and Perić as aiders and abettors (as determined by the First-Instance Panel), it is important to note that “no plan or agreement is required between the aider and abettor and the person(s) who perpetrated criminal offenses”.<sup>122</sup>

#### **D. ELEMENTS OF THE CRIMINAL OFFENSE OF GENOCIDE SATISFIED**

141. In the case law of international criminal courts and in several cases before the Court of BiH it was established that the Bosnian Serb forces committed genocide after the fall of the Srebrenica enclave in July 1995.<sup>123</sup> After the conducted evidentiary proceedings and after the evaluation of all evidence, individually and in their correspondence with each other, this Trial Panel established the state of the facts, and, applying the provisions of the Criminal Code and international criminal law, it established that, *inter alia*, the acts that the Accused in these

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<sup>119</sup> Appeals Chamber Judgement in the *Blagojević and Jokić* case, para. 127; Appeals Chamber Judgement in the *Brđanin* case, para. 484; Appeals Chamber Judgement in the *Simić* case, para. 86; Appeals Chamber Judgement in the *Blaškić* case, para. 49; Appeals Chamber Judgement in the *Vasiljević* case, para. 102.

<sup>120</sup> Appeals Chamber Judgement in the *Krstić* case, para. 143, Appeals Chamber Judgement in the *Brđanin* case, para. 484, Trial Chamber Judgement (not final) in the *Popović et al* case, para. 1016.

<sup>121</sup> Appeals Chamber Judgement in the *Krstić* case, para. 143., Appeals Chamber Judgement in the *Brđanin* case, para. 355; Trial Chamber Judgement (not final) in the *Popović et al* case, para. 1016.

<sup>122</sup> Appeals Chamber Judgement in the *Krnojelac* case, para. 33, Appeals Chamber Judgement in the *Tadić* case, para. 229.

<sup>123</sup> International Court of Justice (ICJ) in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment of 26 February 2007, para. 297; ICTY Trial and Appeals Judgments in the *Krstić* case; ICTY Trial and Appeals Judgments in the *Blagojević and Jokić* case; Court of BiH Trial and Appellate Panels Verdicts in the *Miloš Stupar et al.* case; Court of BiH Trial and Appellate Panels Verdicts in the *Milorad Trbić* case.

proceedings are charged with satisfy all elements of the criminal offense of Genocide in violation of Article 171 of the CC of BiH.

## 1. Underlying crimes

142. The Indictment reads that genocide was committed by (1) killing members of a protected group (Sub-Paragraph (a) Paragraph (1) of Article 171 of the CC of BiH), (2) causing serious bodily or mental harm to members of the group (Sub-Paragraph (b) Paragraph (1) of Article 171 of the CC of BiH), (3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (Sub-Paragraph (c) Paragraph (1) of Article 171 of the CC of BiH), and (4) imposing measures intended to prevent births within the group (Sub-Paragraph (d) Paragraph (1) of Article 171 of the CC of BiH).

143. The Court is not bound by the legal definition of the offense, but by the facts of the operative part of the Indictment, from which it does not follow that the Accused are charged with the acts that may be defined as "*deliberate(ly) inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*" (Sub-Paragraph (c) Article 171 of the CC of BiH), that is, as "*imposing measures intended to prevent births within the group*" (Sub-Paragraph (d) Article 171 of the CC of BiH). The Prosecutor noted in his closing argument that these acts of genocide do not require a proof of consequence, but an actual imposing of the conditions or measures with a specific premeditated consequence, irrespective of whether or not the perpetrator succeeded in achieving that objective. The Prosecutor confirmed that there was a certain overlapping of these acts.

144. The Panel finds that when it comes to the captives in Pilica in the case at hand, the imposing of "measures" designed at bringing about their destruction (starvation, deprivation of the fundamental medical services or physical exhausting) does not apply, given that the perpetrators obviously did not have either the intention or the need to impose measures with that aim. It is true that the detainees were held in the conditions in which they were deprived of food, medical care and hygiene, but only temporarily, since the perpetrators knew that they would execute the detainees in a short while, which was their ultimate goal.

145. With respect to the measures intended to prevent births within the group, the Panel finds that it is indisputable that with mass murders of the men of all ages biological reproduction of the group was rendered impossible. However, the murders do not constitute a "measure" and this fact of preventing biological regeneration of the group has been evaluated in the context of the specific intention to commit the criminal offense of genocide, but not in its own right as a criminal act referred to in Sub-Paragraph (d) of Article 171 of the CC of BiH.

146. Based on the foregoing, the Panel restricted itself to evaluating the acts, that is, the underlying crimes referred to in Sub-Paragraphs (a) and (b) Paragraph (1) Article 171 of the CC of BiH as *actus reus* of the criminal offense of Genocide.



(a) Killing members of the group

147. The Accused Momir Pelemiš and Slavko Perić were charged with participation in a JCE in which detainees from Srebrenica, who had been transported on 14 July 1995 to the place of Pilica, Zvornik Municipality (hereinafter: detainees in Pilica), were killed. These detainees were killed on 16 July at the Branjevo Farm and in the Cultural Center [Dom kulture] in Pilica, and at least two detainees were killed in the Kula School in Pilica.

148. In international law, elements of the essential acts of murder are as follows: death of the victim as a consequence of the perpetrator's act or omission, carried out with the intention to kill or inflict grave bodily injury with the awareness that it will probably cause death.

149. In accordance with the general principle of interpretation *in dubio pro reo*, the precedent law of international courts has opted for the interpretation most favorable to the accused and found that the term "killings", in the context of a genocide charge, must be interpreted as referring to the definition of murder, i.e. intentional homicide.<sup>124</sup>

150. The death of the detainees at the Branjevo Farm, Cultural Center in Pilica and the *Kula* School has been proved beyond a reasonable doubt.<sup>125</sup> Also, it is beyond doubt that their death was violent and a result of the VRS members' use of firearms, during which they and those who issued orders to them acted with direct intent. They knew that their actions would bring about the death of the Srebrenica men against whom they used firearms, and it is beyond doubt that they willed it.

151. Also, it is beyond any doubt that the killings of the men in Pilica (the School, the Cultural Center and Branjevo) were committed as part of a JCE aimed at killing all Muslim men from Srebrenica as members of the protected group, which will be discussed below.

152. In general terms, with respect to the executions of the men from Srebrenica, the Panel finds that the facts established in other cases and the evidence adduced in the case at hand provide a sufficient basis for the conclusion that the killings were carried out on a massive scale, in a limited period of a few days only and in an organized manner.

(b) Causing serious bodily or mental harm to members of the group

153. In order to qualify as an act of genocide, a bodily or mental harm inflicted on members of a group need not be permanent or irremediable<sup>126</sup>, but must be such harm that results in a grave and long-term impairment of a person's ability to lead a normal and constructive life.<sup>127</sup>

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<sup>124</sup> *Blagojević and Jokić* Trial Judgment, para. 642.

<sup>125</sup> See Chapters I, J and K of the Verdict, on the factual findings related to the death of the detainees.

<sup>126</sup> *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Chamber Judgment, para. 645; *Prosecutor v. Sylvestre Gacumbitsi*, ICTR-2001-64-T, Trial Chamber Judgment, 17 June 2004, para. 291; *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment, 02091998, para. 502; *Prosecutor v. Laurent Semanza*,

154. The description of facts in the Indictment does not contain specific bodily or mental harm sustained by the detainees in Pilica. The Prosecution's closing submission refers to the ICTY case law in which it was established that the suffering of a few surviving Bosniak men, because of the separation, the manner in which they were treated during the detention, and the attempt of summary execution, represents a serious bodily or mental harm.

155. It has been proved beyond a reasonable doubt that the detainees in Pilica suffered serious bodily or mental harm, both by the very detention conditions in the buses, the School and the Cultural Center, as well as the acts undertaken against them during the brief but terrible period of detention in which the climate of terror and fear was maintained by individual killings of the detainees.<sup>128</sup> Also, it has been proved beyond a reasonable doubt that the VRS members who held the detainees in such conditions and the ones who inflicted on them serious bodily harm acted with intent, that is, with the knowledge and will to inflict such harm on them.

## 2. Genocidal Intent

156. In addition to the required intent to commit the underlying crimes, the perpetrator must also have the intent to commit genocide, that is, the specific intent to destroy (1) a protected group (national, ethnic, racial or religious), (2) in whole or in part. The destruction, in whole or in part, must be the *goal* of the underlying crime(s).<sup>129</sup> In addition, and consistent with Article 2 of the Genocide Convention, the term "goal" encompasses the intent to destroy the group "as such". That is, the evidence must establish that "the proscribed acts were committed against the victims *because of* their membership in the protected group," although they need not have been committed "*solely because of* such membership."<sup>130</sup>

### (a) Muslims from Srebrenica are the protected group

157. The protected object of this criminal offense is not individuals, but national, ethnic, racial or religious groups. In that respect the Trial Panel finds that the Bosnian Muslims undoubtedly constitute a national, ethnic and religious group and that, as such, they are a protected group pursuant to Article 171 of the CC of BiH. In other words, the Panel states that

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ICTR-97-20-T, Trial Chamber Judgment, 15 May 2003, para. 322; *Prosecutor v. Radislav Krstić*, IT-98-33-T, Trial Chamber Judgment, 2 August 2001, para. 513.

<sup>127</sup> *Prosecutor v. Krstić*, IT-98-33-T, Trial Chamber Judgment, para. 513, also applied in *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Chamber Judgment, para. 645.

<sup>128</sup> See Chapter H of the Verdict, on the factual findings related to the accommodation conditions in the School and the Center.

<sup>129</sup> *Blagojević* Trial Judgment, para. 656 (emphasis added). See also, 1996 International Law Commission Report, p. 44 ("However, a general intent to commit one of the enumerated acts combined with a general awareness of the probable consequences of such an act with respect to the immediate victim or victims is not sufficient for the crime of genocide."); *Krstić* Trial Judgment, para. 571 ("For the purpose of this case, the Chamber will therefore adhere to the characterization of genocide which encompasses only acts committed with the *goal* of destroying all or part of a group.") (emphasis in original)

<sup>130</sup> *Prosecutor v. Niyitegeka*, ICTR-96-14-A, Judgment, 9 July 2004, para. 53 (emphasis in original).

the Muslims are one of the constituent "peoples" of the Socialist Republic of BiH (1974 Constitution of the SR BiH). There is ample subjective and objective evidence indicating that members of other national groups who committed crimes against the Bosniak people identified and stigmatized Muslims as a distinct national group. The Panel also concludes that the Muslims of Srebrenica constituted a "part" of the protected group of the Bosniak people pursuant to Article 171 of the CC of BiH.

158. It has been proven beyond any doubt that the detainees killed in Pilica and at the Branjevo Farm were Bosnian Muslims from Srebrenica.<sup>131</sup>

159. The conclusion that this is a case of a protected group is a conclusion of legal definition, and in order to establish the possession of the specific intent it was necessary to establish that the principal perpetrators were aware, that is, that they (1) knew that the victims in the School and the Cultural Center in Pilica were Bosniaks from Srebrenica, and that they (2) knew that they belonged to the same ethnic, national and religious group as the women, children and elderly who made the rest of the group and who up until that moment had already been expelled from their homes and forcefully transported by buses outside the Srebrenica region.

160. The adduced evidence helped establish that the principal perpetrators and members of the JCE of the killings of men, Popović, Nikolić and Beara (pronounced guilty in the ICTY first instance judgment), Trbić (whose responsibility was established in the Verdict of the Court of BiH No. X-KR-07/386), Momir Nikolić, who pleaded guilty, and the other members of the JCE must have known this. In addition, it has been established beyond a reasonable doubt that the Accused Momir Pelemiš and Slavko Perić also had this knowledge.<sup>132</sup>

(b) A significant part of the protected group has been "destroyed"

161. Destruction of a group means its physical or biological destruction, that is, destruction of its material existence<sup>133</sup>, although there are also different interpretations of the term "destruction of the group", where destruction is interpreted in the context of the intent of the perpetrator,<sup>134</sup> which context this Trial Panel also finds to be correct.

162. In order to establish that genocide was committed, it must be established that the intent of the perpetrators was to destroy the whole group or its *significant part*.<sup>135</sup> There is no set

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<sup>131</sup> See Chapter G of the Verdict.

<sup>132</sup> See Chapter N of the Verdict, on the knowledge of the Accused and the principal perpetrators.

<sup>133</sup> *Stupar et al.*, X-KR-05/24, Trial Panel Verdict, 20 July 2008, pp. 56-57; *Prosecutor v. Krstić*, IT-98-33-A, Appeals Judgment, 19 April 2004, para. 25; *Prosecutor v. Semanza*, ICTR-97-20-T, Trial Judgment, para. 315.

<sup>134</sup> Thus Judge Shahabuddeen concludes in *Krstić* Appeals Judgment that "distinction should be made between the nature of the listed acts [of genocide] and the intent with which they are done".

<sup>135</sup> *Stupar et al.*, X-KR-05/24, Trial Panel Verdict, 20 July 2008, p. 61; *Prosecutor v. Krstić*, IT-98-33-A, Appeals Judgment, para. 12; *Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-T, Trial Judgment, 7 June 2001, para. 64.

number, but the number must be significant enough to have an impact on the group as a whole.<sup>136</sup> Although the Bosniak population of Srebrenica had only around 40,000 people, the evidence indicates that this population was a particularly prominent and significant part of the group of Bosniak people, especially in July 1995.

163. During the entire course of the proceedings the Defense dealt with the issue of the exact number of the men killed in Srebrenica, thus challenging the definition of the crime because the element of destruction of a *significant part of the protected group* was not satisfied given that, in the opinion of the Defense, the 2,500 men who got killed in a column (according to the finding and opinion of the expert witness for the Defense), were killed as a legitimate military target<sup>137</sup>. Following the logic of the Defense, a trier of facts would come to a situation to discuss the minimal number of the killed that would serve as a basis to establish that the number constitutes a significant part of the group, and, following the same logic, the trier would have to infer whether 2,500 fewer or more killed people (in relation to the overall casualty number) make a significant difference and a decisive fact for establishing the element *a significant part of the group*.

164. The Panel notes that it is absurd to discuss and draw conclusions on this issue in such a way, and concludes that all killed men, approximately 7,000<sup>138</sup>, including all detainees killed in Pilica (the School and the Cultural Center) whose killing was the subject of this case (at least 1,000 of them), irrespective of the manner in which they were killed, were killed in the same murder operation after the capture of Srebrenica, and that it is beyond doubt that their calamity, in its own right as well as combined with the transfer of the remaining Srebrenica Muslims, had a significant impact on the group of Bosnian Muslims as a whole. Simply, as the ICTY Trial Chamber concluded, the killings were part of one murder operation, which led to the death of more than 7,000 Bosnian Muslim men and boys.<sup>139</sup>

165. The Panel notes and supports the inference of the Trial Chamber in the *Blagojević and Jokić* case that "the forcible transfer of individuals could lead to the material destruction of the group, since the group ceases to exist as a group, or at least as the group it was", and, having the foregoing in mind, considers the aforementioned Defense arguments to be pointless.

166. The task of a Panel is to "review" a case from all angles and establish facts important for the court proceedings. However, this Panel recalls that court proceedings are directed at a single event, often only to a part of the event, and that it is up to the Panel to establish which

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<sup>136</sup> *Prosecutor v. Krstić*, IT-98-33-A, Appeals Judgment, paras. 8-11; *Prosecutor v. Stakić*, IT-97-24-T, Trial Judgment, para. 522; *Prosecutor v. Semanza*, ICTR-97-20-T, Trial Judgment, para. 316; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ Judgment, 26 February 2007, para.198.

<sup>137</sup> In that respect expert witness Svetlana Radovanović inferred that there do not exist the information sources on the basis of which it would be possible to establish whether soldiers and all identified persons in general were killed in action or under some other circumstances; **Exhibit O-I-38**.

<sup>138</sup> **T-121**, ICTY List of Missing Persons, of 2 May 2000, whose disappearance was reported after the fall of Srebrenica on 11 July 1995, contains **data about 7,481 persons that are either dead or missing, but this number should be regarded as a minimum estimate**.

<sup>139</sup> **Pelemiš Established Facts 48 and 190**, Decision on Established Facts of 30 October 2009.

facts are important in such a way that they must be established beyond a reasonable doubt. The Panel finds that the total number of the men killed in Srebrenica is not one such fact that must be established beyond a reasonable doubt, and that this is a fact that is more important from the historical rather than the legal and factual aspect of the case at hand.

167. Having established that they had the above-referenced knowledge (that those were the Muslims from Srebrenica and that the whole population was expelled and transferred from the territory of Srebrenica) along with the knowledge that mass executions of men were being and already had been carried out in other locations, the Panel concludes that Popović, Beara, Nikolić, Trbić and other members of the JCE, mainly senior RS military and civilian officials, had to know that the mass killing of the men from Srebrenica, including the detainees in Pilica and the Branjevo Farm would have a significant impact on both the Muslims of Srebrenica and the Bosnian Muslims as a whole. Without the man in a family the family as a union would be destroyed and the family would not have its head. Moreover, by destroying men in such patriarchal society the principal perpetrators ensured that the majority of Muslims from this area would not return to the central valley of the Drina River. Without men the women and children stay without protection, there is not anyone to do all traditional male duties, and the future generations will not have husbands and fathers. The evidence adduced in these proceedings indicates beyond a doubt that they wanted to achieve exactly such a goal.

168. In her finding and opinion, the Defense expert witness, Dr Svetlana Radovanović, specialist in demography<sup>140</sup>, conducted an analysis of statistical results and reached a conclusion that the analysis related to all identified persons, as well as the cases related to Pilica, shows that the number in question did not constitute a population mass that could vitally jeopardize the biological survival of the Muslim ethnic community in BiH, or the sub-region of Eastern Bosnia.

169. However, as established by the Trial Chamber in the *Stupar et al.* case:

"The number, or the percentage, of the persons killed and how such percentage affects the 'vitality of an ethnic group' is not an element of the criminal offense with which the Accused are charged. To put it simply, the Accused are charged with committing killings of members of a group with the aim of destroying that group. Whether those are mass killings or individual killings, whether in reality they affect the survival of the group or not, and whether they result in appreciably serious consequences for the 'biological reproduction capacities' of the analyzed group is not relevant to the factual and legal analysis of the elements of the criminal offense, its commission, and the finding that the offense was committed with that specific intention."

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<sup>140</sup> Exhibits **O-I-38** and **O-I-44**.

(i) Conclusion

170. Therefore, the Panel has established that, *inter alia*, with the acts described in the operative part of the Verdict, genocide of the Muslims from Srebrenica was committed in July 1995. All detainees who were transported to Pilica were killed, both the ones placed in the *Kula* School in Pilica and on 16 July transported and executed at the Branjevo Farm, and a few of them executed in the School, and the ones detained in the Cultural Center in Pilica in which they were executed on 16 July, while at least three men who survived the massacre at the Cultural Center were killed on the following day, 17 July 1995. It is not possible to establish the exact number of the killed detainees, but there was at least 1,000 detainees, men from Srebrenica. Prior to the killing, all detainees had been exposed to serious mental harm, and a large number of them suffered serious physical harm.

171. Bosnian Muslims from Srebrenica made the target group. The detainees who were killed in Pilica had previously been separated from their wives, mothers, sisters and children in Potočari, or had been captured while attempting to reach the safe territory. Their families were forcefully transferred from the Srebrenica enclave, in the manner and under the circumstances in which they were given a clear message that they had nowhere to return to, the message reinforced with the killing of thousands of men, whereby the intention to eradicate this group of Muslims from their domicile territory and to destroy the group as a whole without a possibility of its reproduction, was manifested beyond a doubt.

172. The obvious manifestations of the intent to commit genocide are exceptionally rare, therefore, in the absence of such evidence, the conclusion on intent may be drawn on the basis of the circumstances and facts related to the criminal offense, on the basis of which circumstances the Trial Panel concluded beyond a reasonable doubt that the perpetrators and members of the JCE who committed the crimes in Pilica and the Branjevo Farm acted not only with the intent to kill, but also with the intent to exterminate the Muslims from Srebrenica.<sup>141</sup> Ratko Mladić also talked about the “destruction of the people” at a meeting in the *Fontana* Hotel when he advised representatives of the Muslims from Srebrenica to save their people from destruction.<sup>142</sup> The principal perpetrators' intent of destruction is discussed in more detail below in the Verdict, in Chapter III-N-g (*Principal Perpetrators Acted with Intent To Destroy and the Accused Were Aware of That Intent*).

173. Here the Trial Panel re-emphasizes that it could not conclude beyond a reasonable doubt that the two Accused, Momir Pelemiš and Slavko Perić, shared the intent, either on the basis of the evidence offered by the Prosecution, or the other circumstances regarding the criminal offense, but it did establish that they knew of this intent of the principal perpetrators

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<sup>141</sup> So, for example, Momir Nikolić stated in his testimony before the ICTY that he learned of the attack against Srebrenica and the VRS intention in early July 1995, when the Drina Corps Commander, General Živanović, told him that Srebrenica should be defeated militarily and cleansed from the Muslims; **T-142**, Transcript of Witness Examination in ICTY case No. IT-02-60-T, p. 1637.

<sup>142</sup> **T-167**, video footage of the meeting in the *Fontana* Hotel – part II.

and that with such awareness of the acts and intents of the principal perpetrators they carried out the actions with which they significantly contributed to the commission of the offense.<sup>143</sup>

#### E. STRUCTURE OF THE ZVORNIK BRIGADE AND THE 1ST INFANTRY BATTALION

174. The Indictment charges the Accused as members of the 1st Battalion of the Zvornik Brigade. The Zvornik Brigade was established as part of the Drina Corps in 1992.<sup>144</sup> In July 1995, Commander of the Zvornik Brigade was Lieutenant Colonel Pandurević. The Chief of Staff and Deputy Brigade Commander was Major Dragan Obrenović. Three departments directly subordinate to the Commander were: the Security Department, headed by Lieutenant Drago Nikolić; the Logistics Department, headed by Captain Sreten Milošević; and the Department for Morale, Legal and Religious Affairs, headed by Major Nenad Simić.<sup>145</sup>

175. The Brigade Commander was further assisted by his staff, organized and directed by the Chief of Staff, which consisted of the operations and training organ; the intelligence organ; the personnel affairs organ; the communications organ; the engineering organ; the air defense organ; and the artillery organ. The engineering organ was headed by the Chief of Engineering, Major Dragan Jokić.<sup>146</sup>

176. The Zvornik Brigade contained eight infantry battalions of approximately 450-550 men each; one logistics battalion; one mixed artillery division; and one light anti-aircraft rocket artillery battalion. The Zvornik Brigade also had a unit of infantry battalion strength called 'the Podrinje Special Detachment, known as 'the Drina Wolves'. The Drina Wolves were commanded by Captain Milan Jolović, nicknamed 'Legenda.' The Drina Wolves, although functioning within the Zvornik Brigade, acted as a reserve for the Drina Corps.<sup>147</sup> The Zvornik Brigade had three separate companies: an Engineering Company, commanded by Captain Dragan Jevtić as of 23 June 1995; a Military Police Company; and a Communications Company.<sup>148</sup>

177. The Zvornik Brigade headquarters was located at the 'Standard' factory in Karakaj, three kilometers north of the town of Zvornik along the Drina River. The Brigade also manned an IKM (forward command post) at Kitovnice near the village of Orahovac. The Zvornik Brigade secured an area of approximately 40 kilometers along the river Drina around Zvornik town.<sup>149</sup> In July 1995, the Zvornik Brigade always had a duty officer on duty at the command

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<sup>143</sup> See III-N-g (*Principal Perpetrators Acted with Intent To Destroy and the Accused Were Aware of That Intent*)

<sup>144</sup> **Pelemiš Established Facts 15**, Decision on Established Facts of 30 October 2009.

<sup>145</sup> **Pelemiš Established Facts 16**, Decision on Established Facts of 30 October 2009.

<sup>146</sup> **Pelemiš Established Facts 17**, Decision on Established Facts of 30 October 2009.

<sup>147</sup> **Pelemiš Established Facts 18**, Decision on Established Facts of 30 October 2009.

<sup>148</sup> **Pelemiš Established Facts 19**, Decision on Established Facts of 30 October 2009.

<sup>149</sup> **Pelemiš Established Facts 20**, Decision on Established Facts of 30 October 2009.

as well as at the IKM. In addition, the brigade had a barracks duty officer at the brigade command, in charge of the internal duties of the barracks.<sup>150</sup>

178. The Zvornik Brigade Engineering Company had heavy equipment and vehicles. In July 1995, the following heavy equipment and vehicles were available to, and used by, the Engineering Company: two trucks, two ULT loaders, a loader and two excavators.<sup>151</sup>

179. In July 1995, the 1st Infantry Battalion consisted of four infantry companies of 606 soldiers in total. The Battalion was formed from the previous Lokanj Battalion and Pilica Battalion.<sup>152</sup> The Battalion Commander was Milan Stanojević and his Deputy was Momir Pelemiš. Other deputy commanders were: Rajko Babić, administration officer, Dragan Pantić, in charge of morale and religious affairs; Slavko Perić, in charge of security, Stanko Gajić, in charge of logistics.<sup>153</sup> Deputy administration officer was Jovan Gajić.<sup>154</sup>

180. The Battalion Command was located in a private house in the settlement of Manojlovići, while the communications center was located around 200 meters away from the Command building.<sup>155</sup> The Communications Department Commander was Dragan Jovanović, and the Brigade Command communicated with the Battalion Command directly by telephone or via the communications center.<sup>156</sup> Couriers in the Battalion Command were Zoran Ilić and Radivoje Lazarević.<sup>157</sup> The center had field telephones connected to it, almost always by serial wiring, and there were four or five of them on the defense line. The kitchen, the logistics, and the mortar platoon each had field telephones and they were all connected to the center that was connected with the Brigade Command in Zvornik.<sup>158</sup> Driver of the Battalion Commander was Battalion member Milan Jovanović, and the Battalion's official vehicle was a *Lada*.<sup>159</sup>

181. The Battalion produced food for its needs at a part of the Branjevo Farm, and assistant in Logistics Unit Radivoje Lakić was in charge of it. He was appointed to the 1<sup>st</sup> Battalion, as the manager of the Branjevo Military Farm, by Zvornik Brigade Commander Vinko Pandurević under the order of 7 December 1994.<sup>160</sup> Members of the labor detail who lived in the area of

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<sup>150</sup> **Pelemiš Established Facts 22**, Decision on Established Facts of 30 October 2009.

<sup>151</sup> **Pelemiš Established Facts 25**, Decision on Established Facts of 30 October 2009; Witness P-23, Transcript of Audio Recording of 6 October 2009.

<sup>152</sup> **Stevo Petrović**, 29 November 2010 trial, Transcript of Audio Recording.

<sup>153</sup> **T6**, Analysis of combat readiness in the 1<sup>st</sup> Battalion, dated 24 January 1995, signed by Commander Milan Stanojević; **T-12**, Order pov.br.06-156 by the 1<sup>st</sup> Zvornik Brigade Commander, dated 13 September 1994, on appointing commanders under the standard wartime formation; **Rajko Babić**, Transcript of Audio Recording of 28 January 2009, p. 7.

<sup>154</sup> 11 December 2010 trial, Transcript, p. 24

<sup>155</sup> Milan Stanojević, Milan Jovanović.

<sup>156</sup> **Dragan Jovanović**, Transcript of Audio Recording of 10 June 2009.

<sup>157</sup> **Radivoje Lazarević**, Transcript of 24 July 2009, p. 37.

<sup>158</sup> **Stjepan Mitrović**, Transcript of 11 October 2010, p. 37.

<sup>159</sup> **Milan Jovanović**, Transcript of 1 June 2009, pp. 8, 9.

<sup>160</sup> **T-10**, Military Post 7469/20, Manojlovići, No. 02-142/95 of 9 July 1995, List of soldiers of the 1st Infantry Brigade. assigned to work at the Branjevo Military Farm; **T-69**, Article from the *Drinski* newspaper of the Zvornik Infantry Brigade from June 1995, Issue No. 19 (related to production of food for the needs of the army at the Branjevo Farm); Milan Stanojević; Milan Pantić; Ratko Simić; **T-173**, Confidential order of 7 December 1994 No. 06-184 by Zvornik Brigade Commander Vinko Pandurević; **Radivoje Lakić**, witness examination of 2 November 2009, Transcript of Audio Recording.



Donji Lokanj and Pilica worked at the farm, while the other part of the labor detail worked in the kitchen and chopped wood, which tasks were performed by members who lived in the area of Bare and Gornji Lokanj.<sup>161</sup>

182. Several Defense witnesses testified about the status of the Branjevo Farm, given that the Defense claimed that a part of the land at which the detainees were executed and buried did not belong to the army, but the Panel did not find it to be a relevant fact.<sup>162</sup> Defense witness Milica Milovanović was employed at the *Agroprom* company and confirmed that next to that company in Branjevo there was a military farm, which used one lot of land for its needs. The other witnesses also confirmed that the army used a part of the land at the Branjevo Farm for its needs. The Panel did not consider it to be of particular importance whether the detainees were killed and buried in a mass grave at that very part of the farming land or at the part that was not used by the army but the then *Agroprom* company. That was one and the same land, that is, the referenced lots bordered each other, and the perpetrators were obviously not busy establishing the precise borders of the lots and did not consider it important. What is relevant is that one of the reasons why the principal perpetrators (Beara, Popović, Nikolić, Trbić) chose the location for the purposes of execution and burial was the fact that that land or a part of it was used by the army, that is, the Zvornik Brigade, hence it was "suitable" for the perpetration of the crime and the concealing of its traces alike.

#### F. STATUS OF THE ACCUSED IN THE 1ST BATTALION

##### (a) Momir Pelemiš

183. On the basis of the adduced evidence, the Trial Panel established that in July 1995 the Accused Momir Pelemiš carried out the duty of Deputy Commander of the 1<sup>st</sup> Battalion, to which duty he was appointed on 13 September 1994, and that in the relevant period, from 14 to 17 July, in the absence of Commander Milan Stanojević, he carried out the duty of the Battalion Commander.

184. The Defense did not contest the status of deputy commander, and it was also confirmed by the documentary evidence and evidence given by witnesses, Battalion Commander Milan Stanojević included, who stated that Pelemiš was appointed Deputy Commander "probably because of his experience as a man, reserve officer, in order to make the Battalion Command even more successful, that is, more efficient and stronger in terms of combat readiness."<sup>163</sup>

185. The fact that Momir Pelemiš was the Acting Commander in the Commander's absence was confirmed by all examined witnesses -- members of the 1<sup>st</sup> Battalion, including the

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<sup>161</sup> **Stanko Gajić**, Transcript of 1 October 2010, p. 23.

<sup>162</sup> Milica Milovanović, Dragan Milovanović.

<sup>163</sup> **O-I-27; Nebojša Jeremić**, Zvornik Brigade Military Police Company, Transcript of Audio Recording of 15 February 2010 trial, p. 67; **Savo Stević**, Transcript, p. 34.

Commander Milan Stanojević<sup>164</sup>, who stated that in his absence his deputy carried out the duty of commander and had all authorities of the commander. He also stated that in July he received an order to lead the soldiers to the region of Bratunac, to Zeleni Jadar, as the Commander of Combat Group II, hence he called Pelemiš to go to the Battalion Command and assume the duty of commander, which Pelemiš did.<sup>165</sup> Finally, this procedure is standardized in the Battalion Rule No. 77, according to which:

Deputy Battalion Commander shall work under the instructions and orders of the Commander, help him in his work and replace him in his absence.<sup>166</sup>

186. That Milan Stanojević was not present in the 1<sup>st</sup> Battalion Command, that is, that he was not present in the 1<sup>st</sup> Battalion's zone of responsibility in the 14-17 July period, and that in that period Momir Pelemiš carried out the duty of the commander, was confirmed by the majority of the examined witnesses, for example, Milivoje Todorović<sup>167</sup>, Rajko Babić<sup>168</sup>, Mićo Manojlović<sup>169</sup>, Mile Tejić<sup>170</sup>, Stanko Gajić<sup>171</sup>, Jovan Gajić<sup>172</sup>, Branko Jevtić<sup>173</sup>, Dragan Pantić<sup>174</sup>, Borislav Nikolić<sup>175</sup>, and others. Dragan Obrenović also confirmed the foregoing in his evidence before the ICTY, explaining that Milan Stanojević led one mixed tactical group made up of members of the Zvornik Brigade in the Srebrenica takeover operation.

187. The Defense averred that serious oversights were made in the process of taking over the commander duty in terms of the method and place of transferring the rights and obligations of commanding, and that at the moment when Momir Pelemiš agreed to return from his sick leave to the Battalion Command, he was not aware that he effectively assumed all command authorities and obligations.<sup>176</sup> With respect to the manner in which the handover of duty was carried out, the Defense for the first Accused also examined witness Davor Pelemiš, who stated that his father was on sick leave when Stanojević called him for a meeting in Zvornik, and that he was present at the conversation between his father and Stanojević, when Stanojević told him he would be absent. When his father said he was against the assuming of the duty since he was on sick leave and not capable of taking over the command, Stanojević told him that everything was already prepared in the Battalion Command and that he only had to show up.

188. Irrespective of whether or not the things were really like that, the oversights, if there were any, when assuming the duty and the awareness of the Accused could not affect the

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<sup>164</sup> 26 March 2009 trial, Transcript of Audio Recording.

<sup>165</sup> The order entitled "Order for March No. 3" is dated 3 July 1995 and is enclosed as Exhibit **T-8**.

<sup>166</sup> **T-162 (O-I-26)**, Battalion Rule, Federal Secretariat for National Defense 1988 (*emphasis added*).

<sup>167</sup> 24 April 2009 trial, Transcript of Audio Recording, p. 7.

<sup>168</sup> 28 April 2009 trial, Transcript of Audio Recording, pp. 16, 56 and 57.

<sup>169</sup> 26 May 2009 trial, Transcript of Audio Recording, pp. 27 and 29.

<sup>170</sup> 27 September 2009 trial, Transcript of Audio Recording, p. 5.

<sup>171</sup> 6 October 2009 trial, Transcript of Audio Recording, p. 9.

<sup>172</sup> 11 October 2010 trial, Transcript of Audio Recording, p. 24.

<sup>173</sup> 29 November 2010 trial, Transcript of Audio Recording, p. 10.

<sup>174</sup> 25 January 2011 trial, Transcript of Audio Recording, p. 28.

<sup>175</sup> 29 September 2010 trial, Transcript of Audio Recording, p. 8.

<sup>176</sup> Finding and opinion of military forensic expert Radovan Radinović, p. 52.

conclusion regarding his status as the Commander, given the fact that from the moment he arrived in the Battalion Command, knowing that the Commander was absent, he fully assumed all command authorities and obligations, hence all the actions that he afterward undertook in the Commander's absence, he undertook in that very capacity. His rights and obligations were set forth in the Battalion Rule No. 76, according to which:

The Battalion Commander shall have the exclusive right to command the Battalion and all units attached to it for the execution of tasks. The Commander shall be responsible for the proper operations of the Battalion Command and all subordinate officers, morale-political situation, security, combat readiness, training, proper utilization of units and execution of the combat task. He shall, therefore, direct and control the operations of the Command and the units in preparations for forthcoming activities, render decisions, set tasks and request a consistent execution thereof ...<sup>177</sup>

(b) **Slavko Perić**

189. On the basis of the adduced documentary evidence the Panel established that the Accused Slavko Perić was the Assistant Commander for Security of the 1<sup>st</sup> Battalion in the relevant period, and this was also confirmed by all examined witnesses, members of the Zvornik Brigade and the 1<sup>st</sup> Battalion. The Defense did not contest this averment by the Prosecution.

190. According to the Commander's January 1995 report, the security organ in the Battalion was made up of the Assistant Commander for Intelligence and Security and the Military Police.<sup>178</sup> With respect to the duty of assistant commander, Milan Stanojević stated that in a normal situation Assistant Commanders who were in Battalions carried out the tasks they were assigned by the Commands of respective Battalions.

191. If they have tasks from a brigade, which is higher in the hierarchy, that is, from their chief, they carry out the tasks that are a priority.<sup>179</sup> According to the Instruction of the Zvornik Brigade Command of 21 September 1994, the Assistant Commander for Intelligence and Security is an organ of the Battalion Command that is *directly subordinate to the Battalion Commander to whom he answers for his work*, while in the professional sense he reports to the security organ of a higher command.<sup>180</sup>

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<sup>177</sup> T-162 (O-I-26), Battalion Rule, Federal Secretariat for National Defense 1988 (*emphasis added*).

<sup>178</sup> T6, Analysis of combat readiness in the 1<sup>st</sup> Battalion, 24 January 1995.

<sup>179</sup> Transcript of Audio Recording, p 19.

<sup>180</sup> O-I-16 (*italics added*).

## G. TRANSPORT OF DETAINEES TO PILICA

192. On 13 July, witness Q and the other detained men were transported by buses from the stadium in Nova Kasaba in front of the school in Bratunac, where he spent the night on board the bus, while witness P6 was transported from Potočari to the school in Bratunac, where he spent two days, as he remembers. According to witness Q, in the afternoon of 14 July the detainees were transported by buses to the place of Pilica, where they were escorted by VRS soldiers to the gym of the school that Q identified on the presented photographs<sup>181</sup>. Witness P6 was also transported by bus from Bratunac to the school in Pilica and he spent a certain period of time on board the bus parked in front of the school, whereupon he was taken out of the bus late in the afternoon together with a group of detainees and into the classrooms on the upper floor of the school.

193. During cross examination, witness P6 was unsure about how many nights he spent at each particular location (in Potočari, Bratunac and Pilica) prior to being taken for execution by fire, and was also confused regarding the road they took by buses from Bratunac to Pilica. However, the Panel did not attach importance to these facts given that it is absolutely comprehensible that he could not remember such details precisely, due to the circumstances he found himself in and his old age.<sup>182</sup>

194. That the detainees were transported from Bratunac is also confirmed by the fact that on 13 July 1995 a mass mobilization of buses was ordered (at least 50 buses with drivers), which “should immediately move toward the sports stadium in Bratunac”.<sup>183</sup> This was also confirmed by witness Milovan Đokić, driver in the Military Police of the Bratunac Brigade, who was in escort aboard one of the buses that set off from in front of the *Vuk Karadžić* School in Bratunac, witness Slobodan Đajić, driver of one of the buses, and Momir Nikolić and Dragan Obrenović in their evidence given in the proceedings conducted before the ICTY.

195. The adduced evidence does not indicate that the Accused Pelemiš and Perić participated in the selection of locations in Pilica for placement of the detainees. If the opposite had been established, it would have been an indication of the responsibility of the Accused as co-perpetrators acting in a JCE.

196. In other words, although the Order of the Drina Corps Command of 15 April 1995<sup>184</sup> reads that “all Commands – from the Battalion level up – should designate the locations behind the frontline at which captured members of the enemy force will be rounded up”, the adduced evidence indicates that the operation of distributing the men from Srebrenica, first in

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<sup>181</sup> On the photograph he identified the *Kula* School (as a recognizable structure) and stated that he was placed in that school's gym, which he recognized on the photograph.

<sup>182</sup> The witness answered the Prosecutor's question as follows: “Perhaps I made a mistake then, although I wouldn't say so, anyway, on that day I could not, due to the fear I felt, remember everything that happened...”; Transcript of Audio Recording of 25 March 2009, p. 42.

<sup>183</sup> **T-115**, Order by the RS Ministry of Defense Zvornik 02-79/95 of 12 July 1995, Secretary Stevan Ivanović. **T-116**, Order by the RS Ministry of Defense Zvornik 02-21/3640/95 of 13 July 1995, Momčilo Kovačević.

<sup>184</sup> **T-164**, Letter by the Security Administration of the Drina Corps of 15 April 1995.

Bratunac, and afterward in the Zvornik area, was directed and supervised by Colonel Ljubiša Beara, and that Vujadin Popović, Drago Nikolić and others participated in the selection of those locations. This is also confirmed by the established fact that some members of the VRS Main Staff engineered and supervised the killing of Bosnian Muslim men from Srebrenica.<sup>185</sup> The Military Policeman - driver of the Zvornik Brigade Commander testified that he drove Drago Nikolić and Miomir Jasikovac, Commander of the Zvornik Brigade Military Police, to different localities in search of the locations to place the detainees, including the locations in the place of Pilica.<sup>186</sup>

197. In his statement on the facts and the guilty plea, Momir Nikolić stated that in the evening of 13 July he met with Colonel Beara, who ordered him to go to the Zvornik Brigade and inform Drago Nikolić, Deputy Commander for Security, that there are thousands of detainees in Bratunac who would be sent that evening to Zvornik and that they should be detained and executed there. He did so, that is, he personally informed Nikolić about it at the Zvornik Brigade IKM in Kitovnice.<sup>187</sup> He also informed his superior, Bratunac Brigade Commander Colonel Blagojević, about these plans.

198. Dragan Obrenović, at that time the acting Commander of the Zvornik Brigade, testified that in the evening of 13 July he was informed by Drago Nikolić, who was the duty operations officer at the Kitovnice IKM at that time, that he had received a call from Lieutenant Colonel Popović that a large number of detainees would be brought to Zvornik. Obrenović asked why they would not be taken toward Bijeljina, that is, the Batković camp, and Nikolić answered that both the Red Cross and UNPROFOR knew of that camp and that the order came from Mladić personally that the detainees should be executed in Zvornik, and that Beara and Popović would carry it out. He asked Obrenović to have a Military Police company secured to that purpose<sup>188</sup>. According to what Obrenović learned on 15 July, not only that Drago Nikolić afterward ordered killings of the detainees at different locations in Zvornik, but also personally participated in the killings.

199. An entry in the daily log of the duty operations officer of the Zvornik Brigade reads that "Colonel Salapura has called" and that "Drago and Beara should report to Galić", which leads to the conclusion that the highest ranking military intelligence structures of the VRS Main Staff were informed of and involved in the organization of this operation.<sup>189</sup>

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<sup>185</sup> **Pelemiš Established Facts 14**, Decision on Established Facts of 30 October 2009.

<sup>186</sup> That Dragan Nikolić visited the locations at which the detainees would be placed can be seen in the documents recording the movement of the passenger vehicle of the Zvornik Brigade Command, **T-57**.

<sup>187</sup> **T-141**.

<sup>188</sup> **T-142**, Transcript of 2 October 2003, ICTY-IT-02-60-T, p. 29.

<sup>189</sup> **T-4**.

## H. CONDITIONS OF DETENTION IN THE SCHOOL AND CULTURAL CENTER IN PILICA

### a. The School

200. Having reviewed the correspondence of the respective statements of witness Q (who was taken from the bus into the gym and taken out of the gym two days later and transported to Branjevo), P6 (who was taken from the bus into the classroom on the first floor of the school wherefrom he was taken and transported to Branjevo), Bogoljub Gavrić (who was present during the disembarkation and described that the detainees were in the gym, and after some time taken out of the gym and placed in the classrooms), Rajko Babić (who stated that at one moment, while the detainees were being taken into the school, one soldier shouted that the gym was full and that it could not accommodate anyone else, and that later, because of the unbearable conditions in the gym, some detainees got out of the gym into the corridor connecting the gym to the school building and occupied the staircase leading to the first floor of the school, whereupon they were placed in the five classrooms on the first floor), and Zoran Gajić, Savo Stević, Mićo Manojlović (who all confirmed unambiguously that the detainees were both in the gym and the classrooms on the first floor of the school), the Panel established that, upon reaching the school, the detainees were first taken from the buses to the gym, until the gym was full. After that, the detainees from the remaining buses were taken to the classrooms on the first floor of the school, and afterward, as the gym was overcrowded, at one moment a number of the detainees from the gym were transferred to the classrooms upstairs, while a number stayed in the gym.

201. The Indictment (Count 2) alleges that up to 1,200 detainees were transported from the *Kula* School and killed at the Branjevo Farm. However, having reviewed the correspondence of the respective witness statements, the Panel established that this averment from the Indictment has not been proved, and established that at least 500 detainees were in the *Kula* School between 14 July and 16 July when they were transported to Branjevo, due to which the operative part has been modified in relation to the Indictment.

202. Although witness Q stated that there were around 2,000 detainees in the school gym, and witness Zoran Gajić that 1,000-2,000 detainees were taken by buses from the school to Branjevo, the Panel considered that it was possible that these averments were a result of the difficult conditions in the gym in which witness Q was staying, and the fact that an enormous number of detainees were originally taken into the gym and that they fainted because of lack of air, which is why the witness probably had an impression that there were thousands of people in the gym.

203. The Panel emphasizes that, given that it was impossible to establish this piece of information precisely, it made the inference guided by the principle in favor of the Accused, hence it gave the number of five hundred (500) detainees in the description of the facts in the operative part of the Verdict solely as the smallest one, not at all as the final number of the detainees in the Pilica school, leaving room for a possibility that the number was much larger.

204. When making the inference about the number of the detainees in the school, the Panel took into account the fact that the detainees' disembarkation into the school lasted several hours, and the fact that the detainees disembarked until the school was full, that they were placed in the gym and five classrooms on the upper floor, and regarded all that in connection with the assessment of the capacity of the gym and the classrooms that the Panel members made when they went to the site and personally checked the school's dimensions.

205. In other words, driver Slobodan Đajić stated that he arrived in Pilica in a long column of buses in the afternoon and that he waited for long for the vehicles that were parked in front of him to "unload" the detainees so that he could approach with his bus the gate of the school that, according to him, was already full of detainees. When the detainees got off his bus (and there were 50-60 detainees, in his estimate), four hours had already passed from the arrival in front of the school, and there were more buses still behind him waiting for the "unloading". That is the reason why he could not "turn around" the bus there, but continued forward with an empty bus.<sup>190</sup> The Panel concludes that the bus driven by driver Milovan Đokić was in the column behind Đajić's bus. It ensues from Đokić's statement that the disembarkation from the buses that were parked in front of his bus lasted from the moment of the arrival in front of the school until "darkness fell"<sup>191</sup>. Given the fact that it was a summer period when days are long, the Panel concludes that the disembarkation must have lasted for several hours, contrary to the allegations of witness Rajko Babić, who stated that it lasted some 40 minutes. Witness Bogoljub Gavrić stated that the detainees' disembarkation lasted for around three hours.

206. Witness Zoran Radosavljević stated that he saw around 10 parked buses with detainees in front of the school when he reached the school before noon together with Pero Petrović, the Local Community president<sup>192</sup>. Witness Pero Petrović, the Local Community president and member of the 1<sup>st</sup> Battalion, said something similar, as he confirmed that he saw a column of buses on the road when he arrived in front of the school<sup>193</sup>. Witness Slobodan Jović arrived in front of the school on Friday afternoon and saw buses on the road in front of the school, while detainees were already in the classrooms in the school.

207. While they were waiting for the disembarkation aboard the parked buses, witness P6 saw that one detainee tried to get out through the articulation joint of the bus and was killed when he jumped out. Driver Slobodan Đajić and Bogoljub Gavrić testified in accordance with the foregoing, the latter stating that he heard that one detainee (whose dead body he saw on the parking lot in front of the school) tried to jump out of an articulated bus that had a rubber articulation joint that the detainee allegedly cut open with something and jumped out through it whereupon he was killed.

208. The surviving witnesses Q and P6 testified about the conditions in which they spent two nights and two days in the school. Witness Q stated that the school gym was overcrowded,

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<sup>190</sup> Transcript, pp. 24, 26, 27, 38.

<sup>191</sup> The witness stated that when he arrived in front of the school he parked the bus in a column, some 500 meters away from the school, but when darkness fell he moved the bus next to the school; Transcript, p. 70.

<sup>192</sup> Transcript of 1 December 2010, p. 14.

<sup>193</sup> Transcript of 30 August 2010.

stifling to the point that some people even died there, while he fainted in a toilet. There was no food, but when he regained consciousness one of the soldiers gave him his bread and meat pate. There was no water inside the school, but the detainees, escorted by soldiers, went to the drinking fountain down the road and brought water. Witness P6 also confirmed that they were not provided any food, as did several witnesses – members of the 1<sup>st</sup> Battalion, who stated that there was no organized food distribution to the detainees. They also stated that food was brought to the soldiers who were providing security and that some of them gave their rations to the detainees, while some, like, for example, Mićo Manojlović, went to the shop and bought bread with their own money in order to give the bread to the detainees. On the other hand, there were also soldiers who took money from the detainees and bought beer to themselves.<sup>194</sup> Witness Stjepan Mitrović stated that he heard that one Mićo Tomić, member of the 1<sup>st</sup> Battalion, took money from the detainees in exchange for water and that he mistreated the detainees in other ways as well.<sup>195</sup> Neđo Manojlović, member of the Battalion's Logistics Platoon, stated that he spent a short period of time in the school in civilian clothes and unarmed and that he gave the detainees his own cigarettes and bread.

209. Rajko Babić stated that the heat was enormous, that the temperature in the shade hit 35° C, and that there were no windows in the gym that could be opened.<sup>196</sup> A barrel with around 200 liters of water was brought into the corridor so that the detainees could refresh themselves. Savo Stević stated that he and other soldiers went to the drinking fountain down the road and brought water in buckets, and other witnesses testified similarly.

210. Witness Q said that nobody beat him and that he did not see any of the detainees being beaten. He did see one soldier who fired from a heavy machine gun at the gym ceiling while the detainees were inside, due to which he got scared. The soldier who fired from a heavy machine gun was the 1<sup>st</sup> Battalion member Stanko Perić, of which Bogoljub Gavrić testified.<sup>197</sup>

211. Unlike witness Q, witness P6, who was in the classroom on the school's first floor, stated the following:

“...so, when we came there, then those soldiers started arriving immediately, taking out one by one, sometimes two by two, sometimes one. There you heard cries, groans, how they beat, how they killed, how they tortured. Sometimes bursts of fire were heard, sometimes not, but only a voice dying down, dying down, dying down, and then at one point it stops and is no longer ..”

212. He also said that on his way to the toilet he would pass by the soldiers who used to hit him with rifle butts. That the detainees on the first floor of the school were exposed to inhuman

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<sup>194</sup> Savo Stević, Transcript of Audio Recording, p. 11.

<sup>195</sup> Transcript of 11 October 2010; p. 58.

<sup>196</sup> Transcript, p. 35.

<sup>197</sup> Transcript, p. 54.



treatment was confirmed by Zoran Gajić, who stated that he noticed one person, nicknamed *Dželat* [executioner; translator's note], strolling the corridor on the first floor carrying a knife, bursting into the classrooms and forcing the Muslims to sing Chetnik songs.<sup>198</sup>

213. The Panel established that at least two detainees were killed during the stay in the *Kula* School on the basis of the statement of witness P6, who saw the body of one dead detainee upon exiting the school, just before boarding a bus. Witness Bogoljub Gavrić stated that while entering the gym one detainee stumbled and that the detainees [as rendered in the original text; translator's note] shot at him, and that on the playground next to the gym he saw three bodies of detainees and that the rumor was that they had tried to escape. Also, witness Mile Tejić stated that he saw two dead bodies of the detainees and that he heard that they had tried to escape. Rajko Babić stated that one of the detainees was wounded in his leg when he started running on his way to fetch water from the drinking fountain down the road. This was also confirmed by witness Zoran Gajić, who stated that he saw the soldiers "dragging" one wounded detainee "by his hands" away from the fountain. He also stated that during the second night of guarding the detainees he heard a short burst and that on the following day he saw a dead male body on the road and that the story was that he had jumped through the window upstairs. Juroš Jurošević<sup>199</sup>, Savo Stević<sup>200</sup>, Mićo Manojlović, Mile Tejić<sup>201</sup>, and Neđo Manojlović<sup>202</sup> also confirmed that there were dead bodies of civilians around the school.

214. Finally, Jovan Ilić, member of the labor detail of the 1<sup>st</sup> Battalion, testified about the transportation of the killed detainees' bodies. He was ordered to drive a tractor with trailer in front of the school, where the dead bodies were loaded onto the trailer, and he transported them by tractor to Branjevo.<sup>203</sup>

215. A number of detainees stayed on board the buses for the whole night, as there was no more room for them in the school, which follows from the statement of witness Bogoljub Gavrić, who stated that upon the detainees' entering the school two buses with detainees stayed on the road, which he could see from his apartment all the way up to the curve<sup>204</sup>; Milovan Đokić, who stated that in the morning (that is, on 15 July) he drove the detainees from his bus to the Cultural Center<sup>205</sup>; witness Rajko Babić, who stated that he heard that some detainees had been held overnight on board the buses parked on the road leading to the school.<sup>206</sup>

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<sup>198</sup> Transcript of 13 May 2009, p. 17.

<sup>199</sup> Transcript of 1 February 2010, p. 16.

<sup>200</sup> Transcript, p. 14.

<sup>201</sup> Transcript, p. 9.

<sup>202</sup> Transcript of 28 December 2012, p. 20.

<sup>203</sup> At the time the dead bodies were being transported there were no more alive detainees in the school, hence the Panel concludes that the bodies were transported on 17 July, given that on 16 July the detainees were transported from the school to Branjevo.

<sup>204</sup> Transcript, p. 52.

<sup>205</sup> Transcript, p. 64.

<sup>206</sup> Transcript, p. 39; ICTY Transcript.

216. In other words, Milovan Đokić stated that he spent the night on board the bus with the detainees and that he heard shots, cries, noise and curses coming from the school, while witness Slobodan Jović stated that when he arrived in front of the school on Friday he found around four buses with detainees on board there, and that they probably could not all fit into the school, and that the buses were there roughly until noon on the following day as well.<sup>207</sup>

217. In the morning of 15 July, Juroš Jurošević, member of the 1<sup>st</sup> Battalion's labor detail, together with several other detail members arrived at the *Kula* School, where he saw that the detainees were in the school and that a number of detainees were on board several buses parked on the road in front of the school.<sup>208</sup> Also, it stems from his statement that these detainees for whom there was no room in the school were transported by buses to the Cultural Center, where he also went on foot.

218. Pero Petrović states that on the 15<sup>th</sup> he was in his office next to the Center when an unknown soldier came to him asking for the Center keys, whereupon he saw the detainees disembarking from the bus and going into the Center.

219. Having reviewed the correspondence of these witness statements, the Panel inferred that the detainees were not on board the parked buses by the evening of 14 July, as stated in the description of facts of the Indictment, but that several buses stayed parked in front of the school with detainees on board in the night of 14/15 July, and before noon of 15 July these detainees were transported to the Cultural Center. Having in mind the foregoing, the operative part of the Verdict has been modified in relation to the Indictment, in the manner not violating the objective identity of the Indictment.

#### **b. The Cultural Center**

220. Witness Milovan Đokić stated that after the night he spent in front of the school, he reached the Cultural Center in the morning by a bus with detainees on board. As indicated earlier, it follows from his statement that it was 15 July. This witness states that "some 10 buses reached"<sup>209</sup> the Center, although he was not sure about the exact number, and that the detainees' disembarkation lasted longer than one hour. Given the fact that there are no surviving detainees from the Cultural Center, the Panel could be informed about the terrible conditions in which they spent 15 and 16 July only partially from the statements of other witnesses.

221. Witness Petar Jurošević confirmed that one girl was among the detainees. As a reserve policeman he was engaged at a nearby police checkpoint, 30 meters away from the Center, and he talked with two detainees who were sitting in front of the Center and who told him that

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<sup>207</sup> Transcript of 27 December 2010, p. 128.

<sup>208</sup> Transcript of 1 February 2010, p. 15.

<sup>209</sup> Transcript, p. 78.

they were a brother and a sister and that she was the only woman there because she did not want to separate from her brother and that they were waiting to be taken to Batković.<sup>210</sup>

222. Zoran Gajić stated that there were around 300-500 detainees in the school and that the hall was full.<sup>211</sup> The detainees would drink water from one ordinary boot.<sup>212</sup> Milan [the name as rendered in the original; translator's note] stated that together with Milan Ivanić he went upstairs to the Center's projection room and that he pushed his head through the projection opening and saw the people in the hall. He did not know what their number was, but stated that it was so foul-smelling and stifling that he immediately withdrew his head. He heard that some of the people in the Center recognized Milan and they shouted to him "*Milan, brother, save us*", due to which Milan became agitated and started crying. Milan told him that he saw one dead body in front of the Center and everything he saw made him so sick that he started vomiting.<sup>213</sup>

(ii) Conclusion

223. Having reviewed the correspondence of these testimonies, the Panel found that the detainees spent a brief but terrible period of detention in the *Kula* School, in which the climate of terror was maintained by shots fired at the ceiling, sporadic killings of the detainees and beatings. Due to the unbearable conditions caused by high temperatures, lack of air, impossibility to meet the basic hygienic needs, and the exhaustion caused both by hunger and by what they had been through in the days before arriving in the school, many lost consciousness. The men, who were destined for execution, must have suffered terribly; they felt mental anguish while waiting for their execution, while being transported by buses to the execution sites and lined up to be executed, whereupon they were executed. The lethally wounded also suffered, waiting in pain for their bodies to finally give up the struggle so that they could die.

224. The detainees who were placed in the Cultural Center had previously spent two or more days on board the buses (as some were on board the buses while in Bratunac). While they were detained in Potočari and around Bratunac they did not receive any food or medical aid, and they were given only that much water that sufficed to keep them alive until the moment they would be taken to Zvornik.<sup>214</sup> So exhausted they were placed in the Cultural Center in which there were too many of them to be able to breathe normally. There is no proof that at any one moment they were distributed food in an organized manner, while they drank water from a rubber boot. It is difficult to imagine and describe the suffering of the wounded who were dying, and the suffering that the three survivors experienced between 16 and 17 July while waiting, hoping they would not be discovered and that by some miracle they would avoid the fate of the people who were dying around them in terrible agony.

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<sup>210</sup> Transcript of 6 September 2010, p. 37.

<sup>211</sup> Transcript of 13 May 2009, p. 40.

<sup>212</sup> Transcript of 13 May 2009, p. 43.

<sup>213</sup> Transcript of 15 June 2009, pp. 15, 16.

<sup>214</sup> Statement of facts and guilty plea, Momir Nikolić, **T-142**.

225. The Panel finds that the detainees in Pilica suffered serious bodily and mental harm and that this left lasting consequences on the health of the ones who survived the subsequent execution by fire and on their ability to lead a normal life, whereby the Panel is satisfied that the essential elements of the underlying crimes of the offense of Genocide in violation of Article 171(1)(b) of the CC of BiH have been proved.<sup>215</sup>

#### F. MASS EXECUTION OF THE DETAINEES FROM THE SCHOOL AT THE BRANJEVO FARM

226. The Panel has determined beyond a reasonable doubt based on the statements of the witnesses Q and P6 that the detainees who had been kept in the Kula school were summarily executed on 16 July at the Branjevo Farm. These witnesses testified about the most gruesome day of their lives when they survived the execution. Witness Q spent two nights in the school. Given that he was apprehended to the school in Pilica on 14 July, the Panel concludes that he left it on 16 July and that this is the very date when the executions in Branjevo were carried out. The ICTY Trial Chamber has found that the killings in Branjevo had started at 10:00 hrs and continued through 15:00 hrs on 16 July 1995.<sup>216</sup>

227. When the bus with Witness Q arrived at the large meadow around 11:00 hrs, he was taken off the bus with a group of ten other detainees and taken to the place where “a pile of killed people” had already existed.

“... they ordered us to stop. When we stopped, they started shooting. I immediately threw myself on the ground. However, another man fell on me, on my head. He was already dead. So they were firing. Then they started shooting head by head. One of them told the other one not to shoot the heads because the brains would splatter around, but that he should rather shoot at our backs ....”

228. Witness P6 testified that after the bus had stopped, soldiers started cursing them. He spotted through the window dead bodies of the killed people lying in the grass. He understood that “there would be no life any more”. He watched the detainees from the first part of the bus being taken to the place where the dead bodies were lying. Thereupon, the soldiers opened a burst of fire and executed them. Once all the detainees from this group had fallen down, the soldiers came back to the bus and took out another group of 20-25 men, including him:

“.. we walked ... along this path. We walked in a column and the very same man who had kicked me, asked: would any among you become a Serb so that we leave him alive. Two men volunteered. But nothing came out of it. ... when we passed around a hundred meters...we came to this column with the killed people. A Muslim from our column asked them to give us some water before killing us...nothing became of this either. I remained almost the last

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<sup>215</sup> The Court made the inference on genocidal act in the previous chapter, Chapter D.

<sup>216</sup> **Pelemis established facts number 172-** Decision on Established Facts dated 2009;

one in this column. This is it, the death, the end, you see it with your eyes.  
Just a few seconds more...”

229. On the very day when the detainees were executed, Ratko Simić was working in the civilian part of the farm. He stated that soldiers had come and told him they “wanted no civil audience”, so they ordered everyone to leave the area. Only one worker stayed there, namely Milivoje Nikolić who was “with the army”. The workers were told not to come to work for two days. When he came back two days later, he saw machines on the meadow. Milivoje Nikolić confirmed that in 1995 he had worked at Branjevo as a member of a work detail when soldiers came in a van, and that thereafter the buses arrived. He testifies that the soldiers had locked him in a warehouse and would not let him out until the executions were completed around 18:00 hrs, but he saw nothing given that he was detained in the warehouse.

230. Witness Periša Ničić testified that upon his arrival at the military farm, warden Radivoje Lakić told him they would not be working for several forthcoming days because certain people had been killed in the civilian part of the farm. The witness supposed that those killed were the people from Srebrenica who had been detained in the school and the Cultural Center.<sup>217</sup>

231. The ICTY Trial Chamber has established that members of the 10<sup>th</sup> Sabotage Detachment of the Main Staff participated in the killings at Branjevo<sup>218</sup>. Dražen Erdemović, one of the members of this Detachment, also confirmed this. His guilty plea was tendered in the case record. According to him, other members of an unknown VRS formation that had arrived at Branjevo subsequently on that day also participated in the execution in addition to the members of his Detachment.

232. A conversation intercepted on 16 July at 13:58 hrs, in which a duty operative officer of the Zvornik Brigade urgently requests the Drina Corps Command in Vlasenica to deliver 550 l of oil for Lieutenant-Colonel Popović in the village of Pilica “or the job he was on would otherwise be stopped”.<sup>219</sup>

233. Zoran Gajić, member of the 1<sup>st</sup> Battalion which escorted the bus with a group of detainees from the school, testified that upon his arrival at Branjevo he spotted dead bodies there, and 15-20 soldiers armed with automatic rifles and “84-rifles” directed toward the fields, that is, the place where the dead bodies were lying on the ground. When the detainees saw the dead bodies after leaving the bus, they started crying, cursing, and shouting: “Look, they will kill us like them!” Thereupon, he and the driver saw that the men from the bus were lined up and executed. He and the bus driver went back thereafter. During the exhumation of the Branjevo mass grave (which was after the burial illegally recovered, and a part thereof

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<sup>217</sup> Transcript dated 5 October 2009;

<sup>218</sup> **Pelemis established facts number 173**-Decision on Established Facts dated 30 October 2009;

<sup>219</sup> **T-88**- A script containing intercepted conversations relevant to the *Pelemiš et al.* case;

relocated to secondary graves), the investigators have gathered cartridge cases and 98 bullets.<sup>220</sup>

234. A member of the Engineering Company of the Zvornik Brigade, Cvijetin Ristanović, witnessed the killing of the detainees. This witness had to make breaks in digging the grave at certain time-intervals while the soldiers were executing the detainees. When he arrived at Branjevo, the plot where he was supposed to dig had been already “staked out”. The witness testified that, during the digging, smaller groups of civilians were brought there in smaller vehicles for execution.

235. After a certain period of time spent among the dead and the wounded, both survived victims managed to flee and hide. Witness P6 testified that four other younger men succeeded to survive the massacre and flee. Given that they were younger than him, he could not keep the pace with them so he stayed alone. After a ten-day hiding in the woods, he surrendered to the soldiers, who thereupon apprehended him to the Batković camp on 26 July 1995.

236. The evidence adduced shows that the destiny of the four men who had also managed to survive the massacre at Branjevo was not like his. These men are the following: Fuad Đozić (born in 1965), Amir Halilović (born in 1980, age 15 at the time), Sakib Kiverić (born in 1964) and Emin Mustafić (born in 1969). More specifically, Nebojša Jeremić testified about what happened to these four men after they had survived the execution. This witness examined them in the Command of the Zvornik Brigade after they had been recaptured. After their escape from the massacre site at Branjevo, on 18 July 1995, two Serbs, members of the Zvornik Brigade, helped them by giving them some food and clothes. Following the order by Drago Nikolić, these two persons were sentenced to imprisonment for aiding the enemy, while the four captured Muslims from Srebrenica were last time seen alive in the Zvornik Brigade Command in Karakaj.<sup>221</sup>

#### **G. MASS EXECUTION OF THE DETAINEES IN THE CULTURAL CENTER**

237. The ICTY Trial Chamber has found that on 16 July, the VRS soldiers killed around 500 Bosnian Muslim men in the Pilica Cultural Center.<sup>222</sup> The evidence adduced in these proceedings also supports this fact.

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<sup>220</sup> **T-99-11-** Criminal and technical examination of the mass grave at the location of Pilica, Branjevo Farm dated 15 June 1998;

<sup>221</sup> **T-90, T-91, T-92, T-93** statements of Fuad Đozić, Amir Kiverić, Sakib Halilović, Emin Mustafić; **T-97-** Report (Collaboration with Enemy) made by the security organs of the Command of the 1<sup>st</sup> Zvornik Brigade dated 26 July 1995-strictly conf. no.17/94; **T-95-** Document of the military post 7469 Zvornik, Military Police, Crime Prevention Department (Identification Record) dated 25 July 1995; **T-96** – Document of the military post 7469 Zvornik, Military Police, Crime Prevention Department, 25 July 1995 (Statement of person P17); **T-94** Document of the military post 7469 Zvornik, Military Police (Decision ordering custody) dated 25 July 1995.

<sup>222</sup> **Pelémis established facts number 178-** Decision on Established Facts dated 30 October 2009;

238. No living witnesses-detainees, survivors of this massacre, are known to exist. Three detainees, who had survived the shooting by automatic rifles and hand-grenades on 16 July, were killed on 17 July after it had been noticed during the load-up of dead bodies onto trucks that they were alive and hiding below a stage, that is, below the bodies of the killed persons. There exists, however, sufficient other evidence based on which it can be concluded beyond a reasonable doubt that a massacre was committed on 16 July, and completed on 17 July, in which the detainees who had been held in the Cultural Center were killed.

239. Results of a criminal-technical investigation conducted by the ICTY investigators on 29 September 1996 and 2 October 1996 in cooperation with forensic experts of the Crime Investigation Service of the USA Navy Forces (NCIS) show that the photos of the crime scene were made, all material clues photographed and recorded, and a large volume of evidentiary materials collected, including items, biological traces such as human blood, bones, tissues that were splattered around the walls and on the ground, explosion traces, numerous bullet holes, bullets, and cartridge cases.<sup>223</sup>

240. That the detainees in the Cultural Center were killed on the same day as detainees at Branjevo ensues from the testimony of witness Zoran Bojić. This witness testifies that while he was driving an official battalion vehicle a day after the detainees' departure from the Kula school, he saw the dead bodies being loaded onto trucks in front of the Cultural Center. When Slavko Perić entered the vehicle, he told him that the men whose bodies he saw had been killed by „certain security personnel that were present down there and that this happened on the previous day, namely on Sunday.“

241. Dražen Erdemović testified before the ICTY<sup>224</sup> that after the completion of the detainees' execution at Branjevo, the same Lieutenant-Colonel who had brought them from the Command in Zvornik to Branjevo, came again. He told them that there had been around 500 Srebrenica men in the Cultural Center who were trying to break the door and flee, and that they should go there and execute them. His unit refused this task, but other soldiers, who he claimed were from Bratunac, went together with the Lieutenant-Colonel to execute the task. When they subsequently came to an inn located across the Cultural Center upon an order by the same Lieutenant-Colonel, dead bodies were lying all around the Center, and the sounds of shooting and explosions were coming from the Center building. Thereupon, a member of the VRS entered the inn and informed the Lieutenant-Colonel that everything had been completed. The Lieutenant-Colonel stated „Those who survived, survived“.

242. Among other things, the telephone conversation intercepted on 16 July at 21:16 hrs between Popović and the operative center of the Drina Corps Command also indicates that this Lieutenant-Colonel was Vujadin Popović. Popović said among other things: „Tell the

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<sup>223</sup> **T-99-10-** Results of the criminal-technical investigation of the Center in Pilica, ICTY;

<sup>224</sup> **T-126-** Transcript of the testimony of Dražen Erdemović, dated 4 May 2007 in the ICTY case No.: IT-05-88-T, Prosecutor v. Vujadin Popović et al.;

General that I have done the job“, and „I will come there tomorrow when I make sure that everything is resolved, you know,“ noting that „in general, there were no major problems“. <sup>225</sup>

243. That the detainees were killed on the referenced day in the afternoon hours ensues from the testimony of Petar Jurošević, civil police officer from a near-by check point, who spotted the presence of several soldiers unknown to him and a parked red van. At one moment, he heard a burst of fire that lasted for 20 minutes or a half an hour. Thereafter, they approached the van that was parked near his duty booth and heard someone asking them: „Have you killed them? Is everything OK? Have you collected what was to be collected?“ Their answer was affirmative. After they had spotted him, they ordered the witness to come with them. They took him inside the Center where he saw around 200-300 bodies of the killed civilians being plundered by soldiers. Zoran Gajić testified that he did not know the precise number of detainees in there: “300 - 500, the room was full, I don't know its capacity.”

244. The Panel has brought into connection the foregoing statements, the on-site gained observations regarding the capacity and dimensions of the room, the statements of the witnesses who had loaded the detainees' dead bodies onto trucks which lasted for almost all day long<sup>226</sup>, the number of victims exhumed from the mass grave at Branjevo and the related secondary graves (1.052 bodies identified until April 2010), the fact that at least 500 victims who had been previously brought from the school in Kula and killed at Branjevo, were also buried in the same mass grave. The Panel concluded that at least 500 - 600 detainees from the Srebrenica enclave were killed in the Cultural Center. The ICTY Trial Chamber has also established this fact. In addition to the killed men, there was one woman killed too.

#### **H. THE BODIES OF THE VICTIMS KILLED AT BRANJEVO AND THE BODIES OF THE VICTIMS KILLED IN THE CULTURAL CENTER WERE BURIED IN A MASS GRAVE AT BRANJEVO**

245. A day after he had survived the execution, witness Q was lying among the mass of the killed and wounded men at Branjevo when he heard machines, that is, a truck by which the dead bodies were transported to the field and left there. The ICTY Trial Chamber has found that on 17 July, the dead bodies from the Pilica Cultural Center were loaded onto a truck and buried at Branjevo, around 3 km away from the Pilica Cultural Center.<sup>227</sup> The evidence adduced before this Court, including the testimony of Milenko Tomić,<sup>228</sup> member of a Labor Battalion (R Battalion) of the Zvornik Brigade, also supported this fact. This witness transported the bodies from the Cultural Center by a TAM 130 truck (6 tons load capacity) to the already excavated grave at the Branjevo Farm.

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<sup>225</sup> **T-88-** A script containing the intercepted telephone conversations relevant to the *Pelemiš et al.* case;

<sup>226</sup> **T-128-** From the testimony of Savo Popadić stating that they worked on the load in shifts and that at least seven trucks with bodies were loaded and transported from the Cultural Center;

<sup>227</sup> **Pelemis established facts number 179-** Decision on Established Facts dated 30 October 2009;

<sup>228</sup> Transcript of the audio-recording dated 28 September 2009 and 1 October 2009;



246. On 17 July, Jovan Ilić, member of a work detail of the 1<sup>st</sup> Battalion, drove to Branjevo, by a tractor with a trailer, several bodies of the detainees killed individually in the school on 14 and 15 July.<sup>229</sup>

247. The ICTY Trial Chamber has found that, on 17 July, members of the Engineering Company of the Zvornik Brigade participated in the excavation of mass graves at Branjevo.<sup>230</sup> The witnesses examined in these proceedings also confirm the foregoing. Witness P23<sup>231</sup>, a member of the Engineering Company of the Zvornik Brigade, testified that during these days he was digging holes by an ULT-220 loader of the Zvornik Brigade on a number of locations in the Zvornik surroundings, including the Branjevo Farm, where Major Dragan Jokić, Chief of the Engineering Company of the Zvornik Brigade, had sent him. He testified that workers had thrown into an excavated pit bodies from two big “piles” of corpses, and that the corpses brought there on the trucks were also “unloaded” into this pit.

248. The foregoing also ensues from the testimony of Cvijetin Ristanović,<sup>232</sup> member of the Engineering Company, who dug graves at Branjevo with a G 700 excavator. Damjan Lazarević, Commander of the Engineering Platoon, was also present there at the time.

249. Dean Manning<sup>233</sup>, the ICTY investigator, states in his report that the satellite photos reveal numerous mass graves at the time of digging or shortly thereafter. The photos of the Branjevo Farm dated 17 July 1995 show a large number of bodies in a field near the Farm. The photos dated 27 September depict the traces of disturbing a mass grave, as well as of an excavator and a loader. The mass grave at the Branjevo Farm was exhumed during the 10-24 September 1996 period by a joint team of the Physicians for Human Rights (PHR) and the International Criminal Tribunal for the Former Yugoslavia in The Hague (ICTY). It has been established that the grave was disturbed, while the satellite shots indicate that it was disturbed during the 21-27 September 1995 period..

250. An analysis of the primary mass grave Branjevo and the Čančari Road 12 (CR12) grave further indicate that the CR12 is a secondary grave containing the bodies removed from the mass grave at the Branjevo Farm. The evidence supporting this relation includes archeological and anthropological characteristics, the soil and pollen samples, similar blindfolds and ligatures, the dates of unauthorized disturbances of graves obtained from the photos. It transpires from the foregoing that the CR 12 was excavated for the first time after 27 September and covered up before 2 October 1995. The exhumation of the primary mass

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<sup>229</sup> Transcript of the audio-recording dated 27 October 2009;

<sup>230</sup> **Pelemis established facts number 203-** Decision on Established Facts dated 30 October 2009;

<sup>231</sup> Transcript of the audio-recording dated 6 October 2009;

<sup>232</sup> Transcript of the audio-recording dated 27 October 2009; **T-66** Travel work order MP Zvornik 7469, number: 22-1317/95 for the period from 1 July through 31 July 1995 for a Mercedes vehicle, driver Milan Milovanović and **T-67-** Travel work order no.22-1565/95 for the period from 1 July through 31 July 1995;

<sup>233</sup> **T-99** Transcript of the contents from the session of the ICTY Trial Chamber in the case No. IT-05-88-T (Prosecutor v. Vujadin Popović et al.) dated 10 and 11 December 2007, hearing of witness Dean Manning and **T-99-6** Summary of forensic evidentiary material-crime scene and mass grave, Dean Manning, 16 May 2000, Transcript of the audio-recording of the hearing dated 19 April 2010; **T-99-11** Criminal-technical examination of the grave at the location of Pilica, Branjevo Farm dated 15 June 1998.

grave Branjevo was carried out during the 10-24 September period and the mortal remains of 132 persons were found. The CR 12 mass grave was exhumed in 1998, and the mortal remains of 174 persons were found (only 43 almost complete bodies). At least 283 bodies were found in these two graves based on the anthropological examination of bones and parts of bodies at the time when his report was produced, while the number of identified bodies has significantly increased since then. This witness also testified that the CR 12 was not the only secondary grave related to the grave at Branjevo, namely that the evidence indicated that other graves also existed along the road toward Čančari.

## I. SECONDARY GRAVES RELATED TO THE MASS GRAVE AT BRANJEVO

251. Some time between 1 September 1995 and 1 November 1995, members of the VRS and MoI undertook organized and mass-scale activities to conceal the killings and liquidation traces in the zones of responsibility of the Zvornik and Bratunac Brigades by relocating the bodies exhumed from the primary mass graves at the following locations: Branjevo Farm, Kozluk, „Brana“ near Petkovci and Orahovac, and transporting them to the secondary graves at: thirteen locations along the road toward Čančari (with the bodies from the Branjevo Farm and Kozluk); five locations near Liplje (with the bodies from Brana near Petkovci); seven locations near Hodžići (with the bodies from Orahovac).<sup>234</sup> The entire undertaking was a huge engineering and logistic project in which thousands of bodies were exhumed from the graves within the Municipality of Zvornik and relocated to a number of graves distributed in different distant areas.<sup>235</sup>

252. In his Finding and Opinion, forensic expert Rifat Kešetović, Head of the Podrinje Identification Project (PIP) of the International Commission for Missing Persons (ICMP), whose task is to identify exhumed mortal remains, stated that by taking into account the DNA relations among the graves, it is possible to single out 1,052 names of identified victims from the mass grave Branjevo and the graves related to it (concluded with 13 April 2010). It is noteworthy that the identification of all the remains exhumed up to that time was not still completed.<sup>236</sup> The number of officially identified bodies from the primary mass grave PLC (the grave at Branjevo) is 124, among which 11 identified remains belonged to persons younger than 18. The youngest two persons were born in 1980 (one of them is Admir Avdić (son of Ramo), while the oldest person was born in 1925 – Nazif Vilić (son of Ibrahim). The DNA analyses have established direct connections of this grave with four secondary graves along the Čančari Road, namely: KAM04 ZVO, KAM 09ZVO, CR11 and CR12, while the mortal

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<sup>234</sup> Exhibit **T-99-103**: Report by Dean Manning, 2007.; Exhibit **T-99-106**: A map showing the relocation of primary graves into secondary ones; **T-100**: Narrative report about military events in Srebrenica, Richard Butler, paras. 11.0-11.1; Exhibit **T-99**: Transcript of the testimony of Dean Manning before the ICTY, 10 December 2007, Popović et al., case No. IT-05-88-T.

<sup>235</sup> **T-100**: Narrative report about military events in Srebrenica, Krivaja 95, forensic expert Richard Butler, para.11.0-11.7.

<sup>236</sup> **T-132**- Finding and Opinion of Forensic Medicine, Rifat Kešetović, Dr.M.Sc. dated 3 June 2010; **T-133**- photo-documentation + CD with photo-documentation of the graves during the exhumation;

remains of two persons were found in three different graves-the primary grave at Branjevo (PLC) and two secondary graves along the Čančari Road (CR11 and CR12).

253. The forensic expert has analyzed the DNA reports submitted to the PIP by 13 April 2010 for the graves exhumed at the “Čančar Road” (total of 13). Of this number, according to the physical evidence which was not a subject of his analysis, eight graves have been related to the events in Pilice, namely the graves marked as: CR12, CR11, KAM10ZVO, KAM09ZVo, KAM 06 ZVo, CR 05, KAM 04 ZVo. According to the physical evidence found in the grave, KAM08ZVo is also related to the events in Pilica, for which the forensic expert had not received any DNA report by the moment of the analysis given that the forensic processing had just been completed. Therefore, the DNA connection with this grave could not be considered at all. The identification process for the KAM06Zvo grave had also just begun and a large number of DNA reports were expected.

254. More specifically, 148 cases were opened from the mass grave in Čančari marked as CR12, while 101 had been identified up to that date. Relations with the primary mass grave at Branjevo (PLC) were established by way of DNA analysis, as well as connection with the other secondary graves along the Čančari Road – CR 11, KAM10ZVO and KAM06ZVO. The youngest two persons were born in 1980, and one of them was Mujo (son of Smajo) Nukić, while the oldest person was Jusuf Memić (son of Alija) born in 1923.

255. Based on the samples sent from the mass grave in Čančari marked as CR11, the number of opened cases was 132, 100 persons were identified by that time. By way of DNA analysis, connection was established with the primary grave at Branjevo (PLC) and the secondary graves CR12 and KAM10 ZVO. The two youngest persons were born in 1979, one of them being Esed Klempić (son of Alija), while the oldest person was Mehmedalija Čakanović (son of Hakija), born in 1923.

256. Based on the samples sent from the mass grave in Čančari marked as KAM10ZVO, the number of opened cases was 415, and 279 persons were formally identified by that time, while by way of DNA analysis, connection was established with the mass graves CR11, CR12 and KAM09ZVO. The youngest identified person was Ahmedin Osmanović (son of Munib), born in 1980, while the oldest was Nurif Sinanović (son of Ramo), born in 1919.

257. There were 200 DNA cases opened from the mass grave KAM09ZVo, and 117 persons were identified. Connection was established with the primary grave (PLC) and the secondary grave KAM 10 ZVO. The youngest identified person was Sulejman Osmanović (son of Abdulah), born in 1980, while the oldest was Safet Osmanović (son of Osman), born in 1920.

258. From the mass grave KAM 06 ZVo, there were 56 DNA cases opened, 6 persons identified, and DNA relations established with the graves CR05 and CR12. The youngest identified person was Admir Malagić (son of Salko), born in 1979, while the oldest was Meho Mehić (son of Mehmed), born in 1925.

259. From the mass grave CR 05, there were 273 DNA cases opened, 206 persons identified, and DNA connection established with the graves KAM04 ZVO and KAM 06 ZVO.

From the mass grave KAM 04 ZVo, there were 174 DNA cases opened, and by that time 124 persons were identified, while DNA relations were established with the primary grave PLC and the secondary grave CR05. The youngest identified person was Ešad Bajraktarević (son of Bego), born in 1981, and the oldest one was Nazif Suljić (son of Salko), born in 1911.

260. In cases where the cause of death was established with a lower or greater probability, dominant were fire weapon-inflicted wounds, multiple wounds in most of them, while in the graves KAM04ZVO, CR 05 and CR11, in a certain number of cases, it is possible that explosive-inflicted wounds were in question. Given that a direct DNA connection of the primary PLC grave has been established with four secondary graves, and given that individual and numerous connections were established among the secondary graves and inside the graves CR05, KAM06ZVO and KAM10 ZVo themselves, the forensic expert concludes based on the DNA connections that all the foregoing graves are connected with the primary grave at Branjevo. The artefacts found in the graves can also confirm the foregoing.

261. A vast majority of the persons identified by the DNA analysis of the mortal remains from these secondary graves are registered on the ICTY list as the persons missing since the capture of Srebrenica in July 1995.<sup>237</sup>

262. Witness Matthew Winemayer, forensic archeologist who had participated on behalf of the International Commission for Missing Persons (ICMP) in the process of exhumation of some of these graves, explained the manner of the Commission work. It transpires from the summarized Commission reports reviewed by the Court<sup>238</sup> that the archeological approach to the mass graves exhumations has provided certain observations related to the initial digging of the grave and the order of the bodies' burial. The procedure was carried out by way of stratigraphic excavation of the grave, starting chronologically from the last bodies buried in the grave, taking off a layer by layer of the grave by hand-operated tools, all down to the first layer. In such a manner, all the details regarding the burial of the bodies in the mass grave could be noted, for example, which machines were digging up the grave, which machines were used to "press together" the human mortal remains before covering them with a new layer of human remains, or prior to the final covering with the earth.

263. The Defense has contested the conclusions of forensic expert Rifat Kešetović. Therefore, following a request by the Defense for the Second-accused, forensic expert Dr. Ljubiša Simić has analyzed the Finding and Opinion of forensic expert Kešetović with regard to the primary grave in Pilice, the analysis of the secondary grave Čančari Road 12 (CR12) and the reference to the testimony of forensic expert Kešetović<sup>239</sup>. The forensic expert argued that the autopsy reports made by the ICTY experts were deficient as there existed a number of

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<sup>237</sup> **T-132:** PIP's list of the officialy identified victims - BAZ numbers may be correlated with T-134: ICTY list of the misisng persons from Srebrenica.

<sup>238</sup> **T-135-** Summarized reports by ICMP concerning the exhumations of the secondary graves on the Čančari Road, namely: Čančari Road report 04 dated 19 February 2009, Čančari Road 05 dated 17 April 2008, Čančari Road 06 dated 9 April 2009, Čančari Road 08 dated 19 February 2009, Čančari Road 09 dated 17 April 2008, Čančari Road 10 dated 18 April 2008.

<sup>239</sup> **D-II-25-** Forensic Findings Report by Dr. Ljubiša Simić.

reports containing no evidence whatsoever pointing to the manner of death, and yet the forensic experts concluded that the victims were killed. The expert witness also pointed to other errors and omissions made by the ICTY forensic experts. He has further contested the Finding of forensic expert Kešetović in the part establishing the connection between the primary grave Pilica and the secondary graves KAM10, KAM06 and CR5, given that no direct DNA exists confirming that the mortal remains from the Pilice grave ended up in these secondary mass graves.

264. The Panel finds this objection of the Defense forensic expert ill-founded. More specifically, there is no doubt that the primary mass grave PLC has direct DNA connections with only four of the eight secondary graves along the Čančari Road that have been brought into connection with the PLC grave. However, the other four secondary mass graves along the Čančari Road, which have no direct DNA connections given the existence of their mutual DNA connections and thereby with the four graves directly connected with the PLC grave, and given the found artefacts-ligatures and alike, quite logically justify the conclusion of forensic expert Kešetović that all eight secondary graves from which, together with the primary PLC grave, 1052 persons were identified by April 2010, are being brought into connection with the killings at Pilica, that is, the victims who were originally buried in the grave at Branjevo, and subsequently removed to these secondary locations.

265. In addition, the Defense forensic expert, Dr. Ljubiša Simić, has determined that the presence of traces of explosive-inflicted wounds in the graves KAM10, CR 5 and CR 11 indicates that these victims cannot be the victims originating from the primary mass grave at Branjevo, given that “these victims were summarily executed prisoners of war, and that the executions were not carried out by way of mines, grenades or the artillery”. The Panel was not presented with the sources from which the forensic expert obtained the information regarding the manner in which the victims buried in the mass grave at Branjevo had been killed.

266. The Panel observes that the Defense forensic expert has misinterpreted the task of the expert evaluation of Dr. Kešetović. More specifically, he stated that the task of expert Kešetović was to determine “how many persons could be confirmed to have been executed at Branjevo, in Pilica”. It is, however, obvious that this was neither the task nor the subject of the expert evaluation by expert Kešetović, and that he rather gave his opinion as to the *number of victims exhumed and identified from the primary mass grave at Branjevo* (and not how many of them were executed at Branjevo) and *which secondary mass graves are being brought into connection with this primary mass grave*. The evidence adduced during these proceedings also undoubtedly indicates that not only that the victims summarily executed at Branjevo by the automatic weapons were buried at Branjevo, but also the victims killed in the Cultural Center in Pilica, for whom the evidence adduced, the results of criminal-technical investigation carried out at the crime scene, and the witnesses who loaded the victims onto trucks and who noticed that certain bodies were fully destroyed, also point to the fact that the victims in the Cultural Center were among other ways also killed by explosive devices. This is fully in compliance with the conclusion of forensic expert Kešetović.

267. The Finding and the presented arguments of the Defense forensic expert<sup>240</sup> did not bring into question the Finding and Opinion of forensic expert Kešetović to which the Panel has fully given their credence as it was given in compliance with the rules of the profession. The Panel had no reason to doubt the objectivity and the professional qualities of this forensic expert, particularly because his Finding is in compliance with the other evidence adduced.

268. The Panel has rejected the Defense theory that the mortal remains of the victims killed in the column battle in the Baljkovica area were buried in these graves given that the ligatures were found in these graves, that is, the bands with which the victims' hands were tied behind their backs and blindfolds on the mortal remains, as is clearly visible on the photos tendered in the case record and reviewed by the Panel. These facts and the evidence exclude the possibility that the victims were killed in combat. The testimony of Dragan Obrenović supports the foregoing. This witness testified that he assumed that a large number of Muslims were killed and wounded in the battle with the column at Baljkovica, but that their bodies were most likely withdrawn during the night of 16/17 July through a corridor, given that a large number of bodies were not subsequently found in that area, while around 15-20 collected bodies were buried at the location near Motovska Kosa.

## **J. THE INCRIMINATING ACTS ON THE PART OF MEMBERS OF THE FIRST BATTALION**

### **1. Soldiers of the 1<sup>st</sup> Battalion stood guard**

269. The Prosecution argued that members of the 1<sup>st</sup> Battalion stood guard in the school and the Cultural Center in Pilica, where the detainees from Srebrenica had been kept until their execution. The Defense argued that members of the 1<sup>st</sup> Battalion, whose number could not exceed a dozen, were simply "present" at the location near the Kula school, namely that several members of the Battalion who had lived in the hamlet of Kula, including Slavko Perić, went there because they were worried about their families who had lived next to the school itself, or near the school, while there is no evidence that they were actually present at the location of the Cultural Center in Pilica.

#### **a. School**

270. The Panel has examined a number of witnesses, members of the 1<sup>st</sup> Battalion, who testified both for the Prosecution and the Defense. Most of these witnesses testified that, as

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<sup>240</sup> It is noteworthy that in presenting his Finding and Opinion, the Defense forensic expert, Dr. Ljubiša Simić, concluded that: "Insisting on verification is far more than mere splitting hairs because it has been known now that not only the DNA results, but also the DNA samples that give these results, could be authentically forged....and given the complete lack of access to the work of the ICMP, this can be fully applied to the secretive ICMP and the non-transparent DNA evidence that was offered to the Hague Tribunal and the Court of BiH."

the Defense argues, they had gone to the school building in order to secure the village. The Panel finds unconvincing this explanation of their presence near the school, although it is quite logical when viewed from the aspect of the role of these witnesses in the event in which they obviously acted in the capacity of guards, who have thereby tried to make their role irrelevant. Some of them, however, have found strength to avoid this relativization having confirmed that it was the detainees they secured rather than the village, as the Defense has tried to prove.

271. Witness Bogoljub Gavrić, teacher who had lived in a building just across the street, confirmed that Slavko Perić had arrived with members of the 1<sup>st</sup> Battalion even before the arrival of the busses with the detainees. He was watching both the arrival and the escort of the detainees from the bus to the school. The witness testified that 15-20 soldiers had come with Slavko Perić, among whom he recognized Stanko Perić, Slavko's brother and a soldier nicknamed Gaja. They were all armed, and Stanko Perić had a machine gun. The witness testifies that their weapons were not turned toward the detainees, and that it appeared to him the detainees' unload and entrance were coordinated by "the specialists" who had brought the detainees there, and who were in direct contact with them.<sup>241</sup> Bogoljub Gavrić testified that members of the 1<sup>st</sup> Battalion were deployed around the school, at the entrance in the school, and at the exit toward the playground.<sup>242</sup>

272. It transpires from the testimony of witness Rajko Babić, Deputy Commander for general affairs, that at the moment of the detainees' arrival, together with him and members of the Command Slavko Perić and Dragan Pantić, and the soldiers who escorted them to the school, there were 12 members of the 1<sup>st</sup> Battalion who were thereafter divided in three groups with four members each. One group went to the school playground to secure the side exit, one group stayed at the main control entrance in the school, while he, Pantić, Perić and another member of the Battalion entered the school and the hall to check the situation inside.<sup>243</sup>

273. Dragan Jovanović was also in this group of soldiers of the 1<sup>st</sup> Battalion. He testifies that together with him there were 10-12 members of the 1<sup>st</sup> Battalion and that he had moved around the space behind the school, where he stayed all day long and over the night. On the following day, he mostly moved around the road in front of the school when a senior officer came with soldiers during the afternoon hours.

274. Police officers from the company of the Zvornik Brigade performing the duties in the 1<sup>st</sup> Battalion, Zoran Bojić and Slobodan Jović, had been present on that day in the building of the 1<sup>st</sup> Battalion Command when Slavko Perić entered their room and told them that certain people had been brought to the school in Kula and that they should go "down there". Shortly thereafter, they went away together with Slavko, at around 15:00 hrs.<sup>244</sup> On the following day,

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<sup>241</sup> Page 44 of the transcript of the trial audio-recording dated 27 May 2009;

<sup>242</sup> Page 53 of the transcript of the trial audio-recording dated 27 May 2009;

<sup>243</sup> Page a 31 of the transcript of the trial audio-recording dated 28 April 2009 and Transcript of the testimony of witness Rajko Babić dated 18 April 2007 in the ICTY case No. IT-05-88-T *Popović et al.* filed as Exhibit T-15;

<sup>244</sup> Slobodan Jović - page 90 of the transcript dated 27 December 2010;

one of them was replaced with a third police officer, who had performed his duty in the Battalion, Zoran Jović.

275. Slobodan Jović testifies that their task was to secure the detainees from the local population, and to prevent them from entering the school in order to avoid possible incidents and abuse of the detainees. However, given that witness Neđo Manojlović testified that he had entered the school in civilian clothes as a civilian, the Panel concludes that the military police officers either did not execute this task, or this was not their task at all.

276. Zoran Jović described their task differently. He testifies that they were supposed to watch whether soldiers would come from frontlines to the school, and if they did, they were to apprehend them and return to the frontline, and that they had no duties whatsoever related to the detainees. The Panel finds this explanation also illogical given that it is obvious that while the detainees were in the school, soldiers of the 1<sup>st</sup> Battalion kept arriving and replacing each other continually, of whom some had come from the frontline too. Slobodan Jović testifies that at some point a group of around 10-12 armed members of the Battalion arrived in front of the school. None of these members of the 1<sup>st</sup> Battalion was apprehended by the military police, or returned to the frontline. The Panel finds illogical having guards standing near the school in order to return soldiers to the frontline instead of controlling and making tours of inspection at the frontlines, or issuing orders through the communication center to the companies' commanders that soldiers must not leave their posts.

277. In his testimony, Dragan Pantić, Deputy Commander for Morale in the 1<sup>st</sup> Battalion, tried to present that he had gone to the school in Kula quite optionally. He denied that he had arrived at the school together with Slavko Perić. This witness asserted that he went there only in the evening, after Momir Pelemiš had told him he was free to go home to change his clothes and visit Slavko Perić to see if he needed anything.<sup>245</sup> The Panel finds that, given the fact that he was a member of the Command, or one of the Deputy Commanders, he even had reasons not to reveal certain facts and circumstances. One of these facts is the fact that, as Babić describes, he arrived in the school before the detainees' arrival, and that together with the other members of the Command, Perić and Babić, he in a way participated in preparing the school for the arrival and deployment of soldiers to secure the posts around the school.

278. In the evening hours on the very same day, a member of the 1<sup>st</sup> Battalion, Zoran Gajić, was deployed in front of the school. This witness testifies that the Company Commander sent him to the school together with around fifteen soldiers from the 1<sup>st</sup> Battalion who had been in a trench at the time.<sup>246</sup>

279. Even though the witness asserted that he had come to the school out of curiosity rather than following someone's order, Commander of a platoon of the 1<sup>st</sup> Battalion, Stanko Kostić, confirmed that he had spent a certain period of time near the school, and that in addition to

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<sup>245</sup> Transcript of the trial audio recording dated 25 January 2011;

<sup>246</sup> Transcript of the trial audio recording dated 13 May 2009;



other members of the Battalion, he also saw Slavko Perić, Rajko Babić and Filip Lazarević there.

280. Nedeljko Lazić, driver in the Battalion Logistics Platoon, confirmed that by his truck he had transported several soldiers of the 1<sup>st</sup> Battalion to the school in Kula where the detainees were kept, and that they were armed as if they were going to a frontline.<sup>247</sup>

281. In carrying out their task, this group of soldiers spent a night in the school. Two police officers testified that they had slept in the facilities located across the school, that is, in Rajko Babić's apartment. Bogoljub Gavrić also testified that he found a soldier sleeping in his apartment near the school during the night of 14/15 July, while on the night of 15/16 July, two soldiers unknown to him slept in his apartment.

282. On the following day, that is, on 15 July, after they had been told in the Brigade Command that they "would receive no support and that they should organize themselves the best way they knew and could", another group of soldiers of the 1<sup>st</sup> Battalion arrived. A member of this Battalion, Pero Pavlović, testified that on 15 July (as ensues from the part of the testimony where he states that on the following day he saw the detainees' departure) he was in a trench at the frontline when Company Commander Milan Đurić arrived. The witness testified that Đurić had told him that 4-5 soldiers should be engaged near Kula because people were being brought there, but the local population were alone there since soldiers were at the frontline. He and four other soldiers came to the school on a tractor around 14:00 hrs, and moved around the school all day long.

283. In the morning hours, members of the 1<sup>st</sup> Battalion, Savo Stević, Mićo Manojlović and Mile Tejić, came to their shift by car from the frontline. They testified that Company Commander Milan Đurić had ordered them to leave their posts in trenches where they had kept the position and go to the school in Kula.

284. Savo Stević testifies that he was in a trench when Company Commander Đurić ordered him to go to the school in Kula in order to secure the detainees from Srebrenica, as they should relieve the soldiers who had already been there. The witness testified that, having arrived there, he saw Slavko Perić and Rajko Babić. He stated that a person whom he had not known told him, Tejić and Manojlović that they would spend two hours in the shift, and that their task was to secure the detainees. The witness subsequently added that Bato Lazarević, member of the Battalion, was also there with them.<sup>248</sup>

285. Mićo Manojlović also testified that Đurić had issued the order, but that Đurić told them he had received this order from the Command. More specifically, in his statement given during the investigation, this witness specified Đurić's words that the order had been issued by Commander Pelemiš, and that they were told to report to Babić once they arrived in the school, which they did. Babić told them to go upstairs, to the classrooms to relieve the soldier

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<sup>247</sup> Transcript of the trial audio recording dated 24 August 2009;

<sup>248</sup> Transcript of the trial audio recording dated 26 May 2009;

who had been securing the detainees, and to prevent them from coming near the windows and opening them.<sup>249</sup>

286. Mile Tejić testifies that in the early morning hours, having received an order from the Battalion Command, Đurić ordered them to go to the school in order to secure the Bosniaks from Srebrenica. However, unlike Manojlović, he stated that they had been told to report to Slavko Perić.<sup>250</sup> Having arrived in front of the school, he saw Slavko Perić standing in a school corridor with Babić. Perić ordered them to stand in front of the classrooms on the floor and prevent the Bosniaks from going out; while he was in the school, he also saw around twenty members of the 1<sup>st</sup> Battalion, including Mile Vujević and Mićo Tomić.

287. Defense witness Milan Đurić, Company Commander, testifies that he was in Belgrade at the time when the events in Srebrenica took place. He confirmed, however, that his identity may have been mistaken for the identity of Miladin Đurić, given that they have similar first names and the same last names.<sup>251</sup>

288. Company Commander Miladin Đurić, witness for the Defense of the First-accused, testifies that he received no direct information from the Command to relieve the men in order to secure the detainees near Kula in Pilica, and that three or four soldiers from the adjacent trench, not from his trench, voluntarily left the frontline. These were young men who had the information that a dancing party or a wedding party was organized in the neighboring village of Glavičice, so they left by an *Ascona* vehicle.<sup>252</sup>

289. During the referenced period, Witness Milivoje Todorović, commander of a company in the 1<sup>st</sup> Battalion, participated in the action in Srebrenica together with Milan Stanojević. Upon his return, his Deputy Radivoje Matić informed him that it was almost impossible to keep the frontline with such a small number of men because he had been continually requested to provide soldiers to secure the detainees.<sup>253</sup> Defense witness for the Second-accused, Radivoje Matić, confirmed this. This witness testified that Momir Pelemiš had phoned him and asked him to send 7-10 men to secure the detainees, and that his response was that he could not send that many men, so he rejected the request.<sup>254</sup>

290. Witness Dragan Manojlović, who was a member of the Company led by Miladin Đurić, testified that there was a field phone in the Company Commander's trench, which had a connection with the Command. By bringing these statements into connection, the Panel finds that an order was obviously issued by the Command, that is, by Commander Pelemiš, through the communication center to the company commanders to send several members of theirs for a task near the school, and that it is obvious that soldiers went to the shifts in an organized

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<sup>249</sup> Transcript of the trial audio-recording dated 26 May 2009; **T-26**-Witness Examination Record for Mićo Manojlović, BiH Prosecutor's Office No. KT-RZ-02/08 dated 8 April 2008 of which the transcript of the audio-recording in IV parts is an integral part;

<sup>250</sup> Transcript of the trial audio-recording dated 27 May 2009;

<sup>251</sup> Page 62 of the transcript dated 28 December 2010;

<sup>252</sup> Transcript of the audio-recording dated 7 October 2010;

<sup>253</sup> Page 11 of the transcript dated 24 April 2009;

<sup>254</sup> Page 19 of the transcript of the audio-recording **T-184**;

manner following the order. The fact pointing to this is that, among other things, Nedjeljko Lazarević transported them by truck following the same principle by which soldiers were transported to frontlines in shifts.<sup>255</sup>

291. Defense witness for the First-accused, Slavko Stević, testified that he had seen the detainees' being taken off the bus in front of the Cultural Center (the Panel found it took place on 15 July, namely on the second day after the detainees' arrival in Pilica). He also stated that he went to the frontline on the same day, and that Slavko Perić came on the following day and ordered soldiers to go in front of the school and secure the detainees as otherwise they would "set the village on fire".<sup>256</sup>

292. Juroš Jurošević, member of the Battalion work detail, testified at the main trial that while he was near the Kula school he was only bringing water to the detainees. Regardless of the foregoing fact, it transpires from his statement given during the investigation that during the night on 14/15 July, Ilija Ristić, school teacher, came to his house and told him to inform other members of the work detail to come in front of the Kula school because some captured Muslims had arrived, and that on the following day, when he came in front of the school, someone gave him a rifle and told him to secure the detainees to prevent them from escaping the room.<sup>257</sup> In his testimony, however, Defense witness Ilija Ristić denied that he had spoken with Juroš Jurošević at all.

293. Having brought into relation all these statements, the Panel found that a certain number of members of the 1<sup>st</sup> Battalion (totaling 30 soldiers) were continually present near the school in Kula, from the arrival of detainees on 14 July through 16 July when they were transported to the Branjevo Farm, with the task to prevent the detainees from escaping. This number also includes members of the Command, from whom Slavko Perić would occasionally come and go. On 15 July, he even went to the Cultural Center wherefrom his driver drove him to the building of the Brigade Command in Karakaj.

294. It is indisputable that other members of the VRS, who were not members of the 1<sup>st</sup> Battalion, also participated in securing the detainees. The ICTY Trial Chamber has found that the Military Police of the Bratunac Brigade was engaged in the escort of the detainees from Bratunac to the north detention locations on 14 and 15 July 1995.<sup>258</sup> The testimony of driver Slobodan Đajić, from whose bus the detainees were unloaded at the Cultural Center on 15 July, reveals that a military police officer from his bus escort did not return with him to Zvornik. The witness, however, heard that military police officers from the Bratunac Brigade in the escort had returned by the last bus from which the detainees were unloaded at the Cultural

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<sup>255</sup> Transcript dated 11 October 2010;

<sup>256</sup> Page 30 of the transcript of the trial audio-recording dated 29 September 2010

<sup>257</sup> **T-83--** Witness Examination Record for Juroš Jurošević, BiH Prosecutor's Office, KTN-RZ-02/08 dated 9 September 2008, an integral part of which is the transcript of the audio-recording in III parts  
- Witness Examination Record for Juroš Jurošević, BiH Prosecutor's Office, KTN-RZ-02/08 dated 10 September 2008, an integral part of which is the transcript of the audio-recording in II parts

<sup>258</sup> **Pelemis established facts number -124-** Decion on Established Facts dated 30 October 2009;

Center.<sup>259</sup> Milovan Đokić, driver in the military police of the Bratunac Brigade, who escorted one of the buses, also testified that he returned to Bratunac after the detainees were unloaded. It transpires from the diary of the military police of the Bratunac Brigade dated 17 July 1995, which is tendered in the case record, that “a military police patrol stayed in Pilica to secure Muslims”. Momir Nikolić, Commander for Security of the Bratunac Brigade, testified before the ICTY that one patrol usually consisted of two to three police officers.<sup>260</sup>

295. It transpires from the testimony of witness O1 (who testified that he was ordered by Drago Nikolić or the Company Commander of the Jasikovac Military Police) that members of the Military Police of the Zvornik Brigade also joined the detainees’ securing in Pilica. His averments are in compliance with the averments of Dragan Obrenović who testified in the proceedings before the ICTY that on 13 July, around 21:00 hr., he ordered Momir Jasikovac, Commander of the Zvornik Brigade Military Police, to stay with five soldiers within the compound of the *Standard* barracks and report to Drago Nikolić who would give him further instructions and orders regarding the detainees to be brought in.<sup>261</sup> However, during the critical period, the detainees were kept not only in Pilica, but also in other locations, namely Orahovac, Ročevići, Petkovac. The evidence shows that it was exactly the detachment of the Zvornik Brigade Military Police with Jasikovac and Nikolić that was present during the detention and killings of the detainees in Orahovac on 14 and 15 July.

296. By bringing into connection these statements and the statements of most witnesses who testified that the number of other members of the VRS near the school and in the school was not large, and some even assert that there were 5-6, and some up to 15 soldiers, with the fact that at least fifteen members of the 1<sup>st</sup> Battalion were continually present near the Kula school, it is obvious that they both performed the task of securing the detainees, namely that they secured them together.

## **b. Cultural Center**

297. Most members of the 1<sup>st</sup> Battalion who were near the Cultural Center testified that they had been there out of curiosity, that they did not stand guard there, or perform any duties.

298. Savo Stević testifies that after he left the Kula school, together with Tejić and Manojlović he stopped by Ljubo’s inn, located across from the Center, that he saw soldiers around the Center, and that in the inn itself, unknown soldiers with head scarves and one officer were sitting at two joined tables. He, however, asserts that this was on the first day after the arrival in the school. It however transpires from the testimony of Mićo Manojlović that this was on the second day of duty in the school, namely after the detainees had been transported from the school.

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<sup>259</sup> Page 45 of the transcript of the trial audio-recording dated 5 May 2009;

<sup>260</sup> **D-2-7-** Logbook of the duty military police officer of the Bratunac Brigade dated 30 June 1995 through 23 July 1995; Page 1813 of the Transcript dated 23 September 2003 in the case IT-02-60-T- **T-141**;

<sup>261</sup> Pages 32-34 of the transcript of the testimony before the ICTY, IT-02-60-T dated 10 October 2003- **T-141**;

299. Manojlović testifies that he knew that the detainees from Srebrenica were held in the Center and the school, and that he saw them after he got out on the Center's balcony with Mile Tejić, from where they could see the room inside. After they were told by an unknown soldier that they were supposed to kill the detainees, they moved away. They subsequently heard that the detainees had been killed. However, in his statement given during the investigation, he stated that the detainees were killed while they themselves were around the Cultural Center.<sup>262</sup>

300. The Court did not give credence to the part of the testimony of witness Mile Tejić where he absolutely denies his own presence near the Cultural Center, given that both Stević and Manojlović assert that Tejić was with them near the Cultural Center, and given that it ensues from the mutual correlation of their statements that they had been on duty for two days near the school, while Tejić asserts that he was on duty only on the day when the detainees left. It is obvious that all three of them have avoided to tell the full truth about their engagement in the Cultural Center. Tejić even asserted that he had never been there, Stević explained their arrival near the Center only with their presence in the inn across from the Center, while Manojlović admitted that he and Tejić were on the Center's balcony (the Panel concludes that this is a projection room), and that they were there during the detainees' liquidation, but he changed his statement at the main trial by asserting that they had left the area before the execution.

301. That Slavko Perić was repeatedly present at the location near the Cultural Center on 15 July transpires from the testimony of witness Milan Jovanović, driver in the Battalion Command. This witness testified that Perić and two military police officers had been in the vicinity of a store near the Cultural Center when he ordered him to drive him to the Brigade Command in Karakaj, and on the way back from the Brigade Command he again stayed for a while in the Cultural Center to speak with the same police officers. Thereafter, the witness drove him to the Battalion Command where he stayed for around two hours, and thereupon he again drove him to the Cultural Center where two military police officers were still present.<sup>263</sup>

302. Witness Zoran Radosavljević testified that on 15 July a courier had informed him that he was supposed to relieve him on his guard post as there were insufficient men who would secure the detainees, and that this was an order by Pero Petrović to whom he should report in his office. The witness refused this task, packed his things and left for Serbia on the very same day.<sup>264</sup>

303. Witness Zoran Gajić testified that after his return from Branjevo he was ordered to go to the Center in Pilica. He went there together with Stanko Kostić, and found Stanko Perić, member of the 1<sup>st</sup> Battalion, Slavko Perić's brother, sitting at the table on which an M-53 machine gun was mounted with its barrel turned upward.

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<sup>262</sup> T-28 - Witness Examination Record for Mile Tejić, No.: 17-04/2-04-2-952/07 dated 24 September 2007 (State Investigation and Protection Agency);

<sup>263</sup> Pages 12, 13 and 19 of the transcript of the trial audio-recording dated 1 June 2009;

<sup>264</sup> Transcript of the trial audio-recording dated 1 December 2010;

304. Gajić testifies that thereafter he climbed the gallery with Milan Lazarević, from which the inside of the Center could be seen. Some detainees in the Center recognized Milan and asked him for some cigarettes. When asked if in addition to Stanko Perić any other members of the 1<sup>st</sup> Battalion were present there, he responded: “*Kostić was there, some others were hanging around the room, and at one moment I also saw Milan Kalajdžić and Nebojša Stevanović aka Kurjak, but I do not know whether he was with us in the army.*”<sup>265</sup>

305. Witness Milan Kalajdžić confirms that he was in the Center, that he climbed up the gallery with Milan Ivanić, that he pushed his head through an opening toward the room but could not breathe and immediately pulled his head back, and that some people from the room recognized Milan Ivanić and called him by his nickname “... *Bušina, save us!*”.

306. Examined as a witness for the Defense for the Second-accused, Milan Lazarević testified that he had never been present in the Center when the detainees were there, and that Zoran Gajić’s assertions were not true.<sup>266</sup> This witness testified that he had never been a member of the 1<sup>st</sup> Battalion and that he was engaged in the Labor Battalion to dig trenches. He confirmed that for the purpose of oil smuggling he would frequently escape from the frontline and go to Serbia to exchange gas for food and cigarettes. The witness also confirmed that before the war he had worked in a company where a large number of Muslims also worked and with whom he was on good terms. The Panel finds that the testimony of Milan Lazarević, who had reasons to deny his arriving in the Center at the time when the detainees were there, did not bring into question the truthfulness of Zoran Gajić’s testimony. More specifically, he provided very specific details about Milan’s presence on the Center’s gallery, about which he also spoke when he gave his statement to the Prosecution investigators. This witness stood by his statement even at the main trial.

307. The Defense has tried to challenge the credibility of witness Zoran Gajić in a number of ways. Several witnesses testified at the main trial that he was a problematic man prone to petty crime and that he was a “lousy man”. In addition, the Defense tendered as evidence in the case record the Judgment of the District Court in Bijeljina, No. K-4/97 dated 15 August 1997.

308. The Panel, however, finds that these two facts are of no importance so as to bring into question the testimony of the witness in its essential parts. Even more so, unlike most examined witnesses, this witness has given his statement in more detail even though by doing so he incriminated himself to a large extent having admitted that he had escorted the bus by which the detainees were transported for execution, and also that he was armed when he was present in the Center, and that he climbed up the gallery from which the detainees were summarily executed. The Panel finds that due to these facts it is understandable that in certain moments his testimony seemed uncertain, and that he testified with certain hesitance and under pressure.

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<sup>265</sup> Page 42 of the transcript of the trial audio-recording dated 13 May 2009;

<sup>266</sup> Transcript of the trial audio-recording dated 22 November 2010;

309. It transpires from the testimony of Juroš Jurošević, member of the work detail of the 1<sup>st</sup> Battalion, that after the detainees from the buses parked in front of the school had been transported to the Cultural Center, he also went to the Cultural Center and secured the detainees near the Center, and that given the fact that he did not have his own rifle, he had borrowed one from his nephew upon his return from a frontline.<sup>267</sup> In the statement given during investigation, he stated that he had been given a rifle upon arrival at the Kula school.<sup>268</sup> In any case, he was armed.

310. After his shift, the witness went home to sleep. On the following day, at around 14:00 hrs he heard a shooting coming from the direction of the Center. He went to the Center at around 16:00 hrs and found no one there. Two soldiers with rifles joined him subsequently, one was Slavko Jevtić, and the other was unknown to him. They stayed on duty around the Cultural Center all night long.<sup>269</sup> Witness Cvjetko Marković testified that in the morning, on his arrival to the Center to collect the dead bodies, he noticed three soldiers securing the Center.<sup>270</sup>

311. By bringing into mutual connection the statements of these witnesses, the Panel finds proved the Indictment allegations that on 15 and 16 July, members of the 1<sup>st</sup> Battalion were armed and moved around the Center building with the task to secure the detainees, and that they also entered the Center building itself. Given that the persons who carried out the mass liquidation of the detainees on 16 July in the Cultural Center still remain unknown, and have not still been prosecuted, it can be understood why most witnesses tried to hinder or relativize their participation in securing the detainees.

312. The Panel also finds that Juroš Jurošević's testimony basically confirmed the Indictment allegation according to which, after the liquidation in the Cultural Center on 16 July, during the night on 16/17 July, soldiers of the 1<sup>st</sup> Battalion were securing the entrance in the Center until early morning hours and the arrival of a work detail led by Perić, whereupon the loading of the bodies of killed detainees started.

(ii) Conclusion: standing guard amounts to an act of aiding and abetting

313. That the members of the 1<sup>st</sup> Battalion, in concert with other unknown soldiers, indeed secured the detainees and prevented them from escaping transpires from the testimony of Rajko Babić. This witness testifies that during the night they agreed that Perić would go home, and that in the morning he would go to the Battalion or Brigade Command to ask for their relief and for some reinforcement for members of the 1<sup>st</sup> Battalion because the twelve of them near

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<sup>267</sup> Page 17 of the transcript dated 1 February 2010;

<sup>268</sup> **T-82-** Witness Examination Record for Juroš Jurošević, BiH Prosecutor's Office, KTN-RZ-02/08 dated 9 September 2008, an integral part of which is the transcript of the audio-recording in III parts; - Witness Examination Record for Juroš Jurošević, BiH Prosecutor's Office, KTN-RZ-02/08 dated 10 September 2008, an integral part of which is the transcript of the audio-recording in II parts;

<sup>269</sup> Page 29 of the transcript dated 1 February 2010;

<sup>270</sup> Page 33 of the transcript dated 24 May 2010;

the school were already exhausted. Therefore, it undoubtedly ensues from the foregoing that not only that the members of the 1<sup>st</sup> Battalion “were present” in and around the school, but they had actual tasks and roles, and that in concert with other unknown soldiers they, in fact, carried out the action of securing the detainees. How important their role was is also indicated by the fact that they could not simply leave their posts unless their relief was provided before they leave, with an exception of some of them who had left secretly, having reported to no one, like Pero Pavlović who testified that he went to a house nearby to sleep and returned at six o’clock in the morning. Only when the other group of soldiers of the 1<sup>st</sup> Battalion came to relieve them did Rajko Babić go home.<sup>271</sup>

314. It also transpires from the testimony of Rajko Babić that five unknown soldiers at most were around the school – one in the school, and the other four in front of the entrance of the school.<sup>272</sup> In any case, the Panel finds that the unknown soldiers could not adequately and successfully secure such a large number of detainees in the school, and that it was necessary to reinforce the school securing with an additional number of men from the 1<sup>st</sup> Battalion. This is so particularly bearing in mind the fact that no evidence exists that these unknown soldiers were relieved of duty, and that in fact, they were the very same soldiers who had arrived with the detainees on 14 July (Military Police of the Bratunac Brigade) who stayed through 16 July, with a possibility that, at some point of time, several members of the Military Police of the Zvornik Brigade arrived, given that during this period they were also engaged in other places of detention and liquidation of the detainees. It is logical that during the period of two days and two nights they had to have some rest. During that time, someone else had to stand guard, and the members of the 1<sup>st</sup> Battalion did this.

315. When asked by the Prosecutor whether the men could leave the room of their own free will, witness Zoran Gajić responded: “*No, they could not, soldiers were around the place. We were securing them*”.<sup>273</sup> When he was further asked by the Prosecutor if he would agree that the unknown soldiers were the ones who secured the detainees, the witness answered: “*Well, they also were there*”.<sup>274</sup>

316. Witness Savo Stević also confirmed that he secured the detainees together with the soldiers of the 1<sup>st</sup> Battalion and other unknown soldiers near the school, and that two “machine guns M-53” were placed at the entrance of the school. Mile Tejić testified that Stanko Perić, Slavko Perić’s brother, had a machine gun. Mićo Manojlović testified that Commander Đurić had ordered them to go and secure the detainees, as he was so ordered by Pelemiš from the Command.<sup>275</sup> It ensues from Tejić’s and Stević’s statements that, at the crime scene, in the school, Slavko Perić and Rajko Babić, who had stood in the school corridor, gave them a concrete order to secure the detainees who were kept in the classrooms on the school floor. Both these witnesses testified that Perić and Babić were at that moment standing in the school

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<sup>271</sup> Pages 45 and 46 of the transcript of the trial audio-recording dated 28 April 2009;

<sup>272</sup> Page 33 of the transcript of the trial audio-recording dated 29 April 2009;

<sup>273</sup> Page 20 of the transcript of the trial audio-recording dated 13 May 2008;

<sup>274</sup> Page 21 of the transcript of the trial audio-recording dated 18 May 2009;

<sup>275</sup> See para. 283 of the Verdict;



corridor, except that one witness testified that they received the order from Babić, and the latter that the order was issued by Perić. This difference in their statements was of no decisive importance whatsoever.

317. Given the fact that they received the order to go to the school while they were in a trench around 6 or 7 o'clock early in the morning (according to Tejić), and given that they took around 1 hour drive by car to the school, the Panel does not accept the Defense's argument that Slavko Perić was not in the school at the time, but in the Command of the Zvornik Brigade. More specifically, according to the testimony of driver Milan Jovanović, Perić was with him during the period from 10:00 through 17:00 hrs on 15 July, which means that in the early morning hours he could be in the school after arrival from Zvornik and he could have issued these orders. Therefore, the statements of Stević and Tejić regarding this fact have not been brought into question.

318. Although it is questionable in this case whether all persons kept in the school and in the Center could be considered captives because there were a large number of children and the elderly among them who could not be considered as conscripts, the Panel has accepted the view of the Defense that the mere act of securing them and keeping them in the facilities for temporary accommodation contains no illegitimate characteristics, and that that was a legitimate military and security act. However, this act remains as such only until the moment when the guards or those who kept the detainees under their control, and in the present case they were under the control of the soldiers or the 1<sup>st</sup> Battalion Command, learn that these detainees will be executed. Then the act of "the one who secures" changes its character, and does not represent any more a mere guard-standing, but rather a significant contribution and support to the principal perpetrator whose goal is to kill the detainees. The evidence adduced has confirmed that the opportunistic killings had already started in the school itself. Further in the Verdict, the Panel has analyzed whether the accused had any knowledge that all detainees would be killed.

319. Defense witness—military forensic expert Petar Vuga presented a conclusion that the interment of a large number of detainees in civil facilities resulted in an increased security risk for the local population and soldiers' fear for their families, and that it was possible that soldiers could leave their posts affected by rumors, abandon their combat positions in order to protect their families against the threats to which they would be exposed should the detainees escape. In this respect, it is considered that the duty of Slavko Perić, as a security organ, was to take additional security measures in order to remove this risk. It is indisputable that a large number of witnesses for both the Prosecution and the Defense testified that such a risk had existed due to the presence of a large number of enemy detainees interned in the civilian facilities in the village center. The Defense for Slavko Perić has particularly emphasized the fact that the house in which the family of Slavko Perić had lived was in the immediate vicinity of the school.

320. Witness Pero Petrović testified that prior to the detainees' arrival he had met some women who had lived in the houses located near the school, who expressed their concerns regarding this matter, and who also told him that, following a certain information, they had to move their children from their houses.<sup>89</sup> Bogoljub Gavrić acted in the same manner

and after the arrival of the detainees he removed his family from a nearby house, since he thought their safety was jeopardized. The Panel observes that it would be more logical in case of such concerns for the local civil population that the security organ ordered a temporary relocation or evacuation (which order perhaps even existed given Petrović's testimony). In this manner, any risk for civilians due to the presence of the detainees in their close surroundings could have been avoided. In addition, the detainees were not armed and were obviously exhausted. Therefore, the Panel finds that if they possibly escaped their goal would most likely be to move from this territory as far as possible, rather than to take any actions in the surrounding area and thereby increase their chances of being captured and detained again.

321. Witness Dragan Jovanović presented a theory which is somewhat in collision with the foregoing one. He stated that their task was "simply to calm down the Serb population, prevent provocations, mutual conflicts and that the present members of the Battalion did not allow civilians to come closer, and that these were the reasons for their deployment there." The Panel, however, finds such a view of the task disputable and illogical because the unknown soldiers who had escorted the detainees on their arrival could have served the purpose „of the detainees' defense“ against the local population, and the purpose of maintaining peace and order, particularly if one keeps in mind the fact that these soldiers were markedly „robust“, „dangerous“, „frowning“, as almost all witnesses described them to be.

322. The Panel finds that, regardless of the motives and concerns for the local population, it is indisputable that members of the 1<sup>st</sup> Battalion stood guard with the task to prevent the detainees from escaping, initially even because of their concerns. However, the fact that after the Battalion commanding personnel had learned that the detainees would be killed, their subordinate soldiers kept doing what they had been doing until then, that is, stood guard and prevented the detainees from escaping, cannot be disregarded. At no moment whatsoever did Momir Pelemiš and Slavko Perić order the soldiers of the 1<sup>st</sup> Battalion to withdraw from the locations where they secured the detainees until the last detainee from the school was taken for execution, that is, until all detainees from the Cultural Center were killed, including the three detainees-survivors who were killed on 17 July during the dead bodies load-up.

323. It is obvious that, regardless of the fact that the school is a civilian facility, and that interned in there were civilians who were neither captured nor brought there by members of the 1<sup>st</sup> Battalion, their safeguard and securing was along the chain of command transferred from the Zvornik Brigade to the Command and members of the 1<sup>st</sup> Battalion, and that they executed this task. Otherwise, the Battalion Command would not have been informed about this, they would not have been given any task, not even the task to open the school and prepare it for the arrival of detainees.

324. The information that the 1<sup>st</sup> Battalion requested oil from the Brigade Command for "the transport of units to Kula" and that ammunition was requested too, also point to the foregoing.<sup>276</sup>

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<sup>276</sup> T-4: Notebook of a duty operative officer ERN 0293-5761

325. Srećko Aćimović, Commander of the Second Battalion of the Zvornik Brigade, also testified that his Battalion was not contacted at all with regard to the internment of a group of detainees from Srebrenica in the *Ročevići* Primary School and that civilians had informed him about this. The Panel finds that there were no obstacles whatsoever for the civilian authorities to prepare the school in Pilica, specifically School Director Ilija Ristić, whose house was located near the school, and other persons who lived near the school, who had the school keys. Director Ristić testified that he, the school Secretary and assistant workers in the school had the school keys. According to Bogoljub Gavrić, teacher who had lived in the building adjacent to the school, school concierge Dragica Simić also had the school keys.

326. For all the foregoing, the Panel concludes that by their action – securing the detained Bosniaks, with the knowledge that they would eventually be killed, the accused have significantly contributed to the principal perpetrators, that is, the participants in the joint criminal enterprise, including Beara, Popović, Nikolić and Trbić, to kill the detainees, and that in this respect their action was a factual and physical act of aiding and abetting.

**2. Soldiers of the First Battalion tied up and blindfolded the detainees before transporting them to the Branjevo Farm, and at least two members of the Battalion escorted the buses with the detainees to Branjevo**

327. The ICTY Trial Chamber has established that on 16 July, from 10:00 to 16:00 hrs, the detainees in the Pilica school were tied with their hands on their back and blindfolded, and transported by buses to the Branjevo Military Farm.<sup>277</sup> The witnesses heard at the main trial have confirmed this fact. Witness Q testified that before he entered the bus that was parked in front of the school, soldiers had tied their hands on their back with white cloth ribbons. Witness P6 testifies that the detainees were requested to give 20 KM each in order to be transported to Sarajevo. Some detainees gave money and went out. The others who did not pay were subsequently told that they too could go to Tuzla provided that their hands are first tied behind their backs. He stated that the detainees had to make ribbons out of a large piece of green and white cloth, and that they tied each others' hands behind their backs. Thereafter, soldiers escorted them to the bus. On this occasion, the witness saw four officers near the bus.

328. That the detainees were tied up and blindfolded before their departure was also confirmed by Rajko Babić,<sup>278</sup> Bogoljub Gavrić who watched the process from an apartment located near the school, as well as Pero Pavlović who was also present near the school.<sup>279</sup> All this is confirmed by abundant photo-documentation tendered into the case record. This photo-documentation was made during the excavation of the mass graves and also includes the

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<sup>277</sup> **Pelemis established facts number 168-** Decion on Established Facts dated 30 October 2009;

<sup>278</sup> Page 51 of the transcript dated 28 April 2009;

<sup>279</sup> Page 40 of the transcript of the audio-recording dated 13 October 2008;

forensic findings regarding the items and ligatures on the victims exhumed from the mass graves.<sup>280</sup>

329. The Panel has established based on the testimony of witness Rajko Babić that, in addition to the unknown soldiers, members of the 1<sup>st</sup> Battalion also participated in these actions. This witness testified that members of the 1<sup>st</sup> Battalion were there while the detainees were being taken away, namely that they started leaving only when all the detainees were gone from the school. Mićo Manojlović testifies in accordance with the foregoing that he was on duty in the classrooms on the first floor when the detainees were coming out one by one and boarding the two parked buses. He thereafter left the school and went to the Cultural Center.

330. It ensues from the testimony of witness Zoran Gajić that he and Stanko Kostić, following the order issued by Slavko Perić, who had told them that the detainees would be exchanged, were taking the detainees out of the room, who were thereupon tied up and blindfolded in front of the school before boarding the buses, and that during this time two officers were standing there, talking with Perić.<sup>281</sup> Having been presented with the investigation evidence<sup>282</sup>, he clarified that unknown soldiers had been taking out of the building the detainees from the classrooms on the floor, while he saw through the window in the school corridor Slavko Perić talking with the present officers with rank designation plates, for some ten minutes, and that thereupon Slavko Perić entered the corridor and ordered him and five or six other soldiers from his unit to take the detainees out of the gym hall and board them on the buses.

331. His testimony is consistent with the testimony of Mile Tejić, who secured the classrooms on the floor of the school, in the part in which he testifies that Slavko Perić spoke with an unknown officer in the school corridor. In addition, Tejić also saw that Perić and Rajko Babić went with the same officer to the staffroom and stayed there for half an hour. After they left the staffroom, the take-away of the detainees to the bus started. The bus had arrived immediately upon the arrival of this unknown officer and his soldiers. Mile Tejić also testifies that those unknown soldiers who had arrived with the officer were escorting the detainees from the classrooms on the floor.

332. Therefore, by bringing into relation these statements, the Panel concludes that the soldiers from the 1<sup>st</sup> Battalion were taking out of the building the detainees who were in the gym hall, while the other unknown soldiers were taking out the detainees who were in the classrooms on the floor of the school.

333. Furthermore, Zoran Gajić testified that while they were leaving the school a certain number of members of his unit were blindfolding the men who were coming out of the gym

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<sup>280</sup> **T-99-6-** Report and testimony of Dean Manning (page 18 of the Report); **T-99-99** folder containing the photos of blindfolds and ligatures that were found at the Branjevo Farm and Čančari Road 12;

<sup>281</sup> Page 25 of the transcript dated 13 May 2009;

<sup>282</sup> **T-20-** Witness Examination Record for Zoran Gajić number: 17-0472-04-2-298/08, dated 27 March 2008 (State Investigation and Protection Agency);

hall. The blindfolds were made of the cloth torn by these soldiers at the exit from the school. Thereafter, following Slavko Perić's order, the detainees blindfolded each other. The witness explained at the trial that it is true that a number of detainees had blindfolded each other, but he could not remember "who from among his soldiers" blindfolded the rest of the detainees.

334. In certain parts, his testimony is consistent with the testimony of Stanko Kostić. Kostić states that while the detainees were taken away he was standing with Slavko Perić and Lazar Filipović, when one of the unknown soldiers approached him, cursed and ordered him to enter the buses with the detainees and show the road toward the Branjevo Farm, which he did. Upon their arrival at the swing gate of the Branjevo Farm, he was ordered to leave the bus. He waited at this place and again entered the same bus without the detainees this time and returned back to the school.

335. As stated earlier in the Verdict, Zoran Gajić was armed while he was escorting the detainees in the bus from the school to Branjevo. He saw that the detainees had been summarily executed. Stanko Kostić was also armed in one of the buses. The Panel did not give credence to the testimony of Stanko Kostić in the part where he asserted that he had somehow accidentally found himself in the role of an escort in the bus. Therefore, the Panel is more inclined to believe that he entered the bus upon the order of his superior officer, as witness Zoran Gajić presented it more sincerely, rather than upon the order of an unknown soldier. Bearing in mind the fact that Zoran Gajić strictly testified that it was Slavko Perić who had ordered him so, and the fact that it is illogical that in the immediate presence of Slavko Perić as his superior (according to Kostić, at the moment when he issued the order, Perić was standing beside him)<sup>283</sup> he should receive an order from an unknown soldier, the Panel finds that such a statement by Kostić is a result of his attempts to somehow protect Slavko Perić and himself.

336. Even if the unknown soldier had ordered the members of the 1<sup>st</sup> Battalion to escort the buses toward Branjevo, Slavko Perić tacitly agreed with this order, being aware at the moment, as explained further in the Verdict, that his soldier would escort the detainees transported to the Branjevo Farm for liquidation. The Panel finds that Gajić's testimony is more complete and sincere than Kostić's testimony, taking into account the fact that he admitted that he had been in the bus with the detainees until they left it when they were summarily executed in the immediate vicinity. Kostić, however, avoids to confirm this by stating that at some point he was forced off the bus and ordered to wait at a particular place until the bus returned.

- (i) Conclusion: taking the detainees out of the school, their tying up and blindfolding prior to transporting them for liquidation amount to the act of aiding and abetting

337. The Defense teams also argued that tying up and blindfolding the detainees who were being transported was regulated by the Main Staff Instruction dating from April 1995, which specified in paragraph 3 that detainees will be escorted to prisons or camps in the manner

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<sup>283</sup> Transcript of the trial audio-recording dated 10 June 2009;

which prevents the detainees from fleeing, and also a possibility of watching during the escort, which means that the detainees must be tied up and blindfolded, and, if so estimated by the leader of the patrol escorting the detainees, their legs may be tied up as well.<sup>284</sup>

338. However, like in the case of standing guard, the Panel agrees that these acts are not illegitimate as such, but, combined with the knowledge that with their hands tied in this manner, and some blindfolded, the detainees will be taken to the site of their execution where they will be eventually executed, this act amounts to a significant contribution and support to the one who had designed and ordered the execution of detainees, which was eventually carried out. That these acts may be characterized as aiding and abetting a crime also transpires from the fact that the detainees in the first two buses only had their hands tied. However, before boarding the third bus, in addition to having their hands tied up, the detainees were also blindfolded because the detainees from the second bus, and those from the first bus who had not been taken out in the first group, saw the bodies of the killed in the meadow, so it could be expected that they would try to flee or rebel, or obstruct the liquidation operation in some other way. In addition, the escort by an armed soldier from the 1<sup>st</sup> Battalion also served to prevent the detainees from fleeing.

339. The Panel has established that the two accused knew before July 16 what would happen to the detainees, and that the other members of the 1<sup>st</sup> Battalion, even if they did not know this at the time, became aware of this after the first bus with the detainees returned empty after a the period of time that surely was not sufficient to transport the detainees to the closest camp for prisoners of war or for exchange, and for the return of the bus.

340. Juroš Jurošević testified that the shooting from Branjevo could be heard all the way to the school, that is, his house that was located near the school. He therefore concluded that the detainees were killed after they had been taken away from the school. The witness testified that the process lasted from the morning until the afternoon, and that, at around 14:00 or 15:00 hrs, the shooting from automatic weapons started coming from the direction of the Cultural Center.<sup>285</sup> In addition, the bus driver and those who were in the armed escort on its way to Branjevo, witnessed the killings in Branjevo, thus there is but a slight likelihood that they did not talk about this when they returned back to the school for the rest of the detainees.

341. In this context, the Panel finds that these acts in fact constitute a part of the act of securing the detainees, namely the securing that lasts from the first moment when the detainees were brought in, until the departure of the last detainee from the school and their "escort" to the busses, group by group, by which they will be driven to death. Regardless of the indisputable fact that members of the Military Police of the Bratunac and Zvornik Brigades played a large part in escorting these detainees, the soldiers of the 1<sup>st</sup> Battalion participated in this in concert with them. The Panel has established this decisive fact beyond a reasonable doubt, having evaluated all the witnesses' statements, both individually and in combination.

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<sup>284</sup> T-164- Letter from the Drina Corps Security Administration dated 15 April 1995;

<sup>285</sup> Page 25 of the transcript of the trial audio-recording dated 1 February 2010;

### **3. Manpower of the 1<sup>st</sup> Battalion took part in loading and transporting dead bodies to the Branjevo Military Farm**

342. As mentioned previously, the bodies of those killed in the Cultural Centre were taken away and buried in a mass grave in Branjevo on 17 July 1995 by members of the Engineering Company of the Zvornik Brigade. However, manpower of the 1<sup>st</sup> Battalion, under the direct supervision of Slavko Perić and Rajko Babić removed the dead bodies from the Cultural Centre and loaded them onto trucks

343. Specifically, Radivoje Lazarević, a courier, testified that in the Battalion Command, Slavko Perić had given him a piece of paper with an order to inform the men in the labor detail to go in the morning to the road leading to Branjevo.<sup>286</sup> He did as he was told and informed Perić of the task completed. Nedeljko Lazić, who was a driver with the rear battalion,<sup>287</sup> testified that he had received instructions from the courier to transport the men from the labor detail and bring them in front of the Cultural Centre (Dom) in Pilica in the morning, which he did.

344. Witness P-18 testified that he had reached the Dom by a tractor, operated by Nedeljko Lazić, and that they had previously stopped by the army infirmary in Branjevo where they were given medical gloves. Furthermore, in his prior statement given during the investigation,<sup>288</sup> and repeated in his live evidence, the witness testified that Savo Popadić conveyed the order from Momir Pelemiš to him and other members of the labor detail at the front line in trenches, for deployment to Pilica, and added that they had been at the front line at the time.<sup>289</sup> Upon the arrival in front of the Dom, he saw dead bodies inside and in front of the Dom. Next to the Dom door, he noticed Rajko Babić, Boro Milovanović and Slavko Perić whom he did not know, but one of those present on the site told him that Slavko was a security officer. He also spotted several military police officers deployed around the Dom and along the Bijeljina-Zvornik road. The loading truck was parked in reverse next to the hall entrance. After the first truck was loaded, another one came in front of the Dom so the two trucks took turns in transporting the bodies. Rajko Babić gave them instructions for loading. During the loading, someone said that Slavko brought food, and many were drinking brandy to help them endure. The witness heard that there were two females among the bodies. In the investigation, the witness stated that he became seriously ill fifteen days after this assignment due to all the things he had witnessed, just as many others who were loading the bodies, while one man died three days later.

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<sup>286</sup> Transcript of audio recording of the trial held on 24 August 2009;

<sup>287</sup> Transcript of audio recording of the trial held on 24 August 2009;

<sup>288</sup> **T-78** - Examination Record of Witness P18, dated 11 July 2007, State Investigation and Protection Agency (confidential part);

<sup>289</sup> Page 52 of the transcript of audio recording of the trial held on 17 November 2009;

345. His evidence is consistent with the evidence of Savo Popadić. To wit, in his statement given to the Prosecutor's Office of BiH, Savo Popadić testified that he was in trenches at the front line when a courier came and conveyed an order for them to leave the front line and report to the rear command in Manojlovići. They came to the command to find a tractor with a trailer waiting for them on the site. They were given food, and Stanko Gajić informed them that they were to go to Pilica from there. There were around twenty of them on this tractor with a trailer, but before that, they made a stop at the infirmary in Branjevo, where a nurse supplied them with medical gloves and a shot of brandy to drink. He saw Boro Milovanović and Pero Petrović in front of the Dom, as well as some military police officers with white waist belts from Pilica.<sup>290</sup>

346. Stanko Gajić testified that he was in the battalion kitchen, where the logistics were quartered, when he received a phone call from the Command (does not remember whether it was from Perić or Pelemiš) to provide a labor detail for some work. He assumed that the work was to collect the bodies of those killed in Branjevo and the Dom.<sup>291</sup>

347. Cvjetko Marković testified that it was during the night that a courier informed him to be in Branjevo the following morning at 7:00 am. Together with another 10 to 15 members of the labor detail, he went to Branjevo by a tractor. From there they went to the Cultural Centre, and he was tasked to stand next to the truck, and load bodies being taken out of the Dom. The loading was done in shifts since it was unbearable, while the "security officer Slavko aka Mudonja" was there at the Dom. After loading, their platoon leader Radivoje Lakić told them they had a week off and that they did not have to come to work.<sup>292</sup>

348. According to the testimony of Radivoje Lakić, Slavko Perić came in the morning to his office at the Branjevo Military Farm and "asked for 5 men to go to Pilica". To avoid having one of them singled out, Lazarević testified that he had sent all six men to Pilica.<sup>293</sup> In line with his testimony, Periša Mičić said that he heard from Radivoje that Slavko Perić came and said that it was necessary to provide men who will go to the Cultural Centre for cleaning. Those men who went to clean, later on told him how they loaded dead bodies from the Cultural Centre.<sup>294</sup>

349. Jakov Stevanović testified that he came in front of the Dom at the order of Radivoje Lakić, together with Milan Ilić, while other members of the labor detail came before them. On the way they first made a stop in the infirmary in Branjevo, where a nurse gave them gauze in the shape of a mask. On their arrival in front of the Dom, they found Slavko Perić, "giving assignments" who should do what. After the witness complained to him that he could not "work with the dead", Slavko Perić allowed him to stay in front of the Dom, fetching and

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<sup>290</sup> **T-128** - Examination Record of Witness Savo Popadić, No. 17-04/2-04-2-946/07 dated 19 September 2007, (State Investigation and Protection Agency) with the transcript of an audio recording as its integral part;

<sup>291</sup> Transcript of audio recording of the trial held on 6 October 2009;

<sup>292</sup> Transcript of audio recording of the trial held on 24 May 2010;

<sup>293</sup> Page 29, Transcript of audio recording dated 2 November 2009; **T-75** - Examination Record of Witness Radivoje Lakić, No. 17-04/2-04-2-956/07 dated 25 July 2007, (State Investigation and Protection Agency) – where the witness also stated that Slavko Perić come to get men to perform work in the Pilica Dom;

<sup>294</sup> Transcript of audio recording of the trial held on 5 October 2009;



servicing water and brandy to the members of the labor detail, who were taking out dead bodies, and whose hands were therefore dirty.<sup>295</sup> At one point, he was asked to fill a beer bottle with water for a survivor in the Dom, and he did as he was told. Later he heard that this man was also killed. Once they were done with the loading at around 16.00 hours, he did not see Slavko Perić there at the Dom.

350. Ivan Perić, a member of the labor detail, testified that he headed from Branjevo by a tractor. On the arrival at the Dom, he noticed about 30 dead bodies lying in front of the Dom. Some 15 to 18 men took part in the loading of dead bodies, and they started loading at 08.30 a.m. and finished by 02.00 p.m. The witness testified that there were around 200 to 300 bodies in the hall of the Dom, including the body of a girl, who was in the Cultural Centre together with her brother, as he learned later on from the accounts of others. The bodies of the killed ones were all over the floor of the entire hall, with most of them in front of the stage. During the loading, he heard that Slavko Perić was also present there at the Dom, and he saw Pero, the president of the local community.<sup>296</sup>

351. Cvjetko Stević testified that the order to load bodies came from Slavko Perić and Boro Milanović, who entered the Dom with them and “commanded the cleaning”.<sup>297</sup> The witness testified that he spent the whole time inside the Dom, pulling out the bodies and passing them to others who stood by the door and loaded the bodies further onto a truck. In his live evidence, when asked whether Slavko Perić was present at all times, the witness responded that he had not seen him later on. However, after being presented with his prior statement when he testified in the investigation that “Slavko aka Mudonja and Boro were present at all times during the cleaning of the Dom”, the witness explained that his memory had failed him, and gave an unconvincing explanation for the discrepancies with his prior statement.<sup>298</sup>

352. According to the evidence of Savo Popović, the removal and transport of the bodies went on from 09.00 a.m. to 04.00 p.m. They worked in shifts, and a shift would last until a truck was filled up. They all loaded the first shift together, and later on they split into two groups, and worked alternately, so his group alone loaded three more trucks. Based on his testimony, the Court infers that at least seven trucks filled with dead bodies of prisoners were loaded and taken to Branjevo. According to the witness, he heard from the other group that a body of a woman was also found. During the loading in the hall of the Dom, he also saw Slavko Perić, while Boro Milanović gave them the order to load.<sup>299</sup>

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<sup>295</sup> Page 63, transcript of audio recording of the trial held on 2 November 2009;

<sup>296</sup> Transcript of audio recording of the trial held on 1 February 2010;

<sup>297</sup> Transcript of audio recording of the trial held on 24 October 2010, page 16;

<sup>298</sup> *“But look here, when this gentleman asked me when he came to me, in front of what we (incomprehensible) he asked me about him if he was there until the end, and in haste, I mean who could remember it, but I rushed to say yes. Later on I was thinking to myself, when he came inside my neighbor’s place that I should rush to tell him that it was not the case, it was not so, I left out a word, that I was mistaken. That’s why I say I make mistakes and my memory fails me.”*

<sup>299</sup> T-128 - Examination Record of Witness Savo Popović, No. 17-04/2-04-2-946/07 dated 19 September 2007, (State Investigation and Protection Agency) with the transcript of an audio recording as its integral part.

353. According to his testimony, the floor of the hall was covered with blood, about five centimeters deep. As they were loading the bodies, there was a survivor who stood up from a pile of bodies as he was approached by two military police officers, who then took him away and shot him. Another two survivors were hiding underneath the stage, so several planks were taken off the stage floor, and one of the survivors got out, shaking and asking for water. Someone brought him water in a beer bottle, and he drank it “in a gulp”. Once he came down from the stage, two military police officers told him to turn his back and shot him. He fell dead on the soy packages. The second survivor was killed by being shot at through a hole on the stage floor. It follows from his evidence that the Juroš Jurošević and Nebojša aka Kurjak were the perpetrators, while Juroš Jurošević testified in the investigation that Nebojša killed this survivor.

354. Witnesses Zoran Bojić and Zoran Jović, both military police officers, confirmed that the day after the prisoners had left the school, they drove Slavko Perić from the command over to the Cultural Centre, and that Perić had brought with him food from the storage and the kitchen for the labor detail.

355. The defense insisted that organization-and-formation-wise, the labor detail is not a unit within the battalion. Prosecution witness Stanko Gajić, who at one time was the assistant commander for the rear, and during the relevant time, a member of the rear platoon of the 1<sup>st</sup> Battalion, testified that members of that detail in terms of formation were not a part of the battalion, nor did they receive salary and other benefits awarded to other soldiers. The witness also confirmed that the commander and deputy commander had the authority to engage those men. Also, defense witness Savo Petrović testified in this regard,<sup>300</sup> as a former commander of the 1<sup>st</sup> Battalion until 1994.

356. However, the Court finds that these men were members of the battalion, regardless of the fact that they take no part in combat operations, they nevertheless have a status of soldiers, that is, they were drafted.<sup>301</sup> Further, according to the testimony of witness P-18, before their arrival for assignment in the Cultural Centre, together with some of the members of the rear or the labor detail, he was in a combat position and armed.<sup>302</sup> This was further corroborated in the statement of Savo Popadić, who was informed by a courier to report to the command, where Pelemiš told him that he should go to the trenches, and the following day, he was sent from the trenches to an assignment at the Cultural Centre. Therefore, it is a fact that the battalion commander or his deputy can engage them at any time and regardless of their status, in which case they are obliged to respond when called and report for duty at the front line, and later on, also to perform the task of removing the bodies.

357. Considering these testimonials in combination, the Court concludes that the Command of the 1<sup>st</sup> Battalion had organized the operation to remove the bodies from the Dom. Through

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<sup>300</sup> Transcript of audio recording of the trial held on 29 November 2010;

<sup>301</sup> For example, witness Jakov Stevanović, when prosecutor asked “When you say the rear service, did that rear service belong to the Army, was it a military unit?”, he replied “Of course it was, they were all mobilized”, page 61 of the transcript dated 2 November 2009;

<sup>302</sup> Transcript of audio recording of the trial held on 17 December 2009, page 23;

a courier and in person, the Accused Slavko Perić was issuing orders and instructions to the members of the 1<sup>st</sup> Battalion to come for the assignment, to which effect they were provided with transportation to the Dom, gloves and masks in the battalion infirmary. Slavko Perić personally brought them food and drinks, and commended the operation and issued orders on the spot. Considering the testimonials of witnesses P-18, Popadić and Gajić in combination, it may be concluded that also Momir Pelemiš gave an order to the members of the battalion labor detail to go to this assignment, or at a minimum, he approved or delegated the organization and command to Slavko Perić.

(i) Conclusion: loading the bodies without an identification is an act of aiding

358. The Defense argued that this operation was in no way different from the task called “clearing up the terrain”, that is, locating and clearing all the results of wartime operations that could be a source of infection and epidemics, and that due to the extreme heat, it was necessary to remove the bodies from the Dom to prevent the spread of disease. Also, in the words of all witnesses heard, it was humane to bury the victims.

359. The Court concurs that it was both necessary and humane to bury the victims. But not in the way it was done. The actions of the 1<sup>st</sup> Battalion in this case cannot be considered “the clearing of the terrain” in military terms, considering that the victims were not killed in combat or at the frontline, but obviously their death is a result of a crime. To take any action at the crime scene of such a grave criminal offence, before an investigation by the competent authorities and before any identification or an attempt of identification is in fact an act that contributes to the commission of the offense itself, that is, the removal of traces of the crime.

360. According to the Rules of Service of the Security Bodies in the SFRY Armed Forces, the assistant security commander at the least had the duty to make sure to recover and secure the evidence of the crime, and items that can be used as evidence, as well as to gather information that may be useful for the successful conduct of criminal proceedings.

361. Contrary to the above, the traces of the crime were removed extremely quickly, and Slavko Perić as the security officer was the main organizer of the bodies and traces removal operation under the command of his superior commander Momir Pelemiš, who at least approved this procedure. The crime was committed in the afternoon of 16 July, while the loading of the bodies and their transport to Branjevo began immediately the following morning, that is, on 17 July. The victims of the crime were not even counted before being loaded onto the trucks,.

362. According to the Regulations on the Application of the Rules of the International Law of War in the Armed Forces of the SFRY, which was taken over by the VRS armed forces, the procedure with the dead was prescribed in Rule 167. Pursuant to Rule 167, in burial or cremation of the dead, bodies should be examined carefully, possibly by a physician, with a view to confirming death and establishing the identity of a victim, and preferably a report should be submitted.

363. The Regulations also prescribe the duty to protect and administer medical assistance to the wounded who must be protected at all times and at any place; they must not be attacked (Rule 161), and must be treated humanely (Rule 162). Furthermore, without any delay all measures should be taken at any time to recover and collect the wounded and the sick so as to refer them to the appropriate medical units (Rule 164).

364. However, in the process of taking the bodies out from the hall and loading them on trucks, three survivors were found. Out of those three, the two who were trying to hide underneath the stage were forced out, being shot at through the stage floor. The one to come out first was shot on the spot, while the second one was killed while under the stage. The third survivor was on the pile of dead bodies, and once he stood up, he too was killed from an automatic weapon. In this particular case, the circumstances suggest that the attempt was not to prevent the spread of disease, let alone to treat the dead in a humane manner. It was merely a completion of the crime that began on 16 July.

365. The Panel notes that the evidence was not conclusive as to the identity of the perpetrator of the murder of the three survivor prisoners (it is possible that one of the perpetrators was a member of the labor detail of the 1<sup>st</sup> Battalion) but it is indisputable that they were killed during the loading operation, which was directly managed and supervised by Slavko Perić. He was aware of the possibility to have survivors and wounded among such a great number of dead bodies; however, none of the witnesses testified that Perić or Pelemiš had issued any order to immediately administer medical assistance to the wounded or otherwise provide care for them. Despite the absence of evidence that the Accused ordered their killing, all the circumstances surrounding the killing of the three survivors on 17 July, suggest that on that day Perić was finishing what had started the day before.

366. The loading and transport went on the whole day, and they knew that the bodies were buried in a mass grave, thus reducing the chances of them ever being identified; accordingly, the Panel holds that there is no room to qualify such an act as particularly humane.

367. Finally, bearing in mind that the event took place in a populated area, a civilian facility, etc, the activities to prevent the spread or an outbreak of an infection in this particular case, fall within the competence of the Civil Protection. Therefore, the entire surrounding population could have been temporarily relocated until an adequate crime scene inspection is performed, and bodies transported and buried in a lawful manner. Notwithstanding the summer heat, such an immediate and urgent removal of the bodies was not warranted.

368. As already mentioned, it is not of material importance to determine whether the members of the labor detail were formation-wise part of the 1<sup>st</sup> Battalion or not; what is important is that they were deployed by the Command of the 1<sup>st</sup> Battalion to perform this assignment, as well as provided with food and medical supplies for that purpose, including a truck and fuel for the same purpose. It is also important that Slavko Perić, Rajko Babić (as well as Pero Petrović and Boro Milanović as members of the battalion) directly managed the operation on the ground. The Court therefore concludes that in the overall sequence of the events, these acts constitute aiding and abetting whereby the accused substantially

contributed to in the execution of the crime of the principle perpetrators.

**4. Means of communication and the logistics of the 1<sup>st</sup> Battalion were used to coordinate the killing and burial operations**

369. According to the testimony of Zoran Gajić, a member of the 1<sup>st</sup> Battalion Bojko Stankić (Bojko being his nickname) drove the bus that transported the prisoners to Branjevo, who in general used to drive members of the 1<sup>st</sup> Battalion to field missions. In his testimony as the defense witness Božidar Stankić adamantly claimed that he had never driven prisoners, and that whoever said that was not telling the truth. Instead, the witness claimed that on his return from Zvornik, where he had transported members of the 1<sup>st</sup> battalion and left them in front of the Command of the Zvornik Brigade, prior to the operation in Srebrenica, he parked the bus at the roadhouse across the Dom in Pilica, and did not operate it in the period up to 24 July as recorded on the vehicle travel log.<sup>303</sup>

370. It is evident from the testimony of Petar Jurošević that members of the VRS who committed the killings in the Cultural Centre also forced him, since he was a witness to their actions, to go inside the Dom and undertake certain incriminating acts (although he claims to have avoided to shoot by giving his rifle to someone else). Those who carried out the executions in Branjevo followed the same pattern, as confirmed by Dražen Erdemović. The transcript of his testimony before the ICTY was introduced as evidence, in the part where he testified that Brano Gojković, a member of the 10<sup>th</sup> Sabotage Platoon “came up with the idea that drivers could later on become witnesses and that each of them should also kill at least one person”.

371. Mindful of this fact, the Court finds that witness Božidar Stankić had reasons to deny driving the bus to Branjevo; hence, his testimony does not put into question the credibility of the testimony of Zoran Gajić.

372. It is evident from the duty officer’s notebook that the Command of the Zvornik Brigade had received a request for ammunition,<sup>304</sup> and some 24 hours later, came the second request for ammunition, as well as oil and fuel to be used to “transport troops to Kula”.<sup>305</sup> This is of particular importance as there were no ongoing combat activities in the area of responsibility of the 1<sup>st</sup> Battalion, and since battalion commander or his deputy in absence of the commander is the only person authorized to send requests to the Brigade.

373. Furthermore, it is evident from the Zvornik Brigade duty officer’s notebook that on 16 July at 22.10 p.m., the 1<sup>st</sup> Battalion of the (Zvornik) Brigade sought a loader, excavator and a dumper truck to be in Pilica at 08.00 a.m. on 17 July.<sup>306</sup> The notebook further contains information about the request being further conveyed to “Jokić”, and the ICTY Trial Chamber

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<sup>303</sup> D-II-18;

<sup>304</sup> T-4: Duty Officer Notebook ERN 0293-5751

<sup>305</sup> T-4: Duty Officer Notebook ERN 0293-5761

<sup>306</sup> T-4 - Duty Officer Notebook ERN 0293-5771

found that the note refers to Dragan Jokić, and that he was informed in the capacity of the Chief of Engineering.<sup>307</sup>

374. Furthermore, the notebook also reads that in the early morning hours of 17 July, the 1<sup>st</sup> Battalion called to check whether “construction machinery was provided”. As noted previously in the judgment, the evidence shows that an excavator and a loader were sent to the 1<sup>st</sup> Battalion.

375. The Panel concludes that the construction machinery was commissioned to work at a mass grave site, and it is impossible that it was sought for any other task, since according to the testimony of Milan Stanojević, the 1<sup>st</sup> Battalion did not use such equipment for digging trenches and other fortifications.

376. It has been mentioned above that it was noted in the duty officer notebook that the 1<sup>st</sup> Battalion had requested 500 liters of diesel fuel. Witness Branko Bogičević testified that he used a truck to deliver three barrels of diesel fuel from the Brigade Command over to Pilica, some five hundred meters from the Cultural Centre, where soldiers waited for him to pour the fuel over into jerrycans.<sup>308</sup> Documentary evidence demonstrates that fuel was supplied to Popović, that is, the Drina Corps Command. Considering that Popović at the time headed the operation of transport and execution of prisoners in Branjevo, it is obvious for what purpose the fuel ordered and delivered through the means of communication of the 1<sup>st</sup> Battalion was used.

(i) Conclusion: making means of communication available is an act of aiding and abetting

377. The Panel finds that the 1<sup>st</sup> Battalion also provided the necessary logistic assistance to the principal perpetrators. In this sense, these acts amount to practical assistance to the perpetrator, that is, members of the joint criminal enterprise, in the execution of prisoners.

**K. SOLDIERS AND MANPOWER OF THE 1<sup>ST</sup> BATTALION ACTED UNDER THE COMMAND OF MOMIR PELEMIŠ AND IMMEDIATE SUPERVISION OF SLAVKO PERIĆ**

378. Assistant Commander for General Affairs Rajko Babić came in the morning of 14 July to the command building in Manojlovići, where he found Jovan Gajić, who was also in charge of general affairs, and he replaced him on the post of the duty operations officer in the command. While going through the most recent notes from the duty officer’s logbook, he noticed one made for 14 July about a telegram received to inform the 1<sup>st</sup> Battalion about the

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<sup>307</sup> **Popović Established Fact No. 174;**

<sup>308</sup> **T-50** – Vehicle Travel Log MP 7469 Zvornik from 1 July to 31 July 1995, drove a TAM 80 vehicle, fuel received on 14 July, 15 July, and 17 July 1995, driver Branko Bogičević; **T-51** – Materials List dated 16 July 1995 MP 7469 Zvornik, Branko Bogičević.

arrival of 100 to 200 prisoners from Srebrenica who needed to overnight in the school gym in Kula, and leave for Tuzla for exchange the following day, and that the command should ensure the gym and notify the population in the area around the gym. The witness explained that the telegram came to the Communication Centre and conveyed from there via phone to the duty officer in the Command, who then entered it in hand into the duty officer's logbook. Momir Pelemiš, Slavko Perić, Dragan Pantić, Jovan Gajić and guards were in the command building. Following a meeting conducted by Commander Pelemiš, and after a discussion, it was decided that everyone who happened to be there, save for the Commander, should head for the school. The order came from the Commander. On the way to the school, a few soldiers joined them who had headed to the frontline, but returned back to the school in Pilica.<sup>309</sup>

379. Contrary to the testimony of Rajko Babić, his deputy Jovan Gajić testified that he was neither present when the telegram arrived, nor did he recall any. The witness claims that by the time he arrived at the Command, all members of the Command were already gone, and Pelemiš explained to him that they had gone to school to take over prisoners.<sup>310</sup> It is obvious that the telegram was received by either Rajko Babić or his deputy Jovan Gajić; however, they both had reason to deny receiving it. Jovan Gajić was particularly confusing in his evidence about the telegram. During his direct examination by the defense counsel, he denied any knowledge about the telegram, while in his cross-examination by the prosecutor, Gajić stated that he came to the command after the telegram.

380. The Court gave credence to Babić's testimony about the telegram being received, considering that this telegram was also mentioned by other witnesses, such as the Commander of the Communications Section Milan Jovanović,<sup>311</sup> who testified that the Battalion had received a telegram from the brigade about the arrival of prisoners. It follows from the testimony of Pero Petrović that he met Slavko Perić on the way to school, who told him: *"I received this telegram from the command, about the arrival of some prisoners, to prepare the location where they will be detained"*.

381. Further, the Court gave credence to Babić's evidence also in the part about a meeting held at the command. After this meeting, Pelemiš issued an order to the members of the command to go to the school and have some soldiers go with them, that is, to have the soldiers who headed to the frontline return.

382. An important fact mentioned by Dragan Obrenović is consistent with his evidence about a missing page from the logbook. On 15 July in the brigade command, Dragan Jokić informed Dragan Obrenović that as a duty operation's officer, he had many problems with Beara,

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<sup>309</sup> Transcript of audio recording of the trial held on 28 April 2009;

<sup>310</sup> Page 28, transcript of audio recording of the trial held on 11 October 2010;

<sup>311</sup> Pages 19 and 20, transcript of audio recording of the trial held on 10 June 2009;

Popović and Nikolić, and that Colonel Popović ordered that "nothing of the prisoners is to be conveyed via radio communication and likewise nothing should be written or recorded".<sup>312</sup>

383. Vujadin Savić, one of the officers in the battalion command, claims that nobody knew about the arrival of prisoners and that there was no telegram, adding that there were no missing pages from the duty officer's logbook. However, the Panel did not find his testimony reliable due to many inconsistencies with the evidence of other witnesses. For example, contrary to the evidence of Rajko Babić and Bogoljub Gavrić who testified that Babić arrived together with Perić, Vujadin Savić testified that Babić was still in the command when he came there in the early evening hours, and that he asked Pelemiš if he could go to the school, which Pelemiš approved.

384. Witness Radivoje Matić, a company commander in the 1<sup>st</sup> Battalion, testified that he was on the frontline when Pelemiš called him and asked him to send members of the company so as to guard prisoners from Srebrenica. Matić refused as he did not have enough men.

385. Duty officer's logbook of the Zvornik Brigade reads that "Pelemiš's TG has a problem with manpower".<sup>313</sup> Also, an entry reading "a delegation from Pilica" was made later on, after 20:00 hours.

386. Among others, it also follows from the evidence of Rajko Babić that Slavko Perić supervised the troops on the ground. Namely, according to Rajko Babić, on 15 July, after the shift had arrived, he sought and received permission from Slavko Perić to leave the school and go to the apartment to rest.<sup>314</sup> Further, this also follows from the testimony of Zoran Gajić, who stated that after his arrival at the school with a group of soldiers, he received an order to secure the village and Muslims in the school from Slavko Perić, and he was assigned to the school door towards the playground together with Stanko Kostić, also a member of the 1<sup>st</sup> Battalion.<sup>315</sup> Witness Stjepan Mitrović testified that he later heard from the battalion soldiers that Slavko Perić organized the guarding of prisoners in Pilica.<sup>316</sup>

387. The defense argued that Momir Pelemiš did not receive a clear order from a commanding authority, meaning Dragan Obrenović, at the time the acting brigade commander, for guarding prisoners of war, and that the absence of such an order could not be substituted by any other form of written or oral communication, for it was an unusual and highly complex *ad hoc* assignment. Further, the defense submitted that neither Dragan Obrenović, nor Vinko Pandurević, indicated that anyone in the brigade had sent any order to the command of the 1<sup>st</sup> Battalion regarding the arrival of prisoners of war. Furthermore, given fact that Dragan Nikolić on 13 July had an extraordinary handover of duty operations officer's

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<sup>312</sup> Page 81, No. IT-02-60-T, ICTY transcript dated 2 October 2003 - **T-141**;

<sup>313</sup> **T-4** - Duty Officer Notebook (in the Zvornik Brigade Command);

<sup>314</sup> Page 46, transcript of audio recording of the trial held on 28 April 2009, and page 10232 of the transcript admitted into evidence as **T-15**;

<sup>315</sup> Pages 11 and 12, transcript of audio recording of the trial held on 13 May 2009;

<sup>316</sup> Page 56, transcript of audio recording dated 11 October 2011;



duty at the Brigade FCP,<sup>317</sup> in order to select the locations to receive and accommodate prisoners, following an order of the Drina Corps, the defense for Momir Pelemiš argued that it is certain that he informed Slavko Perić about it, as his subordinate security organ of the 1<sup>st</sup> Battalion, who then informed Pelemiš about the arrival of prisoners of war. Also, witness Vujadin Savić testified he heard from Pelemiš that Perić had informed him about the arrival of prisoners.

388. The Court has carefully examined the evidence and excluded the possibility that Perić acted without the knowledge of the Battalion Command. Specifically, it is true that in his evidence before the ICTY, Dragan Obrenović denied giving any orders to battalion commands concerning prisoners, since Drago Nikolić dealt with it, along with Popović and Beara. Considering that Nikolić was still duty operations officer at the time when he informed Obrenović about the prisoners, the Panel concludes that he could have sent an order regarding the prisoners to the battalion command, or the duty operations officer who took over the duty from Nikolić could have done so. Dragan Obrenović, who waved off to Nikolić and said that the problems with prisoners were not his concern, just as Pandurević who was previously deployed in the field with the troops, need not to have been aware of whether, and if so, who gave orders to the battalions in relation to prisoners. However, it is apparent from the testimony of Srećko Aćimović, commander of the 2<sup>nd</sup> Battalion, that someone from the brigade command nevertheless did that.

389. This is confirmed by the Interim Combat Report dated 15 July 1995, sent to the Drina Corps Command, where Vinko Pandurević complains that “an additional burden to us is a large number of prisoners accommodated in different schools in the area of the Brigade, as well as the duties to secure and clearing of the terrain”. This document shows the “duty to secure” the prisoners on the part of the Zvornik Brigade and its battalions.<sup>318</sup>

390. The defense for Momir Pelemiš submitted that he did not have any contact with the part of the unit which was at the school on 16 July, considering that he was at the command post in Manojlovići, and that Slavko Perić decided on everything these soldiers did at the school, as the most senior officer who was at the school on that day, which was all either a result of their autonomous actions or actions following the orders of the VRS Main Staff and the Drina Corps officers who were there on the site, meaning Beara and Popović

391. The Panel also reviewed the Instruction of the VRS Main Staff on the Command and Control over the Security and Intelligence Organs of the VRS dated 24 October 1994, which reads that:

“All telegrams and mail of the members of the security and intelligence organs shall be delivered exclusively to them in person and no other organ of the

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<sup>317</sup> As confirmed by an entry made in the Duty Officer Logbook on 13 July 1995;

<sup>318</sup> Interim Combat Report, footnote 645 Butler’s Narrative Reports T-100.

command, conclusive with the commander, shall have no right to inspect their contents".<sup>319</sup>

This would go in favor of the defense's argument that Slavko Perić acted independently or as part of the security chain of command, and that Momir Pelemiš did not have to have any information regarding the prisoners, except for the information conveyed to him by Slavko Perić. Furthermore, according to this instruction, commanders of units and institutions of the VRS who have members of the security and intelligence organs in their composition, may be consulted on matters within their competence, and make proposals or suggestions, but do not decide in such matters. Linking this to the Instruction of the Zvornik Brigade Command dated 21 September 1994,<sup>320</sup> according to which the security organ conducts the most essential interrogations of prisoners of war and organizes their evacuation on a designated site, the defense argued that Commander Momir Pelemiš had absolutely no authority over the incoming prisoners.

392. In contrast, the defense for Slavko Perić summoned a military expert witness Petar Vuga who concluded that Slavko Perić in his daily work was under the direct command of the battalion commander as his direct superior commanding officer, and that his professional work was managed by the chief of intelligence and security command of the Zvornik Brigade. Furthermore the expert Vuga concluded that Slavko Perić had no right to command and assign tasks to individuals and organizational units of the battalion or VRS, and therefore did not exercise any of the command functions, including coordination.<sup>321</sup>

393. Witness Stevo Petrović, who was the commander of the 1<sup>st</sup> Battalion until 1994, described the practice that in case the assistant for security in the battalion would receive a task from the assistant commander of the brigade, he was obliged to report to the battalion commander, so that the battalion commander would assign him to that task, and could not do anything independently.<sup>322</sup> Witness Duško Vukotić gave similar evidence that the assistant for security in the battalion must perform all tasks through his battalion commander, including the sending of daily reports through the battalion commander, and that his superior from the brigade cannot order anything to him without informing the battalion commander.<sup>323</sup> The defense asked Rajko Babić whether Slavko Perić could execute the orders of his superior Drago Nikolić, without notifying the commander about it, Babić said that he could, but did not do so as there was no need.<sup>324</sup>

394. Witness Stjepan Mitrović, ormer battalion commander at a certain period of time, and also assistant security commander, testified that the very role and function of the assistant commander for security gave certain room for acting independently, that is, vertically towards the security organs in the brigade, corps and the army, but they also had the responsibility and

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<sup>319</sup> O-I- 25;

<sup>320</sup> O-I-16;

<sup>321</sup> D-II-26;

<sup>322</sup> Page 50, transcript of audio recording of the trial held on 29 November 2010;

<sup>323</sup> Page 50, transcript of audio recording of the trial held on 28 January 2011;

<sup>324</sup> Rajko Babić - page 30, transcript of audio recording dated 29 April 2009;

were subordinate to the battalion commander. It depended on the person holding this post as some managed to get more privileges in relation to the battalion commander, and others got less.<sup>325</sup>

395. In considering the possibility for Pelemiš to communicate with his subordinates at the relevant time, the Panel has analyzed the evidence of witnesses indicating that communication between members of the battalion command was also possible via Motorola. Specifically, in 1993 Stjepan Mitrović was assigned to the company of the communications center, and he testified that the battalion initially had some Motorolas of rather poor quality, but later they had real professional military Motorolas.<sup>326</sup>

396. Rajko Babić also confirmed that the battalion command had Motorolas when he testified that Slavko Perić had a Motorola which he normally carried behind his belt. Dragan Jovanović, a signalman, claimed that it was impossible to use a Motorola to communicate with the command from the school because Motorola did not have such a wide signal range.<sup>327</sup> However, witness Zoran Bojić clearly testified that in the morning hours of 16 July, after he told Perić in the school yard that he would go to celebrate his saint patron's day, Perić told him "*Here, Pelemiš just called me via Motorola to say that they will come to drive them*". His evidence is consistent with the evidence of Zoran Jović who was also present on the occasion, and who testified that Perić informed them that Pelemiš had reported that someone will come to drive the prisoners. Therefore, the Panel concludes that the battalion command in Manojlovići, that is, Momir Pelemiš, the then acting commander, could have and most certainly was informed the whole time of all developments relating to the prisoners. Likewise, he also maintained communication with the brigade command, where he could get information from and forward it to Perić, namely that the prisoners were to be transported from the school.

397. Further, the Panel was also mindful of both the possibility and the duty of the commander to physically inspect the site that was not so far away from the command. According to the live evidence of Rajko Babić, if you go on foot from the school to the command, it takes "about an hour and a bit more since you go uphill". The Panel therefore concludes that the car which was at his disposal as the commander could take him in a short time to reach the village of Pilica to inspect the situation on the ground. In addition, according to the testimony of Milan Jovanović, Rajko Babić also came on 15 July to the command in Manojlovići. He was with Pelemiš in the battalion command at the time Slavko Perić returned from the brigade command in Karakaj. So commander Pelemiš had direct information from Babić and Perić about the situation on the ground where he had deployed all his troops, including the plans from the Zvornik Brigade in relation to the prisoners.

398. In the analysis of the possibilities and obligations of a commander, the Panel reviewed the testimony of witnesses Srećko Aćimović, commander of the 2<sup>nd</sup> Battalion of the Zvornik Brigade, who found himself in a situation similar to that of the command of the 1<sup>st</sup> Battalion.

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<sup>325</sup> Page 35, transcript of audio recording dated 11 October 2010;

<sup>326</sup> Page 38 and 39 of the transcript of audio recording dated 11 October 2010;

<sup>327</sup> Page 39 transcript of audio recording dated 10 June 2009;

He learned from a priest from the village of Ročević, which is 14 km away from his battalion command, that prisoners from Srebrenica were in the school in Ročević. Aćimović immediately went to the school where prisoners were guarded by unknown soldiers who refused to talk to him. He saw several bodies of prisoners at the school, so he directly called the brigade command, where he found Vujadin Popović. When Aćimović informed that prisoners were being killed at the school, that they were accommodated in unsuitable premises, and that the soldiers guarding them did not appear sane, Popović told him not to dramatize and that they will be there only for a short period of time since they were to go for exchange. However, at midnight he received a coded telegram from the brigade command requiring him to allocate a certain number of troops for the execution of prisoners. He also used a telegram to respond that he had no men available for this purpose. After 15 to 20 minutes, a telegram arrived with the identical content, the only difference being that it read that it is to inform the company commanders, and then signalmen, since that was the practice, to immediately call the company commanders and dictate to them the contents of the telegram. Aćimović got in contact with the company commanders and instructed them to say they had no manpower for this purpose.

399. Therefore, it is obvious that the battalion commander has both the possibility and duty in such situations to be familiar with the actual situation on the ground, and to be proactive in such situations, including instances when the brigade command did not previously assign any duties or tasks related to the arrival of prisoners as was the case with commander Aćimović. In the case of the 1<sup>st</sup> Battalion, Commander Momir Pelemiš was informed by the brigade from the very the arrival of the prisoners. He was given assignments and issued orders, so it is logical that he continued to take care of their enforcement. The above is confirmed by Dragan Obrenović, in his evidence before the ICTY, where he testified: “in order for a commander to make decisions of any kind, by the virtue of his duty, he must take measures and steps to become familiar with what goes on in his unit, in his immediate surroundings and in the area of responsibility of his unit”.<sup>328</sup>

400. By reviewing the testimony in connection with the evidence of the expert witnesses and documentary evidence, the Panel concluded that all the soldiers of the 1<sup>st</sup> Battalion, including Slavko Perić, as his assistant for security, in the period from 14 July to 17 July acted under the direct command of Momir Pelemiš. Furthermore, the Court inferred beyond a reasonable doubt that the performance of tasks on-site at the school and the Cultural Centre, was supervised and directed by Slavko Perić, his deputy for security.

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<sup>328</sup> T-142 - page 8 of the transcript of the live evidence in ICTY case No. IT-02-60-T dated 2 October 2003;

- (i) Conclusion: by their acts the accused significantly contributed to the commission of the crime

401. Based on all the foregoing, the Court finds that in the period from 14 July to 16 July 1995, through physical acts of aiding - by holding the prisoners in the Cultural Centre in Pilica until their execution, and in the school in Pilica until their execution in Branjevo, by removing them from the school, loading them on a bus to Branjevo, by blindfolding them and tying their hands with ligatures, escorted prisoners on a bus to Branjevo where they were executed, making available the means of the 1<sup>st</sup> Battalion for procuring ammunition, fuel and machinery for burials, loading the dead from the Cultural Centre and taking the bodies to Branjevo to be buried in a mass grave, without conducting a site investigation and identification, significantly contributed, that is, aided the principal perpetrators in the commission of the crime.

#### **L. KNOWLEDGE AND INTENT OF THE ACCUSED**

402. Although the accused may have the knowledge of numerous crimes that may be committed with his contribution, he at least needs to be aware of the essential elements of the crime for which he is charged as an aider [or abettor]. The accused must know that the person or persons in a joint criminal enterprise, intended to commit a crime with which he is charged as an aider [and abettor]. When it comes to crimes requiring specific intent, such as genocide and persecution, the accused must know that the person or persons in a joint criminal enterprise possessed genocidal or discriminatory intent.<sup>329</sup>

##### **(a) The accused knew that the prisoners would be executed**

403. In several cases, the trial chambers of the ICTY and the Court of BiH have determined the dynamics in the execution of the operation to kill prisoners in the municipalities of Bratunac and Zvornik and the pattern of conduct at each mass execution. On 13 July 1995, systematic mass executions were carried out simultaneously at sites in the southern region (Jadar, Cerska, Nova Kasaba, Sandići meadow and the Kravica warehouse); as well as systematic mass executions, one after the other, in the Zvornik area on 14 July: Orahovac in the afternoon until midnight of the same day, in Petkovci from midnight to dawn of 15 July, in Kozluk from afternoon to the evening of 15 July, in Branjevo on 16 July until about 16.00 pm and in the Pilica Dom from 16.00 pm on 16 July.

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<sup>329</sup> *Popović et al.* IT-03-68-T Trial Chamber Judgement dated 10 December 2010, para. 1017 – Eng. version.

404. A clear pattern of behavior at each mass execution, including Pilica, was the following: captured Bosniaks were transferred on trucks and buses to detention sites; at all detention sites executions of smaller scale were carried out, in order to control other prisoners by fear; conditions at each detention site were intolerable; before being taken to execution sites, some of the prisoners were blindfolded and tied with ligatures; the prisoners were transferred to execution sites on military trucks or buses; execution sites were located near the detention sites; firing squads were methodical - all prisoners who were not killed in the initial shooting from firearms by a firing squad were then killed individually, by individual shots, often in the head, within 24 hours from the execution the executed captured Bosniaks were buried in unmarked mass graves at the site where they had been summarily executed.

405. In relation to the executions in Orahovac, the ICTY Trial Chamber found that from the noon of 14 July 1995 to 05:00 a.m. on 15 July 1995, 1000-2500 Bosniak prisoners were transported blindfolded to one of the two nearby meadows located at a distance of less than 1 km from the school in Grbavci nearby Orahovac, where they were executed. The prisoners were lined up and shot from behind; those who survived the initial discharge of fire-arms were killed by additional shots from firearms. Members of the 4<sup>th</sup> Battalion of the Zvornik Brigade were present in Orahovac during the executions and assisted in their execution.<sup>330</sup>

406. In addition, on 15 July 1995, Bosniak prisoners who were placed in the primary school in Petkovci were ordered to go outside the school; their hands were tied behind their backs and they were transported on trucks to the dam in Petkovci where they were summarily executed.<sup>331</sup> Drivers and trucks from the 6<sup>th</sup> Infantry Battalion of the Zvornik Brigade were used to transport prisoners from detention sites to the execution site on the Petkovci dam on 15 July 1995, while the Engineering Company of the Zvornik Brigade was assigned with the groundwork equipment to assist in burying the victims from the Petkovci Dam with approximately 1500 to 2000 bodies on the execution site.

407. Also, excavators and bulldozers of the Zvornik Brigade that worked in the area of Kozluk from 16 July 1995 were involved in the work related to the burial of victims of the executions in Kozluk, which took place between 14 and 17 July 1995.

408. Thus, the pattern of the military operation was clear and consistent throughout the municipality of Zvornik. The same actions were taken at each detention and execution site. As the Panel found, no later than on 15 July, the accused learned about previous detentions and executions since Slavko Perić received information about these events on that day in the Brigade Command in Karakaj. In addition, the Panel concluded that his commander Momir Pelemiš also received this information no later than on that day.

409. Namely, in the period from 13 to 16 July, with the approval of commander Major Dragan Obrenović, according to his own account, and under the supervision of Drago Nikolić, deputy commander for security and Milorad Trbić, his assistant, a large number of members of

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<sup>330</sup> Established Facts 143 through 152 in the Annex to the Verdict;

<sup>331</sup> Established Facts 153 through 162 in the Annex to the Verdict;

this Brigade were engaged and involved in both the transportation of prisoners, as well as securing them. Some of them undoubtedly were involved in the execution, while the manpower and machinery of this brigade was used to bury the victims. It is impossible that the soldiers of the 1<sup>st</sup> Battalion were unaware of the previous executions given the massive scale of the crime and the extent of involvement of the Zvornik Brigade personnel, and given that Orahovac, Petkovci and Kozluk were geographically located within the area of responsibility of the Zvornik Brigade, which was relatively small.

410. Tanacko Tanić, a treasurer in the financial services of the Zvornik Brigade was involved in the events concerning the prisoners in Orahovac on 14 July. He testified that he was in the office in the command building located in the Karakaj barracks in Zvornik, where he was told to take a rifle and head towards the truck since the prisoners were fleeing. Having arrived in Orahovac, where prisoners were placed in the school, he regretted that he came there, because he believed that the prisoners would be killed. Asked about the reasons behind such an inference, Tanić testified:

"...I don't even know how many people were there, I saw a little boy carrying water and a soldier following him. There's no way there was going to be an exchange, meaning that there was to be killing, but why haven't they at least left the children aside... They were detained in the gym... it was a broad daylight and nothing indicated to me that anything good was going to happen to them... everything was different than it should have been... nobody provided them with water, or bread, or anything, they were detained, the guards preventing their escape. There was some talk about the exchange, but just to trick them onto the trucks and... If the intention was different, they would have brought them water, water tanks, as well as bread, there would have been everything, had there been another option."

411. This witness testified that he saw Popović and Drago Nikolić in Orahovac, and when he returned from Orahovac on the evening of the 14<sup>th</sup>, he saw that the door of the duty officer's office was open, with a group of people sitting inside and commenting on a good job done, and that the men who carried out the executions should be rewarded. He further testified that given the scale of the event, the execution of prisoners in Orahovac was a known matter in the barracks already on the 15<sup>th</sup>.<sup>332</sup> Milorad Birčaković, a driver to the Military Police Company Commander Jasikovac also testified about the operation of the execution of prisoners in Orahovac. Upon Jasikovac's order, Birčaković escorted the trucks with prisoners to the execution site in an Opel vehicle.

412. Nebojša Jeremić, a member of the Zvornik Brigade Military Police Company, and at the relevant time a guard at the gate to the Standard barracks, also confirmed that in the barracks he learned about the executions at Orahovac from other soldiers who said in passing that

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<sup>332</sup> Transcript of audio recording dated 14 December 2009;

“there was an execution today...”<sup>333</sup>. Generally, he said the following about the events in the barracks:

“..at that time.. we were prohibited from taking a leave, and so we were all present there...everyone was mobilized. We knew that a large column from Srebrenica was coming. Not a column but a column of those Bosniacs, persons of Bosniac ethnicity, and no one knew which side they would try to break through. So, people were very nervous and the frontlines were reinforced, men were mobilized, there were very few men in the barracks, all of them left to man some positions...”

413. Stjepan Mitrović, a member of the Zvornik Brigade Communications Company, alleged that he heard about the Srebrenica-related events through means of communication and also heard stories from officers inside the barracks.<sup>334</sup>

414. It was exactly there, at the Brigade HQ in Karakaj, that Slavko Perić spent some time on 15 July, according to witness Rajko Babić and witness Milan Jovanović, driver of the battalion commander. He alleged that Perić stayed in the Brigade HQ for about an hour and a half up to two hours, and he waited for him during that time at the cafeteria located in the same building.

415. While Dragan Obrenović did not mention seeing or contacting Slavko Perić at the Standard barracks on 15 July in his testimony before the ICTY, the Panel took into account the fact that a large number of persons who were members of or were aware of the JCE were present at the Brigade HQ on that particular day. Specifically, commander of the Zvornik Brigade Vinko Pandurević had just returned from Žepa when his deputy, Major Dragan Obrenović, advised him of the problems relative to the guarding and executing of prisoners. Duty operations officer Dragan Jokić had conveyed this information to Obrenović at the entrance to the building. Moreover, Dragomir Vasić, deputy chief of the Zvornik CJB, Ljubiša Borovčanin, commander of the special police units, and Miloš Stupar, commander of the 2<sup>nd</sup> Šekovići Police Detachment, were in the same office on that occasion, and one of the topics discussed was the mass execution of prisoners at the Kravica warehouse.<sup>335</sup>

416. ICTY Trial Chambers have found that more than 1,000 men were killed at Kravica on 13 July, while the victims were buried in mass graves in the period between 14 July and 16 July. A member of the Zvornik Brigade who gave evidence in the present case had been involved in removing the dead bodies.

417. Considering that there were only a few men in the barracks at that time, that the Panel has found beyond a reasonable doubt that all the men inside the barracks became aware of the mass killings of the prisoners on 15 July and that Perić, as a command staff officer, went to

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<sup>333</sup> Trial audio transcript of 15 February 2010, p. 50.

<sup>334</sup> Transcript of 11 October 2010, p. 40.

<sup>335</sup> **T-141.**



the Brigade HQ to discuss the issue of prisoners, the Panel has concluded that he definitely learned at that point, if not sooner, that the prisoners at Pilica would also be executed, that is, that an exchange was out of question. The Panel has concluded beyond a reasonable doubt that, following his visit to the Brigade HQ, he became well aware of the full scale of the operation as well as the role to be played by him and the 1<sup>st</sup> Battalion in that operation.

418. Upon return to Pilica, the driver alleged that Perić alighted from the vehicle near the Cultural Center and remained there for a brief period of time. The prisoners were held at the Center at that time. Thereafter, the two of them went to the Battalion HQ in Manojlovići and Perić entered the room, occupied by the commander or the duty operations officer, remaining there for up to two hours. At that time, the driver was in the room opposite the duty officer's room and he saw Pelemiš and Babić through an open office door.<sup>336</sup>

419. This portion of the witness's testimony is not consistent with Babić's testimony; Babić claimed that he did not go to the HQ in the period between 14 July and 16 July. However, by virtue of his duty of assistant commander and in view of the fact that as a command staff officer he was heavily involved in all the activities relating to the prisoners that had just arrived, the Panel has found that Babić had reason to conceal the fact that he visited the HQ at the referenced time, whereas witness Jovanović, responding to repeated questions put by the Prosecution and Defense, remained adamant in his claim that he saw him at the Battalion HQ on the 15<sup>th</sup>, for which reason the Panel deemed him to be a credible witness.

420. In relation to witness Rajko Babić's testimony in the present case, the Panel observes that the witness gave a more detailed testimony in the ICTY case no. IT-05-88-T, which is a result of having a better memory in 2007, as well as the fact that the proceedings before the Court of BiH charged his commander and deputy commander, persons who are not only his fellow-soldiers but also his neighbors. In addition, his testimony was evaluated in light of the fact that he, as deputy commander and potentially responsible along with other command staff officers, probably tailored his testimony.

421. As Babić (who obtained information about the fate of the prisoners on site – at the school) and Perić (who returned from the Brigade HQ with such information) obviously spoke to commander Momir Pelemiš, the Panel has found that he, too, definitely had information at that point, if not sooner, that the prisoners would be killed, and that several prisoners had already been killed in the school.

422. Slavko Perić had frequent contacts with the Brigade and the issue of prisoners was discussed in general by the Battalion Command, including above all the battalion commander Momir Pelemiš, as confirmed by the following words of communications officer Dragan Jovanović:

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<sup>336</sup> Relating to the driver's movement on that day, and **T-37** vehicle log sheet no. 22-1455/95 Lada Riva, 1 July to 31 July 1995 VP /army post office/ 7469 Zvornik.

“I know that Slavko Perić non-stop, that is, constantly requested and constantly worked on it, as to how long the people would stay and where and when they would leave, and was it dangerous to the local population. People were hungry, starving. We were unarmed and so on and so forth. And that, the man was working on that non-stop and we talked about it non-stop”.

423. The vehicle log sheet for the vehicle driven by Milorad Birčaković, driver of the Military Police commander, shows that Momir Jasikovac, Military Police company commander and one of the principal participants in the operation of execution of prisoners, was in Pilica on 15 July and 16 July. The vehicle log sheet indicates the extensive use of the vehicle at that time and that the passengers in the vehicle visited most of the locations where the prisoners were killed. Considering what he witnessed and what he participated in, it stands to reason that Milorad Birčaković had many motives to testify at trial that the mileage was not entirely accurate because he increased it to account for fuel consumption.

424. Furthermore, it ensues from Juroš Jurošević’s testimony that while buses with prisoners were parked by the school (15 July) an officer who was present there – he did not know him and had not seen him before – asked: “*does anyone have the balls to kill them*” referring to the prisoners: as no one came forward, the officer ordered that the prisoners be bused to the Cultural Center.<sup>337</sup>

425. Presumably it was the same officer whose openly announced intention to execute the prisoners appalled Dragan Jovanović, a member of the 1<sup>st</sup> Battalion who was present there guarding the prisoners. He reacted in the following manner:

“... I know that I requested to be relieved, but no one came. And then a Jeep arrived. Four or five soldiers and an officer got out. The officer had an officer’s cap and he started shouting as he was entering there. I was about 20 meters away, by the house, I don’t know who he was threatening, but he said, *what are you waiting for, why aren’t you doing the killings?* At that moment I was lost, I lacked sleep, I was in shock. At that point I did not give it much thought, I do not recall the soldier who was next to me, I said ‘I’m going home, I’m out of here’. I never heard such a thing in my life. In the presence of anyone, if you know what I mean, let alone soldiers. I put my rifle in the trunk, Lada was on a cross-road, and I headed home, taking a shortcut... He also said, I think I heard that from soldiers, up there at the HQ, I heard it, he requested- *where is Slavko, I’ll kill him*,...he took out his pistol - *What is he looking for non-stop up there..*”

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<sup>337</sup> Pgs. 37 and 47 of audio transcript.

426. The witness understood the officer's intention to execute the prisoners so seriously that he concluded that he could not stand up to such men and that there was only one solution for him: to be killed together with the people detained in the school or to flee.<sup>338</sup>

427. Therefore, in the morning of 15 July the officer openly announced that the prisoners would be executed, and all members of the 1<sup>st</sup> Battalion who were present there heard it. Rajko Babić, too, confirmed this when he alleged to have spoken to a lieutenant-colonel, the latter telling Babić that they were a peasant unit and that they could not see to the prisoners. When Babić asked him if all the prisoners needed to be taken away and if at least one or two prisoners that he knew could stay behind (although he did not put it that way – the Panel concludes that his intention was to save them because he already knew what would happen to them), the lieutenant-colonel yelled at him and said that no one can stay behind and that all of them must be taken away; it then occurred to him that they would all be killed.<sup>339</sup> While he had previously believed that the prisoners would be exchanged, he no longer believed so following his conversation with the high-ranking officer.<sup>340</sup>

428. Zoran Bojić, military police officer of the 1<sup>st</sup> Battalion of the Zvornik Brigade, testified that he saw two officers upon his arrival at the front of the school on 15 July; one of them was yelling and making a noise, mentioning that he would kill someone. Bojić's colleague, a military police officer, explained to him that the officer was yelling because Slavko Perić had gone to the Brigade HQ in Karakaj to request a relocation of the prisoners; the officer was unhappy about that and made threats.<sup>341</sup> Zoran Jović, a fellow military police officer, said that one of the officers was tall, whereas the other one was a bit shorter and chubbier; the two of them were yelling and calling them "jajari" and were shouting at Slavko Perić.<sup>342</sup> Dragan Pantić, too, heard someone cursing Slavko Perić for going to the Brigade HQ and he heard that members of the 1<sup>st</sup> Battalion were referred to as "jajari".<sup>343</sup>

429. Furthermore, after the prisoners left the school, Rajko Babić returned to the HQ and noticed that a page from the log containing an entry about the telegram announcing the arrival of prisoners was torn out. He even described in detail that the beginning of the sentence was on the left-hand side, while the right-hand side containing the remaining wording of the telegram was torn out. Later on, he discussed this unofficially with the command staff officers and they either knew nothing or were unwilling to say anything about the page that had been torn out.<sup>344</sup>

430. All members of the 1<sup>st</sup> Battalion testified that they were convinced until the very end that the prisoners would be exchanged, including those who observed repeated departures and

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<sup>338</sup> Audio transcript of 10 June 2009, p. 27.

<sup>339</sup> Audio transcript of 28 April 2009; pgs. 1023 and 10240 of the transcript of witness's testimony in ICTY case no. IT-05-88-T (T-15).

<sup>340</sup> Transcript of 29 April 2009, p. 36.

<sup>341</sup> Transcript of 11 June 2009, p. 14.

<sup>342</sup> Transcript of 27 December 2010, p. 20.

<sup>343</sup> Transcript of 25 January 2011, p. 19.

<sup>344</sup> Transcript of 29 April 2009, p. 19.

returns of an empty bus. To wit, Pero Pavlović adamantly claimed that he did not hear any shooting at the time when the prisoners were being transported and that “you could not hear it because of conversations”. Dragan Pantić, who was near the school at the time when the prisoners were being transported and executed, gave a similar account, adding that he went to get some rest near some cars and did not notice any shooting because it was “a state of war, and someone returning from the frontline could be firing”. Moreover, Pantić contended that he learned about the killings of the prisoners two to three days later, although there were rumors about it in the Battalion HQ on the same day and he himself claimed to have returned to the HQ after the prisoners left.

431. According to the Panel, those witnesses do not have credibility. Even if they had believed the story about an exchange, seeing the first bus return empty within a time period during which the prisoners could not have been transported to any collection center (Batković was the closest one) or to the line of disengagement, with at least two members of the 1<sup>st</sup> Battalion witnessing the execution of the prisoners (bus driver Zoran Gajić and, probably, Stanko Kostić) it is impossible that the men standing by the school and monitoring the transportation process could not have realized that the prisoners were being killed in close vicinity. As some of them in a way participated in that horrible crime, it is logical that some of them wittingly – and others even unwittingly to ease their conscience – attempted to convince themselves and others that they learned about the fate of the prisoners only several days later.

432. In any event, the fact that only two buses were sent to allegedly transport so many prisoners to the territory controlled by the ABiH or to a nearby prison camp strongly indicated that the prisoners were being transported to a nearby location and that there would be no exchange. Otherwise, all the prisoners would have been transported at once by a large number of buses, the same as when they were brought to Pilica: without ligatures and blindfolds.

433. While witness Zoran Radosavljević testified before this Panel that he refused to enter the Center to guard the prisoners and that he fled to Serbia because he feared for his family’s safety, this is what he testified before the ICTY: *“I was not active in the military when Pero told me to find a rifle and come and guard the camp, I did not want to have blood on my hands. I was afraid that I, too, would become a war criminal, and as I was successful in saving myself from that, I wanted to continue that way.”*<sup>345</sup>

434. Finally, if Tanacko Tanić, an ordinary soldier who obviously had a lower rank and who presumably had lesser perception skills than Perić and Pelemiš as security officer and deputy battalion commander respectively, concluded that the prisoners in Orahovac would be killed solely on the basis of the fact that they did not receive food or water and that they were in horrible conditions, and that the story of an exchange was a lie served to appease the prisoners before boarding the trucks that carried them to their deaths, the two accused could have equally made the same inference.

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<sup>345</sup> Transcript of 1 December 2010, p. 35.

435. The prisoners in Pilica were in similar conditions, food was not provided to them during the time they spent in Pilica, nor was there any indication that the Brigade Command would send food, the prisoners were killed and ill-treated while in the school, Drina Corps Command officers openly announced on the spot that the prisoners would be killed, the prisoners were blindfolded prior to the execution, the Brigade was largely involved in the operation of killing of prisoners at locations in the vicinity of Pilica. Consequently, the Panel concludes that Perić and Pelemiš, even if they did not have information from the Brigade Command that Perić undoubtedly received upon his arrival there, could have concluded and had reason to conclude on the basis of those facts alone that the prisoners would be killed.

**(b) Principal perpetrators acted with intent to destroy, and the accused were aware of that intent**

436. Miroslav Deronjić testified before the ICTY that Colonel Ljubiša Beara came to his office in Bratunac on the evening of 13 July and told him openly about receiving orders from the top to kill all the prisoners from Srebrenica detained in various facilities in Bratunac.<sup>346</sup> He further testified about a meeting with Radovan Karadžić, president of the Republika Srpska, at Pale on 8 July or 9 July, discussing what would happen in Srebrenica. Karadžić told him: “Miroslav, those people must be killed. Kill everyone that you can”, and then added a sentence: “the western Slavonia principle”. As the leadership of the Republika Srpska analyzed the offensive of the Croatian Army in western Slavonia at several meetings and concluded that during the attack in that area the Croatian Army displaced the majority Serb population and that many soldiers and civilians were killed in the process, he realized that the Serb army should apply the same principle and “kill everyone they can when they enter Srebrenica”.

437. Momir Nikolić further testified before the ICTY that prior to the meeting at the “Fontana” Hotel he talked to Lieutenant-Colonel Popović and Lieutenant-Colonel Kosorić on the morning of 12 July; Popović said that following the separation of the able bodied men from the women, the women and children would be evacuated, all the men would be temporarily detained, and then “all balijas should be killed”. He was entrusted with coordinating the operation of separation, temporary detention and killing of people.<sup>347</sup>

438. The Drina Corps Order of 13 July 1995 instructed all subordinate units as follows:

Information about captured and blocked groups to be transmitted through safe means of communication. Any unnecessary and redundant conversations that may lead to the leaking of confidential information or indicate our intentions and activities must be resolutely prevented.<sup>348</sup>

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<sup>346</sup> T-125- Transcript of Miroslav Deronjić’s testimony, IT-02-60/1-S, *Prosecutor v. Momir Nikolić*.

<sup>347</sup> T-142- Transcript of 22 September 2003, IT-02-60-T, p. 13.

<sup>348</sup> T-163 and O-I-10.

439. It is obvious from this order that attempts were made to prevent the enemy from obtaining information about the plans regarding the prisoners. It is likely that a small number of people in the VRS were involved in this plan from the very beginning, but it is certain that neither Pelemiš nor Perić were one of those people. However, this is not to say that it was necessary to conceal information from the two of them once they became involved in the activities regarding the prisoners. Not a single piece of evidence showing a reason for which plans regarding the prisoners would be concealed from Pelemiš Perić was presented.

440. On the contrary, that Nikolić and Popović did not conceal from the battalion command their intention, that is “the intention from the top”, to kill all the prisoners from Srebrenica, obviously ensues from the testimony by commander of the 2<sup>nd</sup> Battalion Srećko Aćimović, who was even ordered to find men to carry out the execution. He testified about the amount of pressure exerted on him by Nikolić and Popović, and that Drago Nikolić told him that the order had come from the top and that it must be carried out and that “*those sort of things were not to be trifled with*”, setting him a deadline until 7 a.m. on the following morning to find men to carry out the task. Nikolić called him on the following morning and threatened him again, telling him to go to Ročević school where the prisoners were being held. Vujadin Popović was waiting for him there and told him: “*mother fucker, who do you think you are, what they did to the Serb villages around Srebrenica, why are you slacking off?*” After Aćimović remained adamant in refusing the order, he asked him if there was any adequate area in the vicinity to serve as an execution site.

441. It is therefore obvious that those two men were finding ways to pursue the purpose of killing – destruction of every single prisoner from Srebrenica – “as they went along”; they did not conceal their intentions and they effected them in cooperation with and with the assistance of local battalion commands, depending on the extent of cooperation of the battalions (for instance, Aćimović refused to participate and he told his subordinates-company commanders that his decision was firm and that he may be arrested and, if so, that they should help him).

442. The accused knew that the VRS forces, including units from their battalion led by their commander Stanojević, had captured Srebrenica. They knew that the entire Muslim population from Srebrenica was transported to the A RBiH controlled territory. They knew that a large number of men from the column were captured, and that a large number of prisoners were transported to Pilica; they therefore knew that those were prisoners who fell under the authority of the VRS as a result of the attack on the Srebrenica enclave. Perić saw that the underage, the elderly and the sick were detained in the school and the Pilica center in addition to able bodied Muslim civilians, and Pelemiš must have been informed about that fact. They knew that members of the Zvornik Brigade were already carrying out mass executions of those men, in Orahovac for sure and probably at a location in Petkovac and at other locations; accordingly, they had reason to know that the prisoners brought to Pilica were killed in the context of all those events, and the purpose of those events was obvious – destruction of every single prisoner as an ethnic and national group of Muslims of Srebrenica, with the civilian population already expelled from the enclave.

443. Defense witness Duško Vukotić, assistant chief of staff of for Intelligence at the Zvornik Brigade, contended that if he, as an<sup>118</sup> intelligence officer in the Brigade, was not

aware of the events deep in the territory (and having been interviewed several times in that regard by ICTY investigators, it was determined that he was not aware of it), he is convinced that Slavko Perić could not have known that either. He maintained that if he was not relevant in the Brigade to the extent that he knew nothing about such monstrous plans and sick ideas or had any indications in that regard, then neither Pelemiš nor Perić could have known that.<sup>349</sup>

444. However, the witness himself confirmed that during the relevant event he was practically isolated and was solely engaged in gathering intelligence about the enemy, being largely involved in the situation, that is, in the fighting which occurred when the column from Srebrenica came to Zvornik and was engaged in direct combat in the area of Baljkovica; the column broke through, in fact, ABiH enemy units entered from the area of the 2<sup>nd</sup> Corps. The witness further confirmed that he could not be easily manipulated with and that on several occasions he caused problems to his superiors because the Geneva Conventions were not respected, and that that was probably one of the reasons why the things that were happening to the prisoners were concealed from him.

445. Moreover, he confirmed that Šemso Muminović, a 2<sup>nd</sup> Corps intelligence officer who was in Tuzla, asked him during their conversation about the opening of a corridor “what are you doing down there in the rear”, but at that time he did not know what he meant. Later on, when he heard about the killings of prisoners, he concluded that the 2<sup>nd</sup> Corps in Tuzla knew that something was going on.<sup>350</sup> He further alleged that he was at the Kula Grad elevation above Zvornik the whole time and did not come down. If he had come down to Zvornik at least once, he would have probably learned what was going on because now, when one realizes the mass-scale of executions, it is obvious, regardless of the fact that there very but a few people who planned the whole thing, that a lot of people knew what was going during those events.<sup>351</sup>

**(c) There is no evidence that the accused shared the intent of the principal perpetrators**

446. The Court arrived at a conclusion regarding the accused’s knowledge in the preceding section. However, as the Panel of the Court of BiH found in *Stupar et al.*, the accused’s knowledge of the genocidal plan and of the genocidal intent of others, as well as their participation in their implementation is not on its own sufficient to infer that the accused possessed the genocidal intent themselves.<sup>352</sup> It is evident that not all persons who contributed

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<sup>349</sup> Transcript of 28 January 2011, pgs. 21-22.

<sup>350</sup> Witnesses P-25 and P-26, members of a forward squad for anti-electronic operations and electronic reconnaissance in the 2<sup>nd</sup> Corps of A RBiH, situated at the Majejica, explained the manner of intercepting conversations, mostly of the VRS Drina Corps in the areas of Zvornik and Srebrenica, recording of conversations and sending reports to the intelligence organ of the 2<sup>nd</sup> Corps Command.

<sup>351</sup> Transcript of 28 January 2011, pgs. 34-36.

<sup>352</sup> *Stupar et al.*, First Instance Verdict, p. 133; 29 July 2007, *Stupar et al.*, Second Instance Verdict, para. 548, p. 97, 9 September 2009; see also *Vuković and Tomić*, First Instance Verdict, 22 April 2010, para. 574 (“it does not automatically logically follow that [their] participation in the plan – on the orders of their superiors – means that they had the requisite genocidal intention themselves.”).

to the furtherance of the genocidal plan acted with the identical state of mind or the same level of intention.<sup>353</sup> Therefore, the Court may find the person whose actions contributed to the perpetration of genocide guilty as a principal or direct perpetrator of genocide only if the Court is satisfied that the person had the intent to bring about the destruction of a group in whole or in part.<sup>354</sup>

447. The Prosecution argued in the closing arguments that the determination of the accused's intent, with two or more criminal offenses targeting the same group, requires an analysis of circumstances in their totality and a combination of their consequences to understand the context in which each act was committed. The Trial Panel reasoned herein that the killing of the men and the forcible transfer of the population undoubtedly targeted the same group – the Muslim population of Srebrenica. In that regard, the Panel unequivocally inferred that the principal members of the “narrower” JCE within which the acts were committed during the relevant incident, by *actus reus* (killing of men and infliction of serious bodily injury), in the context in which they were committed, were committed with the intent to destroy this group, that is, with genocidal intent.

448. However, by applying the same criteria to the two accused in the present case, that is, by applying the three main factors developed by the Trial Panel in *Stupar et al.*<sup>355</sup> and expanded by the Trial Panel in *Trbić* ((1) the general context of events in which the perpetrator acted including any plan to commit the crime, (2) the perpetrator's knowledge of that plan, and (3) the specific nature of the perpetrator's acts), the Panel has found that only the first two criteria have been proved. The accused knew the general context in which they acted and they knew that the prisoners would be killed. However, the Panel analyzed the nature of the accused's acts on the basis of the presented evidence and could not find that the accused possessed the same intent as the principal perpetrators.

449. With respect to this criterion, the Trial Panel in *Trbić* analyzed ten sub-factors that could serve to establish genocidal intent; all of them need not be present but they constitute alternative ways to establish genocidal intent, as follows: (1) no acts to the contrary for genocidal intent;<sup>356</sup> (2) methodological planning;<sup>357</sup> (3) single-mindedness of purpose; (4) efforts to overcome the resistance of victims; (5) efforts to overcome the resistance of other perpetrators; (6) efforts to bar the escape of victims; (7) persecutory cruelty to victims; (8)

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<sup>353</sup> *Stupar et al.*, Second Instance Verdict, 9 September 2009, para. 572, p. 101; *Vuković et al.*, First Instance Verdict, 22 April 2010, para. 575.

<sup>354</sup> *Stupar et al.*, Second Instance Verdict, 9 September 2009, para. 569; *Vuković et al.*, First Instance Verdict, 22 April 2010, para. 580.

<sup>355</sup> P. 58 First Instance Verdict in *Kravica (Prosecutor's Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brane Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić)*, Second Instance Verdict X-KRŽ-05/24.

<sup>356</sup> This sub-factor was developed by the Appellate Panel in *Kravica* (“*Kravica* Second Instance Verdict”), 9 September 2009, paras. 553-556.

<sup>357</sup> The eight sub-factors were developed by the Panel in *Trbić*. *Trbić* First Instance Verdict, para. 202.



ongoing participation within the act itself; (9) repetition of destructive acts, i.e. more than one act or site; (10) the acts themselves (the Kravica test):<sup>358</sup>

- a) The number of victims;
- b) The use of derogatory language toward members of the targeted group;
- c) The systematic and methodical manner of killing;
- d) The weapons employed and the extent of bodily injury;
- e) The methodical way of planning;
- f) The targeting of victims regardless of age;
- g) The targeting of survivors; and
- h) The manner and character of the perpetrator's participation.

450. While facts confirming the applicability of some of the listed sub-criteria to the accused have been proved in the present case (for instance, efforts to bar the escape of victims during their detention at the school and the Cultural Center, the number of victims and their age, attack on the survivors at the Cultural Center), the Panel finds that in the absence of proof of other criteria it could not infer that there was intent beyond a reasonable doubt, especially considering the nature of the accused's specific acts - *actus reus* (guarding of the prisoners, blindfolding the prisoners and escorting the prisoners to the execution site, making battalion resources available and loading of dead bodies); the acts made a substantial contribution to the perpetration but they by nature do not constitute direct acts of perpetration that unequivocally indicate intent to destroy a group.

451. As indicated by the Appeals Chamber in *Prosecutor v. Kvočka*, the significance of the accused's contribution, except when meting out a sentence, will be relevant to "*demonstrating that the accused shared the intent to pursue the common purpose*"<sup>359</sup>. The Panel has found that the accused made a substantial contribution and that their acts constituted aiding and abetting. At the same time, the Panel found that the perpetrated acts, given the totality of circumstances surrounding the case, were not of such intensity and significance to indicate beyond a doubt that the accused intended to kill the prisoners at Pilica, let alone destroy the Muslim population of Srebrenica.

452. The conclusion of Prosecution expert Michael McQueen that "the killings of Bosniac prisoners in July 1995 were no surprise to the 1<sup>st</sup> Battalion but were in fact the final step in the

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<sup>358</sup> *Kravica* First Instance Verdict, p. 118, n. 266. *Kravica* Panel developed those factors on the basis of the case law of the ICTR and the ICTY.

<sup>359</sup> *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber's judgment of 28 February 2005, para. 97. See also *Rašević and Todović*, X-KR 06/275, Second Instance Verdict, 6 November 2008, p. 27 in English version and p. 28 in BCS version: "... the importance of participation of the accused is necessary and relevant to establish that the accused shared the intent to achieve a common criminal goal."

process that began in 1992 and in which they previously participated”, was not sufficient to affect the Panel’s conclusion regarding the absence of intent on the part of the accused.<sup>360</sup>

#### IV. ACCUSED’S LIABILITY

453. The accused are individually criminally liable for the acts referred to in the Verdict's operative part as **aiding and abetting** JCE members, according to Article 180(1) of the Criminal Code of BiH. Article 180(1) has been derived from and is identical to Article 7(1) of the ICTY Statute relative to the terminology, with the exception of the word „perpetrate“ in lieu of „commit“ in the English translation of the CC of BiH.<sup>361</sup>

454. Article 180(1) of the CC of BiH provides specific modes of liability and is limited to crimes against humanity and criminal offenses in violation of international law referred to in Articles 171 through 179 (with the exception of Article 176). It also provides additional modes of liability, separate and more specific compared to the ones referred to in the general section under Articles 21, 29, 30, 31 as read with Articles 33, 34 and 35 of the CC of BiH, providing that a person who planned, initiated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of the listed criminal offenses shall be guilty of those offenses.

455. As noted above, the Panel has found that the accused Pelemiš and Perić did not directly order, initiate, plan or execute the crime at Pilica, and that holding them criminally liable as co-perpetrators in JCE category I, as envisaged in the original and in the amended indictment, required proof from the Prosecution that the accused’s assistance or substantial contribution to pursuing a purpose or plan shared with JCE members were effected with the same intent shared by the JCE members, which was not proved in the case in question.

456. As noted by the Prosecution in its closing argument, the key difference between a co-perpetrator in (i.e. a member of) a JCE and an aider and abettor in a JCE crime is the intent. Both are required to possess knowledge of a criminal purpose, but only a co-perpetrator must share the JCE intent.

457. The *actus reus* of aiding [and abetting] is consisted of acts or omissions<sup>362</sup> aimed at assisting, furthering or lending moral support to the perpetration of a specific crime, which substantially contributed to the perpetration of the crime.<sup>363</sup> As noted in the Verdict, the acts of

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<sup>360</sup> **T-200-** Report by expert Michael McQueen „Executions and ill-treatment of prisoners in Zvornik Municipality prior to July 1995“ and a CD.

<sup>361</sup> While the ICTY and ICTR use the English term “committed” (učini), the English translation of the term “učini” in Article 180 is “perpetrated”.

<sup>362</sup> *Nahimana et al.* Second Instance Judgment, para. 482; *Ntagerura et al.* Second Instance Judgment, para. 370; *Blaškić* Second Instance Judgment, para. 47.

<sup>363</sup> *Nahimana i dr.* Second Instance Judgment, para. 482; *Blagojević and Jokić* Second Instance Judgment, para. 127; *Ndindabahizi* Second Instance Judgment, para. 117; *Simić* Second Instance Judgment, para. 85; *Ntagerura et al.* Second Instance Judgment, para. 370, footnote 740; *Blaškić* Second Instance Judgment,

the accused and soldiers of the 1<sup>st</sup> Battalion under the command of Momir Pelemiš and immediate supervision and control of Slavko Perić (guarding, blindfolding and escorting the prisoners to the execution site, making battalion resources available and loading of the dead bodies) have made a substantial effect upon the perpetration of the offense.

458. Assisting, encouraging or lending moral support of an aider [and abettor] need to have a substantial effect upon the perpetration of the crime. However, the Prosecution is not required to prove that the act would not have been committed without the contribution of the aider [and abettor].<sup>364</sup>

459. The *actus reus* of aiding and abetting may occur before, during or after the act is committed, and be geographically separated therefrom<sup>365</sup>, as was the case with the killing of the prisoners that had been guarded at the Kula school and executed at the Branjevo farm.

460. Regarding the *mens rea* for aiding and abetting in genocide, the Prosecution must prove beyond a reasonable doubt that the accused 1) knew or was aware of the genocidal intent of the principal perpetrator, and 2) with that knowledge/awareness, undertook acts assisting or contributing to the perpetration of genocide.<sup>366</sup> If those two elements have been met, and the Panel has found that that is the case here, the accused need not have genocidal intent to be convicted of aiding [and abetting] in genocide.<sup>367</sup>

461. Therefore, it is entirely irrelevant whether aiders knew the particulars or specific events,<sup>368</sup> or if an aider and perpetrator know each other or know about their participation.<sup>369</sup> It is not necessary that the aider [and abettor] knows the precise crime that was intended and/or indeed committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider [and abettor].<sup>370</sup>

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paras. 45, 48; *Vasiljević* Second Instance Judgment, para. 102; *Tadić* Second Instance Judgment, para. 229.

<sup>364</sup> *Mrkšić and Šljivčanin* Second Instance Judgment, para. 81 (finding that “there is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as a condition precedent to the commission of the crime”).

<sup>365</sup> *Blaškić* Second Instance Judgment, para. 48.

<sup>366</sup> *Kravica* Second Instance Verdict, para. 570; *Prosecutor v. Vuković*, para. 24; *Krstić* Second Instance Judgment, para. 140; *Blagojević* Second Instance Judgment, paras. 127, 221; *Popović* First Instance Judgment, paras. 1014, 1016, 1017.

<sup>367</sup> *Kravica* Second Instance Verdict, para. 570; *Trbić* First Instance Verdict, para. 792; *Krstić* Second Instance Judgment, para. 142; *Blagojević* Second Instance Judgment, para. 221; *Popović* First Instance Judgment, para. 1016.

<sup>368</sup> *Vuković et al.* second instance decision, para. 24.

<sup>369</sup> *Id.*, paras. 24, 30; *Popović* First Instance Judgment, para. 1016; *Krstić* Second Instance Judgment, para. 143.

<sup>370</sup> *Simić* Second Instance Judgment, para. 86 (quoting *Blaškić* Second Instance Judgment, para. 50). See also *Nahimana et al.*, Second Instance Judgment, para. 482; *Ndindabahizi* Second Instance Judgment, para. 122; *Furundžija* First Instance Judgment, para. 246.

## V. SENTENCING

462. Notwithstanding the large scale of the crime that is the subject matter of the proceedings, the Panel, when determining the type and length of sentence, was guided by its obligation to fashion the sentence for the two accused based on their specific conduct and acts of perpetration, taking into account the extenuating and aggravating factors. The Panel was also guided by its obligation to individualize the sentence, and concrete circumstances surrounding the case were therefore of the utmost importance.

463. Having considered the gravity of the crime, the Panel took into consideration that the crime was extremely grave because the victims were chosen on discriminatory grounds. While it has not been found that the accused possessed specific intent to destroy a national, ethnic and religious group, it has been found that they aided persons who committed the crime with such intent; the accused were aware of that intent and that intent was evident.

464. The Panel further took into account that the accused did not organize the crime or play key roles in it. The Panel is aware of the limited scope of assistance provided by the 1<sup>st</sup> Infantry Battalion compared to other VRS elements, but the assistance provided made a substantial effect on the perpetration of the crime. If the lower command structures had not provided practical assistance on the ground, the principal perpetrators and those who devised and organized the plan would have found themselves isolated in their intention to effect the destruction, and the crimes could not have been perpetrated in the manner and on the scale in which they were perpetrated.

465. While the Panel finds that in terms of quality both accused equally contributed to and assisted in the perpetration of the crime, the Panel finds that the accused Perić, by his acts, was more active in contributing to the system of guarding the prisoners under the conditions prevailing at the time; in that regard, the Panel meted out a harsher sentence for the accused Perić, especially bearing in mind his role in the removal of dead bodies when three surviving prisoners were killed.

466. In any event, the Panel considered all the factors (both aggravating and extenuating) when fashioning the sentence.

### a. Accused Momir Pelemiš

467. Momir Pelemiš was a professional officer responsible for the actions of the 1<sup>st</sup> Battalion and its members. However, he failed to act in the manner he was trained to act and the manner which he knew to be the correct one. At no point did he exercise his authority to apply proper rules and procedures regarding the prisoners or stop further participation of soldiers under his command in the crime of that scale, and by his conduct he allowed an unhindered linkage of logistic elements of the genocidal plan at the Pilica Dom, the Kula school and the Branjevo farm. The Panel finds that he has a high degree of criminal liability.

468. The accused is married, father of two children. He has no criminal record, nor is there information about any other ongoing proceedings against him for another criminal offense, which, in the Panel's view, constitutes an extenuating factor to a limited extent.

Furthermore, the health condition of the accused Momir Pelemiš is also an extenuating factor.<sup>371</sup> The accused showed proper decorum in court and did nothing to aggravate the position of witnesses or be disrespectful of any witness or the Panel; according to the Panel, this conduct is appropriate for any accused in criminal proceedings and the Panel does not attach special importance to it. When presenting his closing argument, the accused expressed his remorse over the loss of lives during the perpetration of the crime, which the Panel assessed as an extenuating factor to a limited extent. Another limited extenuating factor was the situation in which he requested from the Brigade Command to deliver food to the prisoners,<sup>372</sup> though he did not demonstrate persistence in that regard.

469. Consequently, having assessed relevant “circumstances bearing on the magnitude of punishment” as laid down in Article 48(1) of the CC of BiH, for the reasons mentioned above, the Panel finds that there are both extenuating and aggravating factors and meted out a sentence of sixteen (16) years’ imprisonment.

470. Pursuant to Article 56 of the CPC of BiH, the time that the accused spent in custody from 5 November 2008 onwards shall be credited towards the sentence of imprisonment.

**b. Accused Slavko Perić**

471. Slavko Perić was assistant commander for intelligence and security at the 1<sup>st</sup> Battalion; in that capacity, he had substantial authority and influence in the Battalion, as well as important duties and responsibilities, some of them specifically related to prisoners. However, he never discharged any of his duties. He was well acquainted with the fact that prisoners at the Kula school were being ill-treated, tortured and killed because he was present on the site. He personally ordered that they be blindfolded, tied and taken to the Branjevo farm, knowing that they would be executed there. He witnessed the horrible conditions the prisoners were held in at the Pilica Dom and was constantly present at those locations or in the close vicinity thereof. He directed and actively participated in mopping up operations at the Pilica Dom when the surviving prisoners were killed off. Slavko Perić was not willing to refuse the orders from the Brigade, he knew that he was participating in an illegal activity, and he has a high degree of criminal liability.

472. The accused is married, father of two children. He has a criminal record, but the Panel did not find this to be an aggravating factor in light of the nature of the offense he was convicted of, the same as the Panel did not find an extenuating factor his proper decorum in court and the fact that he did nothing to aggravate the position of witnesses or be disrespectful of any witness or the Panel. When presenting his closing argument, the accused expressed his remorse over the loss of lives during the perpetration of the crime, which the Panel assessed as an extenuating factor to a limited extent.

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<sup>371</sup> O-I-35.

<sup>372</sup> T-130 - Momir Pelemiš's personal dairy.

473. Consequently, having assessed relevant “circumstances bearing on the magnitude of punishment” as laid down in Article 48(1) of the CC of BiH, for the reasons mentioned above, the Panel finds that there are both extenuating and aggravating factors and meted out a sentence of nineteen (19) years’ imprisonment.

474. Pursuant to Article 56 of the CPC of BiH, the time that the accused spent in custody from 5 November 2008 onwards shall be credited towards the sentence of imprisonment.

## **VI. DECISION ON COSTS**

475. In light of the fact that the accused are of average financial standing and that they have been in custody for a while, the Court, pursuant to Article 188(4) of CPC of BiH, relieved the accused of their duty to reimburse costs of the criminal proceedings, finding that the payment of costs would jeopardize the support of the accused or of persons whom the accused are required to support financially.

## VII. DECISION ON CLAIMS UNDER PROPERTY LAW

476. Numerous claims under property law were filed during the proceedings; to avoid burdening the wording of the Verdict, those claims are listed in **Annex 3** of the Verdict and make up an integral part thereof. The Prosecution noted in its closing argument that the Court of BiH rarely rules on claims under property law filed by aggrieved parties, thus forcing the aggrieved parties to take civil action. The Prosecution argued that the aggrieved parties were mothers and wives of more than 1,000 men who were executed, and their pain is eternal and they still yearn for their loved ones. The Prosecution further argued that the aggrieved parties did not have the necessary means or money to pursue their claims under property law in civil action, urging the Court to exercise its authority and acknowledge the financial claims.

477. When rendering its decision, the Court considered the claims under property law, especially bearing in mind the reasons put forward by the Prosecution in that regard. The Court is aware of the losses and great suffering, both mental and financial, that the families of killed people from Srebrenica have experienced. However, the Court finds that the information gathered during the proceedings does not provide a reliable basis for awarding costs in full or in part. To wit, in light of the fact that the Court found the accused guilty of aiding in the crime of Genocide and the fact that the Court was unable to establish in this case which families (the exact identity of all the men killed at the school, at Branjevo and the Cultural Center remains unknown) would be entitled to compensation, the Court finds that the claims cannot be adjudicated. Pursuant to Article 198(2) of the CPC of BiH, the aggrieved parties are instructed to pursue their claims under property law in civil action, in line with a fact set out in the decision's operative part that the principal perpetrators committed the crime as part of and in pursuance of a State and organizational policy.

**Minutes-taker - legal adviser:**

**Sabina Hota Čatović**

**Panel President**

**Judge**

**Ljubomir Kitić**

*(hand and stamp)*

**LEGAL REMEDY:** An appeal from this Verdict may be filed with the Appellate Division of Section I of the Court of Bosnia and Herzegovina, within fifteen (15) days after service of the written Verdict.

\*Appeal is filed with this Court in a sufficient number of copies.

**VIII. ANNEX 1 FACTS ESTABLISHED IN ICTY CASES**

Serial No.	Para.	<p align="center"><b>ACCEPTED FACT ESTABLISHED IN A FINAL ICTY JUDGEMENT</b>  <b>KT = Krstić Trial Judgment IT-98-33-T</b>  <b>KA = Krstić Appeal Judgment IT-98-33-A</b>  <b>BT = Blagojević Trial Judgment IT-02-60-T</b>  <b>BA = Blagojević Appeal Judgment IT-02-60-A</b></p>
1.	KT 481	A state of armed conflict existed between BiH and its armed forces, on the one hand, and the Republika Srpska and its armed forces, on the other.
2.	BT 549	...there was an armed conflict in eastern Bosnia between 11 July and 1 November 1995
3.	BT 551	The attack on Srebrenica was widespread or systematic. See p. 13 of Decision 13.12.2007.
4.	BT 551	The attack, carried out by the VRS and MUP, was planned and defined in the "Krivaja 95" order.
5.	BT 551	The attack continued after the fall of Srebrenica and affected approximately 40,000 people who lived within the Srebrenica enclave at the time of the attack.
6.	BT 647	Serious bodily and mental harm was occasioned by the trauma and wounds suffered by those individuals who managed to survive the mass executions; the fear of being captured and at the moment of separation, the sense of utter helplessness and extreme fear for their family and friend's safety as well as for their own safety is a traumatic experience; the men suffered mental harm having their identification documents taken away from them, seeing that they would not be exchanged as previously told and when they understood what their ultimate fate was; upon arrival at an execution site, the Bosniak men saw the killing fields covered with bodies of the Bosnian Muslim men brought to the execution site before them and murdered; after having witnessed the executions of relatives and friends, and in some cases suffering from injuries themselves, they suffered the further mental anguish of lying still, in fear, under the bodies - sometimes of relatives or friends - for long hours, listening to the sounds of the executions, of the moans of those suffering in pain, and then of the machines as mass graves were dug.
7.	BT 649	Men who were separated, detained, abused and subsequently killed suffered serious mental harm in that they knew what their fate was: the last sight that many of the victims saw was the killing fields full of bodies of the Bosnian Muslim men brought to the execution site before them.
8.	BT 650	The forced displacement of women, children, and elderly people was itself a traumatic experience.
9.	BT 652	The suffering of the women, children and elderly people who were cruelly separated from their loved and forcibly transferred, and the terrible consequences that this had on their life, reaches the threshold of serious mental harm.
10.	BT 652	The women, children and elderly people suffered mental anguish from being forcibly displaced from their homes - in such a manner as to traumatize them and prevent them from ever returning - obliged to abandon their property and their belongings as well as their traditions and more in general their relationship with the territory they were living on constitutes serious mental harm.
11.	BT 653	Many of the survivors, who lost their relatives under horrific circumstances are still searching for the bodies of their loved ones and looking for any information which would establish with certainty whether they are dead, and, if so, the exact circumstances of their death constitutes serious mental harm.
12.	BT 671	The transportation out of the enclave of the Bosniak women, children and elderly, in combination with those killings, or on its own, caused the survivors to suffer serious mental harm.



13.	BT 673	Acts perpetrated by Bosnian Serb soldiers in Srebrenica and surrounding municipalities in 1995 targeted the Bosnian Muslims from Srebrenica – a substantial part of the Bosnian Muslim group.
14.	(591 - 599) KA 35	Some members of the Main Staff of the VRS engineered and supervised the killing of Bosnian Muslim men from Srebrenica.
15.	BT 62	The Zvornik Brigade was established as part of the Drina Corps in 1992.
16.	BT 62	In July 1995 the Commander of the Zvornik Brigade was Lieutenant Colonel Vinko Pandurević. The Chief of Staff and Deputy Brigade Commander was Major Dragan Obrenović. Three departments directly subordinate to the Commander were: the security department, headed by Lieutenant Drago Nikolić; the logistics' department, headed by Captain Sreten Milosevic; and the department for morale, legal and religious affairs, headed by Major Nenad Simić.
17.	BT 63	The Brigade Commander was further assisted by his staff, organized and directed by the Chief of Staff, which consisted of the operations and training organ; the intelligence organ; the personnel affairs organ; the communications organ; the engineering organ; the air defense organ; and the artillery organ. The engineering organ was headed by the Chief of Engineering, Major Dragan Jokić.
18.	BT 64	The Zvornik Brigade contained 8 infantry battalions of approximately 450-550 men each; one logistics battalion; one mixed artillery division; and one light anti-aircraft rocket artillery battalion. The Zvornik Brigade also had a unit of infantry battalion strength called 'the Podrinje Special Detachment, know as 'the Drina Wolves. The Drina Wolves were commanded by Captain Milan Jolović, nicknamed 'Legenda.' The Drina Wolves, although functioning within the Zvornik Brigade, acted as a reserve for the Drina Corps.
19.	BT 65	The Zvornik Brigade had three separate companies: an Engineering Company, commanded by Captain Dragan Jevtić as of 23 June 1995; a Military Police Company; and a Communications Company. The Brigade also had two Platoons; a Nuclear, Biological and Chemical Defense Platoon, and a Reconnaissance Platoon.
20.	BT 66	The Zvornik Brigade headquarters was located at the 'Standard' factory in Karakaj, three kilometers north of the town of Zvornik along the Drina River. The brigade also manned an IKM at Kitovnice near the village of Orahovac. The Zvornik Brigade secured an area of approximately 40 kilometers along the river Drina around Zvornik town. In January 1995, the brigade was reported to comprise of 5,248 officers, non-commissioned officers, and soldiers.
21.	BT 66	In July 1995, the (Zvornik) brigade also had units deployed outside their area. The 4th Infantry Battalion and the 8th Infantry Battalion, known in July 1995 as the 4th Battalion of the Bratunac Brigade, were deployed in the Bratunac Brigade's area, south of the Zvornik Brigade's area.
22.	BT 67	In July 1995, the Zvornik Brigade always had a duty officer on duty at the command as well as at the IKM. In addition, the brigade had a barracks duty officer at the brigade command, in charge of the internal duties of the barracks.
23.	BT 68, 523 BA 156	In July 1995 the Zvornik Engineering Company Commander during the relevant period was Captain Dragan Jevtić and his deputy was Slavko Bogičević. The Engineering Company had approximately 90 members divided into three platoons: a pioneer or combat engineers platoon, a fortification or general engineering platoon, and a road platoon. The main tasks of the pioneer platoon was to map and lay mine fields or to dismantle them. From 13 to 17 July, Slavko Bogičević was in charge of the Engineering Company because its commander was absent.

24.	BT 68	The Engineering Company headquarters was located in Glinica approximately one kilometer from the Zvornik Brigade headquarters.
25.	BT 69	The Zvornik Brigade Engineering Company had heavy equipment and vehicles. In July 1995, the following heavy equipment and vehicles were available to, and used by, the Engineering Company: two trucks, two ULT loaders, a loader and two excavators.
26.	KT 28	In March 1995, Radovan Karadžić, President of Republika Srpska ("RS"), reacting to pressure from the international community to end the war and ongoing efforts to negotiate a peace agreement, issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as "Directive 7", specified that the VRS was to: [C]complete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.
27.	KT 28	Just as envisaged in this decree (Directive 7), by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic.
28.	KT 28	In early July 1995, 28th Division of ABiH (Bosnian Muslim) forces in the Srebrenica enclave issued a series of reports that requested that efforts be made to deblock the humanitarian corridor and that identified the consequences of the humanitarian blockage, namely civilians dying from starvation.
29.	KT 29	On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladić. Directive 7.1 was issued "on the basis of Directive No. 7" and directed the Drina Corps to, inter alia, conduct "active combat operations...around the enclaves"
30.	KT 30	On 31 May 1995, Bosnian Serb forces captured OP Echo, which lay in the Southeast corner of the enclave. In response to this aggression, a raiding party of Bosniaks attacked the nearby Serb village of Višnjica, in the early morning of 26 June 1995.
31.	KT 30	Although (the VRS attack on OP Echo - section of the Srebrenica enclave was) a relatively low intensity attack, some houses were burned and several people were killed.
32.	KT 30	On 2 July 1995, the then-commander of the Drina Corps, General-Major Milenko Živanović, signed two orders. The first laid out the plans for the attack on the enclave and the second ordered various units of the Drina Corps to ready themselves for combat. The operation was code-named "Krivaja 95".
33.	KT 31	The VRS offensive on Srebrenica began in earnest on 6 July 1995.
34.	KT 31	In the following days, the five UNPROFOR observation posts, in the southern part of the (Srebrenica) enclave, fell one by one in the face of the Bosnian Serb forces advance.
35.	KT 31	Some of the Dutch soldiers retreated into the (Srebrenica) enclave after their posts were attacked, but the crews of the other observation posts surrendered into Bosnian Serb custody.
36.	KT 31	Simultaneously, the defending ABiH (Bosnian Muslim) forces came under heavy fire and were pushed back towards the town.
37.	KT 32	Once the southern perimeter began to collapse, about 4,000 Bosnian Muslim residents, who had been living in a Swedish housing complex for refugees nearby, fled north into Srebrenica town. Dutch Bat soldiers reported that the advancing Bosnian Serbs were "cleansing" the houses in the southern part of the enclave.
38.	KT 33	By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometers deep into the enclave, halting just one kilometer short of Srebrenica town.

39.	KT 33	Late on 9 July 1995, emboldened by this military success and the surprising lack of resistance from the Bosnian Muslims as well as the absence of any significant reaction from the international community, President Karadžić issued a new order authorizing the VRS Drina Corps to capture the town of Srebrenica.
40.	KT 34	On 10 July 1995, Colonel Karremans sent urgent requests for NATO air support to defend the town, but no assistance was forthcoming until around 1430 hours on 11 July 1995, when NATO bombed VRS tanks advancing towards the town.
41.	KT 34	NATO planes also attempted to bomb VRS artillery positions overlooking the town (of Srebrenica), but had to abort the operation due to poor visibility.
42.	KT 34	NATO plans to continue the air strikes were abandoned following VRS threats to kill Dutch troops being held in the custody of the VRS, as well as threats to shell the UN Potočari compound on the outside of the town, and surrounding areas, where 20,000 to 30,000 civilians had fled.
43.	KT 36	Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town.
44.	KT 429	The Drina Corps plan for Krivaja 95 was aimed at reducing the “safe area” of Srebrenica to its urban core and was a step towards the larger VRS goal of plunging the Bosnian Muslim population into humanitarian crisis and, ultimately, eliminating the enclave.
45.	KT 430	On 10 and 11 July 1995, the shelling of Srebrenica, carried out by the Drina Corps, was calculated to terrify the Bosnian Muslim population and to drive them out of Srebrenica town and, thereby, the area.
46.	KT 41	On 12 July 1995, in the Srebrenica enclave, Bosnian Serb soldiers initiated a campaign of terror by setting houses and haystacks on fire which increased the panic of the Bosniak residents, making them frantic to leave.
47.	KT 424	In July 1995, following the take-over of Srebrenica, Bosnian Serb forces devised and implemented a plan to transport all of the Bosnian Muslim women, children and elderly from the area.
48.	KT 425	In July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number of victims is likely to be within the range of 7,000 -8,000 men.
49.	KT 85	A concerted effort was made to capture all Muslim men of military age. In fact, those captured included many boys well below that age and elderly men several years above that age that remained in the enclave following the take-over of Srebrenica.
50.	KT 85	Men and boys who fled the Srebrenica enclave were targeted regardless of whether they chose to seek refuge in Potočari or to join the Bosnian Muslim column.
51.	KT 37	By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari.
52.	KT 37	Faced with the reality that Srebrenica had fallen under Bosnian Serb forces control, thousands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within and the UN compound and the neighboring factories and fields.
53.	KT 37	At Potočari, on the evening of 11 July 1995, the majority of people who sought protection within the UN compound were women, children, elderly or disabled and there were also at least 300 men inside the perimeter of the UN compound and between 600 and 900 men outside the perimeter.
54.	KT 38	The conditions in Potočari were deplorable.
55.	BT 147	From 11 to 13 July 1995 the temperature was very high, reaching 35 degrees centigrade and this small water supply was insufficient for the 20,000 to 30,000 refugees who were outside the UNPROFOR compound.

56.	KT 150 and KT 42	On 12 and 13 July 1995, upon the arrival of (Bosnian) Serb forces in Potočari, the Bosnian Muslim refugees taking shelter in and around the compound were subjected to a terror campaign comprised of threats, insults, looting and burning of nearby houses, beatings, sexual assaults and killings.
57.	KT 43	...at around 1200 hours on 12 July, he saw a (VRS) soldier slay a child with a knife in the middle of a crowd of expellees... (Bosnian) Serb soldiers execute more than a hundred Bosnian Muslim men in the area behind the Zinc Factory and then load their bodies onto a truck.....
58.	KT 44	...three brothers – one merely a child and the others in their teens – were taken out in the night. When the boys' mother went looking for them, she found them with their throats slit.
59.	KT 45	That night, a Dutch Bat medical orderly came across two Serb soldiers raping a young woman.
60.	KT 46	Other people heard women screaming, or saw women being dragged away.
61.	KT 46	Several individuals were so terrified that they committed suicide by hanging themselves.
62.	KT 46	Throughout the night and early the next morning, stories about the rapes and killings spread through the crowd and the terror in the camp escalated.
63.	BT 167	The mood among the refugees in Potočari in the evening and night of 12 July was "fearful"; "It was a night of horror".
64.	KT 47	On 13 July 1995, the Bosniak refugees from Srebrenica found the dead bodies in a prominent place which strengthened their resolve to flee from Potočari as soon as possible.
65.	KT 434 and C72 KT 435	Drina Corps personnel present in the Potočari compound, on 12 and 13 July 1995, must have been aware of the catastrophic humanitarian situation confronting the Bosnian Muslim refugees, as well as the mistreatment being inflicted by Bosnian Serb forces, but took no action in response.
66.	KT 615	The humanitarian crisis that prevailed at Potočari was so closely connected to, and so instrumental in, the forcible evacuation of the civilians that it cannot but also have fallen within the object of the criminal enterprise.
67.	BT 168-9 and KT 53	On 12 and 13 July, the Bosnian Serb soldiers systematically separated out the Bosniak men of military age (aged 16 to approximately 60 or 70) from the women and sent them to various locations but most were sent to a building in Potočari referred to as the White House near the UNPROFOR Headquarters.
68.	KT 435	Drina Corps personnel knew that there was a terrible uncertainty about the fate of the Bosnian Muslim men separated from the women, children and elderly.
69.	KT 158	Police dogs were involved in the process of separating the Bosniak men from the women at Potočari on 12 and 13 July 1995.
70.	BT 212	Momir Nikolić co-ordinated the various units which carried out the separations of men from the rest of the Bosnian Muslim population at Potočari on the 12 and 13 of July 1995.
71.	KT 58	On 13 July 1995, the Dutch Bat troops witnessed definite signs that behind the White House, the Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated.
72.	KT 58	On 13 July 1995, in the vicinity of the White House, Bosnian Serb soldiers shot an unarmed man with a single gunshot to the head. There were gunshots heard by a Dutch BAT officer 20-40 times an hour throughout the afternoon.
73.	KT 157 and BT 169	The Bosnian Muslim men were forced to leave their passports and identity cards at the entrance to the White House near UNPROFOR Headquarters prior to entering.

74.	KT 157	Some of the Bosniak men detained at the White House were killed and mistreated in sporadic attacks and, more generally, the detention conditions were appalling.
75.	KT 158	Drina Corps Officers were involved in procuring the buses and overseeing their journey out of the enclave, giving rise to an inference that they also played a part in boarding the Bosnian Muslim refugees onto the buses.
76.	KT 158	Drina Corps officers were also seen in the vicinity of the White House during the time the separated men were detained there.
77.	KT 159	Beginning on the afternoon of 12 July 1995 and continuing throughout 13 July 1995, men detained in the White House were bussed out of the Potočari compound to detention sites in Bratunac.
78.	KT 160 KT 547	Later, after all of the Bosnian Muslim civilians had gone from Potočari, the piles of personal effects, including identity cards that had been taken from the Bosnian Muslim men and boys were set on fire.
79.	KT 48	On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj.
80.	KT 48	Some Bosnian Serb soldiers were hitting and abusing the Bosniak refugees as they boarded the buses at Potočari.
81.	KT 49	The buses at Potočari were overcrowded with Bosniak refugees and the heat was unbearable.
82.	KT 50	Dutch Bat soldiers attempted to escort the buses carrying the Bosnian Muslim civilians out of Potočari; however after the first convoy of refugees on 12 July 1995, the Dutch Bat soldiers were stopped and their vehicles were stolen at gunpoint.
83.	KT 51	The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 2000hrs.
84.	BT 266	By 12 July 1995, at 19:00hrs or 20:00hrs around 9,000 to 10,000 Bosnian Muslim men, women, children and elderly had left Potočari on buses and trucks.
85.	KT 56 and KT 547	As the buses carrying the women, children and elderly headed north towards Bosnian Muslim-held territory, they were stopped along the way and again screened for men.
86.	KT 431	The Drina Corps was instrumental in procuring the buses and other vehicles that, on 12 and 13 July 1995, were used to transport the Bosnian Muslim women, children and elderly out of the Potočari compound, as well as the fuel needed to accomplish that task.
87.	KT 66	The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000) were transported to Bratunac and subsequently joined by Bosnian Muslim men captured from the column.
88.	KT 66	The VRS made no discernible effort to keep separate the group of Bosniak prisoners who were captured in Potočari and from those captured from the column in the woods once these men had been transported to Bratunac.
89.	KT 66	These men (men from Potočari and from the column) were held in various locations (in Bratunac), such as an abandoned warehouse, an old school and even in the buses and trucks that had brought them there.
90.	KT 464	General Krstić ordered the procurement of buses for the transportation of the Bosnian Muslim population out of Potočari on 12 and 13 July 1995.
91.	KT 464	General Krstić issued orders to his subordinates to secure the road along which the buses transporting the Bosnian Muslim population on 12 and 13 July 1995 would travel to Kladanj.
92.	KT 433	On 12 and 13 July 1995, the Bosnian Muslim civilians of Srebrenica who were bused out of Potočari were not exercising a free choice to leave the area of the former enclave.

93.	BT 218	As the situation in Potočari escalated towards crisis on the evening of 11 July 1995, word spread through the Bosnian Muslim community that the able-bodied men should take to the woods, form a column together with members of the 28th Division of the ABiH and attempt a breakthrough towards Bosnian Muslim-held territory to the north of the Srebrenica enclave. At around 22:00 on 11 July, the "division command", together with the Bosnian Muslim municipal authorities of Srebrenica, made the decision to form the column.
94.	KT 60	The young men were afraid they would be killed if they fell into Bosnian Serb hands in Potočari and believed that they stood a better chance of surviving by trying to escape through the woods to Tuzla.
95.	BT 219	By the evening of 11 July, 10,000 to 15,000 Bosnian Muslim refugees gathered near the villages of Jagličići and Šušnjari and began to trek north.
96.	KT 62	At around midnight on 11 July 1995, the column (of Bosnian refugees) started moving along the axis between Konjević Polje and Bratunac.
97.	KT 61	The head of the column was comprised of units of the 28th Division, then came civilians mixed with soldiers and the last section of the column was the Independent Battalion of the 28th Division.
98.	KT 162	On the 12 and 13 July 1995, VRS units, that were not engaged in the Žepa campaign, including the Drina Corps, as well as a Special Brigade of the police units of the RS Ministry of the Interior (MUP), elements of the Military Police Battalion of the 65th Protection Regiment and subsequently elements of the municipal police, took action to block the column of Bosniak men from Srebrenica.
99.	BT 221 and KT 62	Later in the day of 12 July, heavy shooting on the column began. The Bosnian Serb armed forces, including many MUP units, who were patrolling the road between Kravica and Konjević Polje and the road between Konjević Polje and Nova Kasaba started firing at the column, using artillery, machine guns and hand grenades and continued throughout the day and night.
100.	BT 222	During the period of 12 to 17 July, the Drina Corps and its subordinate brigades carried out searches of the area with the purpose of capturing the men from the column.
101.	KT 63	By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear.
102.	KT 295	On 12 and 13 July 1995, Bosnian Serbs captured 6,000 Bosniak men from the column of people who were fleeing through the woods.
103.	KT 63	Bosnian Serb soldiers used a number of techniques to capture or ambush the Bosniak men from the column, such as shouting into the forest and urging the men to surrender by promising that the Geneva Conventions would be complied with. In some places, Bosnian Serb forces fired into the woods with anti-aircraft guns and other weapons or used stolen UN equipment to deceive the Bosnian Muslim men into believing that the UN or the Red Cross were present to monitor the treatment accorded to them upon capture.
104.	KT 63	When Bosnian Serb forces captured the Muslim men from the column, they stripped them of their personal belongings and identity papers, which were piled up and eventually burnt. In some cases, the Bosnian Serb forces carried out random summary executions of the captured Muslim men.
105.	KT 436	Between 12 and 18 July 1995, Drina Corps Brigades, particularly the Bratunac and Zvornik Brigades, were engaged in combat with the Bosnian Muslim column as it attempted to break-through to Bosnian Muslim held territory.
106.	KT 62	Only about one third of the (Bosniak) men (from the column) successfully made it across the asphalt road (leading to free territory) and the column was split in two parts.
107.	KT 65	The head of the column waited to see what would happen to the second part of the column.
108.	KT 65	Heavy shooting and shelling continued throughout the day of 12 July 1995 and into the night, and ultimately the head of the column abandoned hope.

109.	BT 238	By the morning of 13 July, a group of approximately 2,000 to 3,000 Bosniak people from the column reached an area between Konjević Polje and Nova Kasaba. They could not cross the road as it had been blocked by Bosnian Serb units. At around 13:00, the Bosnian Serb forces surrounded the large group which was then forced down to the asphalt road.
110.	BT 239	Between 1,000 and 4,000 Bosnian Muslim men captured from the column were detained in the Sandići meadow, located on the Konjević Polje-Bratunac road on 13 July. The majority of these men were civilians. The soldiers guarding the men forced them to drop their belongings into big piles and to hand over any valuables they might still have.
111.	BT 242	During the course of the day those who were wounded or injured were sent to a house close to the meadow and were later executed. There is evidence that throughout the day prisoners were beaten and some were killed.
112.	KT 65	On 13 July 1995, the remainder of the column of Bosnian Muslim people continued their journey along the Kalesija-Zvornik road, where they were caught in ambushes and suffered further casualties.
113.	KT 65	The head of the column finally managed to break through to Bosnian Muslim-held territory on 16 July 1995 with the assistance of ABiH forces attacking from the direction of Tuzla.
		<b>12-15 JULY 1995: THE DETENTION AND EXECUTION OF BOSNIAN MUSLIM PRISONERS IN BRATUNAC</b>
114.	KT 179	Most of the Bosnian Muslim men separated at Potočari and captured from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites.
115.	KT 180	The town of Bratunac is in the zone of the Bratunac Brigade of the Drina Corps.
116.	BT 492	...members of the Bratunac Brigade Military Police participated in the detention of Bosnian Muslim men in Bratunac, both on buses and at the Vuk Karadžić School, on the nights of 12 and 13 July.
117.	BT 492	... other members of the Bratunac Brigade were in and around the Vuk Karadžić school
118.	BT 494	... it would have been common knowledge to anyone walking the streets of Bratunac on the nights of 12 and 13 July that the Bosnian Muslim men were being detained in overcrowded conditions in an environment of constant threat of abuse and serious mistreatment, including the threat of death.
119.	BT 264 BA 72	On 12 and 13 July 1995, thousands of Bosnian Muslim men were detained in Vuk Karadžić School, in the Bratunac town football stadium, as well as in buses parked along the streets in Bratunac town for between one and three days.
120.	BT 264	The security situation in the town was tense and chaotic.
121.	BT 264 BA 72	The detention conditions of the Bosniak detainees in Bratunac were terrible: the prisoners were deprived of sufficient food and water and suffered in sweltering, crowded conditions in the detention facilities and on the buses.
122.	BT 267	On the night of 13 July 1995, approximately 80-120 buses and trucks were parked in Bratunac town and it is estimated that between 3,500 to 4,500 Bosnian Muslim men were detained in these buses.
123.	BT 268	The buses in Bratunac town were guarded by members of the Republika Srpska armed forces, including by several members of the Bratunac Brigade Military Police Platoon, the civilian police of the MUP, as well as by armed civilians who volunteered.
124.	KT 181	The Bratunac Brigade military police were engaged in escorting these prisoners to northern detention sites on 14 and 15 July 1995.
		<b>DETENTIONS AND EXECUTIONS AT VUK KARADŽIĆ SCHOOL</b>
125.	BT 271	Beginning on 12 July, around 2,000-3,000 men were detained in Bratunac town at the Vuk Karadžić School and the buildings surrounding it, such as in the school gym, a in a building called the hangar, and in a nearby secondary school for technical education called "Sloboda, ime ti je Tito".

126.	BT 272	The Vuk Karadžić School and the various buildings surrounding it were secured by several units of the Republika Srpska armed forces, including by members of the Bratunac Brigade Military Police Platoon, by the special police, by the civilian police of the MUP, as well as by members of the Drina Wolves and paramilitary formations.
127.	BT 273 BA 72	The prisoners detained at the Vuk Karadžić School building were in a state of shock and frightened. They were deprived of sufficient water and of medical aid.
128.	BT 494 BA 75	During the nights of 12 and 13 July 1995, at several times people were taken out of the buses in Bratunac and did not return. After these men were taken from the buses, those remaining in the buses heard horrific screams, followed by gunshots, after which silence ensued.
129.	BT 564	Between 12 and 14 July 1995 more than 50 Bosnian Muslim men were summarily executed in and around the Vuk Karadžić School.
130.	BT 285	The Bosnian Muslim men, from Potočari as well as from Sandići and Nova Kasaba, who had spent the night on 13 July in Bratunac town went in a long column of buses the following day to various temporary detention facilities and execution sites in the Bratunac and Zvornik municipalities.
<b>EXECUTIONS AT JADAR RIVER</b>		
131.	BT 293	On the morning of 13 July 1995, 16 Bosnian Muslim men, who had been captured from the column, were transported by bus from a warehouse in Konjević Polje to the Jadar River bank. Amongst them was a 15 year old boy.
132.		After the 16 Bosniak men got off the bus they were lined up alongside Jadar River.
133.		Four Serb soldiers who had escorted the 16 Bosniak in the bus to Jadar River opened fire with their automatic rifles. One of the Bosnian Muslim men survived as he threw himself into the river after he was hit by a bullet. This survivor recognized one of the soldiers participating in the killings as a member of the 2nd PJP Company.
<b>EXECUTIONS AT CERSKA VALLEY</b>		
134.	BT 567c	On 13 July 1995, 150 Bosniak men were transported to an area along the road in Cerska Valley about 3 km from Konjević Polje and summarily executed and then covered with dirt using heavy equipment.
<b>EXECUTIONS AT NOVA KASABA</b>		
135.	BT 253	On 13 July 1995, an estimated 1,500 to 3,000 Bosnian Muslim men captured from the column were held prisoners on the Nova Kasaba football field.
136.	BT 253	The men at Nova Kasaba were forced to turn over any valuables and abandon their belongings. The prisoners sat in rows close together and surrounded by Bosnian Serb soldiers. During their detention the prisoners never received anything to drink.
137.	BT 254	During the day of 13th July 1995, buses arrived at Nova Kasaba and the prisoners were taken to Bratunac town.
138.	BT 255	In July 1996, a team of forensic investigators exhumed four primary, undisturbed graves in the Nova Kasaba area. The graves, located in two fields, contained the bodies of 33 male victims. Thirty-two of these victims died as a result of gun shot wounds and one victim died as a result of massive head trauma.
139.	BT 255	The graves, located in two fields, contained the bodies of 33 male victims. Thirty-two of these victims died as a result of gun shot wounds and one victim died as a result of massive head trauma.
140.	BT 255	In 1999, another four primary graves were exhumed in Nova Kasaba, containing the remains of at least 55 individuals. At least 43 victims had died as a result of multiple gunshot wounds.
<b>EXECUTIONS AT KRAVICA WAREHOUSE</b>		



141.	BT 567 and BT 296	On 13 July 1995, over 1,000 Bosniak men were detained in a large warehouse in Kravica and summarily executed with automatic weapons, hand grenades and other weapons.
142.	BT 567 and BT 306	The victims of Kravica Warehouse massacre were buried in mass graves in Glogova and Ravnice between 14 and 16 July 1995.
		<b>DETENTIONS AND EXECUTIONS IN AND AROUND GRBAVCI SCHOOL IN ORAHOVAC</b>
143.	KT 220 and BT 316	Early in the morning of 14th July 1995, a large group of the prisoners who had been held overnight in Bratunac were bussed in a convoy of 30 vehicles to the Grbavci school in Orahovac in Zvornik Municipality where they were temporarily detained.
144.	BT 317 and 368	An APC marked "UN" served as an escort to the convoy of buses transporting Bosniak men from Bratunac to Zvornik Municipality and was driven by members of the Bratunac Brigade Military Police. The convoy was lead by a Golf car with Colonel Vujadin Popović, Chief of Security in the Drina Corps, in it.
145.	BT 319	When the Bosnian Muslim men arrived at Grbavci school, in 5-10 buses, armed VRS soldiers guarding the school forced them to leave their belongings outside before entering the school.
146.	KT 225	Drina Corps Zvornik Brigade participated in the execution of Bosnian Muslim men at Orahovac on 14 July 1995. Members of the military police company of the Zvornik Brigade were present immediately prior to the executions, presumably for such purposes as guarding the prisoners and then facilitating their transportation to the execution fields.
147.	KT 225	Personnel from the 4th Battalion of the Zvornik Brigade were present at Orahovac during the executions, assisting in their commission.
148.	KT 225	Machinery and equipment belonging to the Engineers Company of the Zvornik Brigade was engaged in tasks relating to the burial of the victims from Orahovac between 14 and 16 July 1995.
149.	BT 320	There are estimates that between 1,000 and 2,500 Bosnian Muslim men were detained in the gymnasium of the school.
150.	KT 220	The detention conditions at Grbavci School were appalling: the gym was packed and stifling; occasionally soldiers would shoot at the ceiling to quieten panicked prisoners; the prisoners were not given any food and were only given a little water and people fainted due to the heat. At one point, two Bosnian Muslim men were taken outside and shot.
151.	KT 221 and BT 763	On 14 July 1995, from noon until 15 July 1995 at 05:00hrs, 1,000 to 2,500 Bosniak detainees were blindfolded and transported to one of two adjacent meadows less than 1 km away from Grbavci School where they were executed. The detainees were lined up and shot in the back; those who survived the initial gunfire were killed with an extra shot.
152.	BT 567f and BT 332-336	The victims of the executions at Orahovac were buried in mass graves near to the execution site throughout the evening and night of 14 to 15 July 1995.
		<b>DETENTIONS AND EXECUTIONS IN PETKOVCI SCHOOL AND DAM NEAR PETKOVCI</b>
153.	BT 337	On the 14th July, Bosnian Muslim prisoners, who had been detained in Bratunac and Kravica were taken by bus to the Petkovci School in the Zvornik municipality.

154.	BT 337-339	The detention conditions at Petkovci School were appalling. The Bosniak detainees were beaten by rifle butts, were forced to chant Serb slogans, threatened with their lives, and had their belongings stolen. They were not allowed to use the toilet and had no food or water. It was extremely hot and crowded and some prisoners became so thirsty that they resorted to drinking their own urine. Some of the detainees were killed.
155.	BT 340 and BT 341	On 15 July 1995, the Bosniak detainees were ordered out of the school where their hands were tied behind their backs, and they were transported in trucks to Petkovci Dam where they were summarily executed.
156.	BT 567(g)	Some men were shot with automatic weapons at Petkovci School.
157.	BT 342	In the morning of 15 July 1995, a loader appeared at the site and was loading the dead bodies onto a tractor. There were approximately 1,500 to 2,000 dead bodies on the execution site.
158.	BT 567(h)	The victims from Petkovci Dam executions were buried in mass graves at the Dam. Subsequently their remains were moved to secondary mass graves nearby.
159.	BT 343-344	Between 11:00 and 12:00 on 14 July 1995, Marko Milošević, Deputy Commander of the 6th Battalion of the Zvornik Brigade, received a telephone call from Dragan Jokić, who was the duty officer of the Zvornik Brigade at the time and told him that Muslims from Srebrenica would be detained at Petkovci School. Ostoja Stanišić, the Commander of the 6th Battalion, later asked Marko Milošević to go to Petkovci school to relay a message from Zvornik Brigade to Colonel Beara. Marko Milosevic delivered the message to Colonel Beara, who was standing with Drago Nikolić, the assistant commander for security of the Zvornik Brigade, at the cross roads in Petkovci.
160.	BT 345	From the cross-roads on the main road in Petkovci, Marko Milošević heard gunfire late in the afternoon coming from the direction of the school.
161.	BT 345	Marko Milosevic was later told that the detainees from the Petkovci School had been killed at the dam, but he does not remember who gave him this information. Dragan Obrenovic testified that on the 16th July Ostoja Stanišić informed him that a group of prisoners had been killed in the Petkovci School. He later learned that the participants to these killings were members of the 10th Sabotage Detachment.
162.	KT 232	Drivers and trucks from the 6th Infantry Battalion of the Zvornik Brigade were used to transport the prisoners from the detention site to the execution site at Petkovci Dam on the 15th July 1995 and the Zvornik Brigade Engineering Company was assigned to work with earthmoving equipment to assist with the burial of the victims from Petkovci Dam.
<b>DETENTIONS AND EXECUTIONS IN PILICA SCHOOL</b>		
163.	BT 347 KT 233	On 14th July, Bosnian Muslim prisoners were taken by bus from Bratunac through Zvornik to Pilica, where they were detained in the sports hall of the Pilica School.
164.	BT 567(i) KT 233	Due to the overcrowded conditions in which the men were detained, there is evidence to support a finding that at least two men died at the school.
165.	BT 348	The detention conditions at Pilica school were appalling: two or three men died during the night from lack of air; there was not enough water for the detainees; prisoners were not always allowed to go to the toilet. When the prisoners were allowed some of them were beaten by VRS soldiers with their rifles. VRS soldiers stole the prisoners' belongings and money and threatened their lives. Shooting and people crying for help were heard from behind the school. Some men were taken and screams heard. Some of the men did not return.

166.	KT 233	The (Bosniak) men were held at the Pilica School for two nights.
167.	BT 567(i)	During the night of 14 to 15 July, some Bosnian Muslim men were taken out of the school and killed.
168.	BT 349 KT 233	On the 16th July, from 10:00hrs to 16:00hrs, prisoners in Pilica School had their hands tied behind their backs and were taken in buses to Branjevo Military Farm where they were summarily executed by VRS soldiers by automatic rifle and machine guns.
169.	BT 766	On 16 July the prisoners were taken by bus from the school to the nearby Branjevo Military Farm where they were executed.
<b>EXECUTIONS AT BRANJEVO MILITARY FARM</b>		
170.	KT 241	It is important to note that the Branjevo Farm itself was under the direct authority and control of the 1st Infantry Battalion of the Zvornik Brigade.
171.	BT 567(j) KT 236	Nearly 1,200 Bosnian Muslim men from Pilica School were executed at the Branjevo Military Farm on the morning of 16 July 1995.
172.	KT 240	The shootings (at Branjevo Farm) began at 10:00 hours and continued until 15:00 hours on 16.07.1995.
173.	BT 350	The Trial Chamber finds that members of the 10th Sabotage Detachment of the Main Staff took part in the killings at Branjevo Military Farm.
174.	BT 766	The Zvornik Brigade duty officer's workbook shows that at 22:10 on 16 July the (Zvornik) brigade's 1st Battalion, which was stationed at the farm, requested a loader, an excavator and a dump truck to be in Pilica at 08:00 on 17 July. The workbook further contains the information that this request was conveyed to "Jokić," which is also corroborated by witness testimony. The Trial Chamber finds that the notation refers to Dragan Jokić and that he was informed in his capacity as Chief of Engineering.
175.	BT 766 BA 162	Early in the morning on 17 July, the workbook notes that the 1st Battalion called to verify that "the engineering machines had been secured." The evidence establishes that an excavator and a loader were sent to the 1st Battalion.
176.	BT 354	At least 132 male individuals, all wearing civilian clothes were buried in a large cultivated field about 130 meters north from Branjevo Military Farm. Ligatures were recovered from 82 individuals and evidence of affiliation with the Islamic religion was found on five individuals.
177.	BT 354	In a secondary grave along the Čančari road, the remains of people initially buried at the Branjevo Farm were discovered. In one report the minimum number of individuals found in the secondary grave in Čančari was 283 victims. Three were determined to have been between 8 and 12 years old, 49 were between 13 and 24 years old and 231 were older than 24. At least 269 victims were male.
<b>DETENTIONS AND EXECUTIONS AT PILICA DOM</b>		
178.	BT 355 and BT 567(k)	On 16th July, approximately 500 Bosnian Muslim men were killed by VRS soldiers in the Pilica Cultural Centre. It appears that men were crammed into the main room. Shots and detonations from grenades were heard across the road for about 20 minutes. There is forensic evidence that corroborates the killings.
179.	BT 355	The next day, 17th July, dead bodies were loaded onto a truck and buried at Branjevo Military Farm, which is about 3 kilometers from the Pilica Cultural Centre. There are no known survivors of this massacre.
180.	BT 356	Forensic evidence of DNA blood samples and markings of artillery and grenades on the walls corroborates the killings.
<b>DETENTIONS AND EXECUTIONS AT KOZLUK</b>		

181.	BT 567(I) and BT 357	On 15 or 16 July 1995, 500 Bosnian Muslim men were transported to Kozluk, near the Drina River, and executed along the riverbank.
182.	BT 567(I)	On 16 July 1995, the victims were buried in mass graves near the site of their execution.
183.	BT 567(I)	The remains of the victims were subsequently moved to a secondary mass grave nearby.
184.	KT 453	Zvornik Brigade excavators and bulldozers operating in the Kozluk area, from 16 July 1995, were involved in work related to the burial of victims from the Kozluk executions, which occurred between 14 July and 17 July 1995 (para.253).
		<b>MASS EXECUTIONS - EXTERMINATION</b>
185.	BT 568	The vast majority of the victims of the mass executions were taken to their detention sites and execution sites in trucks and buses; many were blindfolded, their hands - and sometimes their feet - were bound with ligatures; and they were called out of the trucks and buses in small grouped, after which all were shot.
186.	BT 568	The bodies of the executed men were then immediately buried, either at the execution site itself or somewhere close to the execution site.
187.	BT 568	The mass executions occurred in a limited time period.
188.	BT 568	The killings were done in an organised way.
189.	BT 569	The direct perpetrators had the intention to kill or inflict serious injury in the reasonable knowledge that their acts or omissions were likely to cause the death of the victim.
190.	BT 577	The killings were part of one killing operation, which led to the death of more than 7,000 Bosnian Muslim men and boys.
191.	BT 577	The killings were conducted on a massive scale.
192.	BT 577	The perpetrators of the killings had the intent to kill on a massive scale.
193.	BT 577	The killing operation was carried out in a short time period, with similar pattern of killings, in locations near to each other and by perpetrators who in some cases were active in more than one of these locations.
		<b>ACTIVITIES OF THE ZVORNIK BRIGADE</b>
194.	BT 371	Members of the Engineering Company of the Zvornik Brigade participated in the burial operation at Glogova following the mass executions at the Kravica Warehouse on the 15th July.
195.	BT 515	The Trial Chamber finds that Dragan Jokić already knew about the murder operation by the morning of 15 July.
196.	BA 164	Dragan Jokić, along with "everyone", (at Zvornik Brigade Command) knew about the mass executions of detainees at Orahovac on 15 July 1995
197.	BT 372	Members of the Zvornik Brigade participated in the detention, execution and burial of Bosnian Muslim men at the Grbavci School and nearby field in Orahovac. Drago Nikolić, the chief of security of the Zvornik Brigade, was in charge of the detention of the Bosnian Muslim men in Orahovac.
198.	KT 449	The Zvornik Brigade participated in the execution of Bosnian Muslim men at Orahovac on the 14th July 1995. Members of the military police company of the Zvornik Brigade were present immediately prior to the executions, presumably for such purposes as guarding the prisoners and then facilitating their transportation to the execution fields.
199.	BT 372	Members of the Zvornik Brigade Military Police assisted in the detention of prisoners, with the approval of Dragan Obrenović, the deputy commander of the Zvornik Brigade, who knew of the murder operation at the time when he allowed the Military Police members to assist Drago Nikolić.

200.	BT 374	Members of the Zvornik Brigade, particularly the Engineering Company, participated in the burial of the Bosnian Muslim men murdered in Orahovac.
201.	BT 375	Members of the Zvornik Brigade were near the Petkovci School and Dam at the time prisoners were detained and executed at the Petkovci Dam.
202.	BT 376	Elements of the Zvornik Brigade were aware that Bosnian Muslim men were being detained at the Pilica school.
203.	BT 377	On the 17th of July, members of the Zvornik Brigade Engineering Company participated in digging the mass graves following the execution of approximately 1000 Bosnian Muslim men at the Branjevo Military Farm.
204.	BT 379	Members of the Zvornik Brigade Engineering Company participated in the burial of Bosnian Muslim men in mass graves at Kozluk on 16th of July.

## IX. ANNEX 2

### LIST OF MATERIAL EVIDENCE

#### C. PROSECUTION'S MATERIAL EVIDENCE

- T-1** Maps, photographs of the Kula School, Pilica Dom and Branjevo Farm, tagged with 1-44
- T-2** -----
- T-3** UN Secretary-General's Report pursuant to General Assembly Resolution 53/35 dated 15 November 1999
- T-4** Duty Officer's Notebook (notebook of the Duty Operation's Officer in the Zvornik Brigade HQ)
- T-5** Order, confidential number 06-156, by the Commander of the First Zvornik Brigade, 24 January 1995, the 1<sup>st</sup> Zvornik Infantry Brigade appointments of commanding officers per wartime establishment
- T-6** V.P. 7469/20 Manojlovići, 02-26/95, Analysis of combat readiness in the First Battalion, 24 January 1995.
- T-7** V.P. 7469/20 Manojlovići, 02-26/95 Analysis of work and discipline in the First Battalion, 6 December 1995.
- T-8** Command of TG of the 1<sup>st</sup> Zvornik Infantry Brigade, strictly confidential no. 01-246 Order for March no. 3, 3 July 1995.
- T-9** Branjevo Farm Photograph
- T-10** V.P 7469/20, Manojlovići, number 02-142/95, 9 July 1995, List of soldiers of the 1<sup>st</sup> Battalion deployed to work at Branjevo Military Farm
- T-11** Order, confidential no. 06-291, by the Commander of the First Zvornik Brigade, 23 July 1993, on appointments of commanding officers per wartime establishment
- T-12** Order, confidential no. 06-156, by the Commander of the first Zvornik Brigade, 13 September 1994, on appointments of commanding officers per wartime establishment
- T-13** List of the First Battalion personnel
- T-14** Record of Interview of the Witness Rajko Babić, Prosecutor's Office of BiH KTN-RZ-02/08,23 October 2008, including 2 part- audio recording transcript and the CD with audio recording
- T-15** Transcript of the Witness Rajko Babić, 18 April 2007,ICTY case number IT-05-88-T Popović et al.
- T-16** Statement of the Witness Rajko Babić, ICTY Prosecutor's Office, 13 and 14 September 2005
- T-17** Kula School and the surrounding area photograph marked by the witness Zoran Gajić
- T-18** Kula School and the gym photograph, marked by the witness Zoran Gajić
- T-19** Branjevo Farm photograph, marked by the witness Zoran Gajić
- T-20** Record of interview of the Witness Zoran Gajić, number: 17-0472-04-2-298/08, 27 March 2008 (State Investigation and Protection Agency)

- T-21** School playground photograph marked by the Witness Savo Stević
- T-22** School photograph marked by the Witness Savo Stević
- T-23** Record of Interview of the Witness Savo Stević, number: 17-04/2-04-704/07, 6 July 2007 (State Investigation and Protection Agency)
- T-24** School playground photograph marked by the Witness Mićo Manojlović
- T-25** Record of Interview of the Witness Mićo Manojlović, number: 17-04/2-04-2-692/07, 2 July 2007 (State Investigation and Protection Agency)
- T-26** Record of Interview of the Witness Mićo Manojlović, BiH Prosecutor's Office of BiH KT-RZ-02/08, 8 April 2008, including 4-part audio recording transcript
- T-27** Playground photograph marked by the Witness Mile Tejić
- T-28** Record of Interview of the Witness Mile Tejić, number: 17-04/2-04-2-952/07, 24 September 2007 (State Investigation and Protection Agency)
- T-29** School and the broader area photograph marked by the Witness Bogoljub Gavrić
- T-30** Photograph of the school entrance marked by the Witness Bogoljub Gavrić
- T-31** Gym and adjacent house photograph marked by the witness Bogoljub Gavrić
- T-32** School and gym photograph marked by the Witness Bogoljub Gavrić
- T-33** School playground photograph marked by the Witness Bogoljub Gavrić
- T-34** Record of Interview of the Witness Bogoljub Gavrić, number: 17-04/2-04-2-960/07, 27 September 2007 (State Investigation and Protection Agency)
- T-35** Photograph marked by Milan Jovanović
- T-36** Photograph marked by Milan Jovanović
- T-37** Vehicle Work Log number: 22-1455/95, Lada Riva, between 1 July and 31 July 1995, VP 7469 Zvornik
- T-38** Record of Interview of the Witness Milovan Đokić, BiH Prosecutor's Office, KT-RZ-132/06, 28 November 2006
- T-39** Trial Transcript of Milovan Đokić in Milorad Trbić case, Court of BiH X-KR-07/386, 11 February 2008.
- T-40** Record of Interview of the Witness Milovan Đokić number: 17-15/3-1-04-188/06, 26 September 2006 (State Investigation and Protection Agency)
- T-41** Record of Interview of the Witness Milovan Đokić, BiH Prosecutor's Office, number: KT-RZ-132/06 dated 19 February 2007 including the 4-part audio recording transcript
- T-42** Kula School and the surrounding area photograph marked by the Witness Dragan Jovanović
- T-43** School Photograph marked by the Witness Dragan Jovanović
- T-44** School and the adjacent house photograph, marked by the Witness Dragan Jovanović
- T-45** School and the adjacent house marked by the Witness Stanko Kostić
- T-46** School Photograph marked by the Witness Stanko Kostić
- T-47** Dom/Cultural Center photograph marked by the Witness Zoran Bojić
- T-48** School and the school broader area photograph marked by the Witness Zoran Bojić
- T-49** School yard photograph marked by the Witness Zoran Bojić
- T-50** Vehicle Work Log, VP 7469 Zvornik, between 1 July and 31 July 1995, TAM 80 vehicle, fuel tanked on 14 July, 15 July and 17 July 1995, driver Branko Bogičević
- T-51** Delivery Sheet, 16 July 1995, VP 7469 Zvornik, Branko Bogičević

- T-52** Excerpt from the Zvornik Brigade Internal Distribution Register
- T-53** School and the broader area photograph
- T-54** Photograph of the Dom and the broader area including "Ljubo's coffee bar"
- T-55** Vehicle Work Log no. 22-1667/95, VP Zvornik, between 15 July 1995 and 31 July 1995, TAM 130 vehicle, fuel tanked on 17 July, 21 July, 23 July and 25 July 1995, driver Milenko Tomić
- T-56** Witness' sketch
- T-57** Vehicle Work Log number 22-1463/95, between 14 July and 31 July 1995, Opel Rekord vehicle, driver Milorad Birčaković
- T-58** School and the surrounding broader area photograph marked by the Witness Birčaković
- T-59** School photograph marked by the Witness Birčaković
- T-60** Vehicle Work Log number 22-1463/95, between 1 July and 31 July 1995 for Opel Rekord vehicle, drivers Milorad Birčaković /Mirko Ristić /Miško Arapović
- T-61** Dom photograph marked by the Witness Birčaković
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- T-163** Drina Corps HQ – Order, strictly confidential no. 03/156-12, 13 July 1995: prevention of passage of Muslim groups towards Tuzla and Kladanj
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- T-171** Drina Corps Order, 16 May 1995, no. 04/112-15: Addendum to the Order to stabilize defense around Žepa and Srebrenica enclaves
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- T-183** Handwritten intelligence report by Duško Vukotić, 12 July 1995, strictly confidential no. 19/39
- T-184** Record of Interview of the Witness Radivoje Matić, BiH Prosecutor's Office KTN-RZ-02/08, 12 May 2008, including the interview transcript and a CD
- T-185** Agenda, General Secretariat of the Republika Srpska Government, 26 March 2008, Banja Luka, signed by Milorad Dodik
- T-186** Publication by the Srebrenica Historical Project „How the Hague Tribunal Fabricates its Evidence”
- T-187** Monitor magazine articles, Parts I and II „Interview with Jean- Rene Ruez, Head of Srebrenica Investigations“
- T-188** Selected statements of Srebrenica survivors that the Expert Witness Karganović relies upon (188-1 to 188-20, statements attached)
- T-189** HQ of 1. PL P BR strictly confidential no. 04-520-61/95, 21 July 1995 – request by General Zdravko Tolimir to use chemical weapons against Žepa Muslim refugee column, EDS 0425863
- T-190** A part of the ICTY Transcript of BiH Army Gen. Hadžihasanović, 6 April 2001
- T-191** Internal Memorandum, Ewa Tabeau, 24 July 2008,
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- T-195** Expert Report by the Expert Witness Petar Vuga, retired Colonel, Popović case, 31 March 2008
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- T-201** Additional death records (one CD)
- T-202** Transcript of the Witness PW-143, ICTY case IT-05-88-T, Prosecutor v. Vujadin Popović et al.
- T-203** Document of the Institute for Missing Persons no. 02/1-40-1-2606/11, 30 June 2011
- T-204** Directive no. 4, VRS Main Staff, strictly confidential no. 62/5-21Q, 19 November 1992
- T-205** Photocopied sections of „Work Log“ of VRS General Ratko Mladić

**D. DEFENSE'S MATERIAL EVIDENCE**

**(a) Defense for the First-Accused**

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- O-I-4** Log of Presence of Command Personnel of the Zvornik Brigade 1st Battalion for combat assignments
- O-I-5** Basic Characteristics of International Military and Political Situation, RS Armed Forces Supreme Command, no. 2/2-11, 8 March 1995 (Directive no. 7)
- O-I-6** VRS Main Staff, Dt no .0272-15 – Directive for further operations, no. 7/1, 31 March 1995 (Sadejstvo-95)
- O-I-7** Bratunac Brigade HQ Order for Active Combat Operations, op. no. 1, strictly confidential no. 439-2, 5 July 1995 (Krivaja 95)
- O-I-8** Decision on the appointment of the civilian commissioner for the Serbian Municipality of Srebrenica, Republika Srpska President, no. 01-1350/95, 11 July 1995
- O-I-9** Rule Corps of Grounded Forces, SFRY Armed Forces General Staff, 1990
- O-I-10** VRS Main Staff Order for prevention of passage of Muslim groups towards Tuzla and Kladanj, 13 July 1995

- O-I-11** Excerpt from the Zvornik Brigade Technical Service Log (fuel disbursement to Lieutenant Colonel Popović, 16 July 1995)
- O-I-12** Excerpt from the Zvornik Brigade Internal Distribution Register (disbursement of fuel and 40 mm rounds, 400 pieces to KDK /Drina Corps Command/), 16 July 1995
- O-I-13** Drina Corps Command, strictly confidential no. 03/156-12 (prevention of passage of Muslim groups towards Tuzla and Kladanj)
- O-I-14** Excerpt from the Log of Orders of the Day of the Zvornik Brigade Engineering Company
- O-I-15** Excerpt from the Military Police Duty Operations Officer Log-book, 17 July 1995
- O-I-16** Zvornik Brigade HQ - Instructions for the work of an assistant commander for security and intelligence no. 17/353, 21 September 1994
- O-I-17** R BiH Army, 28<sup>th</sup> Division HQ, Operative Report to the 2<sup>nd</sup> Tuzla Corps HQ, strictly confidential 04-114/95, 30 June 1995
- O-I-18** Informative Report from the Srebrenica Municipality Presidency session held on 9 July 1995
- O-I-19** List of war criminals known to the First Bratunac Brigade HQ with indications of their presence in Srebrenica
- O-I-20** RBiH Army General Staff, Report on supply of lethal assets and materiel to Žepa and Srebrenica enclaves, no. 1-1/7-169, 28 May 1996
- O-I-21** RBiH Second Corps HQ, successes and assignments of RBiH Army units, strictly confidential 02/1-604/123, 2 July 1995
- O-I-22** RBiH Army Second Corps HQ, Congratulations message for successful sabotage operations, no. 02/1-670/4, 28 June 1995
- O-I-23** RBiH Army 28<sup>th</sup> Division HQ, strictly confidential no. 02-06/95 – Informative report based on RBiH Army General Staff document, 28 June 1995
- O-I-24** RBiH Army 28<sup>th</sup> Division HQ, strictly confidential no. 03-183-231 – Report on replenishment of the 28<sup>th</sup> Division wartime units, 1 July 1995
- O-I-25** VRS Main Staff, Instruction on Command and Control of VRS security and intelligence organs, 24 October 1994
- O-I-26** Battalion Manual, Federal Secretariat for National Defense, military secret, 1988
- O-I-27** Order of the 1<sup>st</sup> Zvornik Infantry Brigade Commander, confidential no. 06.156, 13 September 1994
- O-I-28** Occupancy list no. 71/10 issued by the Republic Department for Geodetic and Property Affairs Banja Luka, Field Office Zvornik
- O-I-29** Magnified copy of the cadastral sketch of Šepak Municipality, 23 March 2007 with notes made and signature affixed by the Witness Milica Milovanović
- O-I-30** Shortened log – fuel disbursement (witness Novica Đerić)

- O-I-31** Black and white photograph, marked by the Witness Petar Jurošević, with the date and his signature
- O-I-32** Certificate by the Brčko Municipality Exchange Committee, no. 05/97, 1 October 1997, confirming that Momir Pelemiš was exchanged on 26 May 1994
- O-I-33** Decision of the Tuzla Municipal Defense Secretariat, no. 03/9-846-253-1793, 31 May 1994, approving trip abroad to Momir Pelemiš to visit his family
- O-I-34** Consent of the RS Ministry of Justice to deploy Momir Pelemiš on the work obligation as a mathematics teacher in *Sveti Sava* Elementary School
- O-I-35** Referrals to a specialist doctor and doctor's findings and opinions;
- O-I-36** Record of interview of the Witness Dragan Stankić, BiH Prosecutor's Office KTN RZ-02/08, 6 May 2008, including the interview audio-recording transcript
- O-I-37** Report of the Expert Witness Radovan Radinović, December 2010  
(plus: 46 attachments listed in the Brief by attorney Miloš Perić dated 20 December 2010)
- O-I-38** Order for Expert Analysis, 10 September 2010, issued by Attorney Miloš Perić to the Expert Witness professor Svetlana Radovanović, Ph.D.
  - Report by the Expert Witness Svetlana Radovanović, Ph.D., 25 December 2010
  - CV of Svetlana Radovanović, Ph.D.
  - 4 CD attached to the above
  - Record of Identification of Mujo Salihović, 16 February 2005, Tuzla University Hospital,
  - Record of Identification of Senad Dautbašić, 16 September 2005, Tuzla University Hospital,
  - Record of Identification of Jusuf Alić, 25 October 2005, Tuzla University Hospital,
  - Human losses during the siege of Sarajevo between 10 September 1992 and 10 August 1994, used in Stanislav Galić case
- O-I-39** Photograph T-1-10 marked by the Witness O-1
- O-I-40** Photograph T-1-12 marked by the Witness O-1
- O-I-41** CD with transcripts of Vinko Pandurević, 27, 28 and 29 January 2009, and 2 and 25 February 2009, ICTY case IT-05-88-T
- O-I-42** CD with transcripts of Vinko Pandurević, 3, 9, 10, 11 and 19 February 2009, ICTY case IT-05-88-T
- O-I-43** DVD with audio recording of the testimony of Vinko Pandurević, ICTY IT-05-88-T
- O-I-44** Supplemental Report by the Expert Witness Svetlana Radovanović, 18 June 2011
- O-I-45** 1<sup>st</sup> Krajina Corps HQ, op. no. 583-23, 25 August 1992, VRS interim rules dated August 1992
- O-I-46** Map with designation of the First Battalion defense sector

- O-I-47** BiH Institute for Missing Persons, Cover Letter and Certificate on exchanged persons
- O-I-48** CD with remaining transcripts of Vinko Pandurević

(b) **Evidence for the Second-Accused**

- D-2-1** Statement of the Witness P6, 25 May 1996
- D-2-2** Set of five photographs (School, Pilica Dom and Branjevo)
- D-2-3** Rules of service of security organs in the armed forces of the SFRY, 1984
- D-2-4** Rules of service of military police in the armed forces of the SFRY, 1985
- D-2-5** Verdict of the Bijeljina District Court, no. K-4/97, 15 August 1997
- D-2-6** Map
- D-2-7** Log of the Bratunac Brigade Military Police Duty Officer, between 30 June 1995 and 23 July 1995
- D-2-8** Map made by the witness Radivoje Lakić in front of investigators in The Hague
- D-2-9** Transcript of Radivoje Lakić, pp. 100272 and 100273, ICTY case IT-05-88-T Popović et al.
- D-2-10** Briefing of Radivoje Lakić by the ICTY prosecutor
- D-2-11** Statement of Radivoje Lakić given to ICTY investigators
- D-2-12** RBiH Army General Staff, Introductory Speech by General Rasim Delić, strictly confidential 1/1-941, 30 July 1996
- D-2-13** RBiH Army, 2<sup>nd</sup> Corps HQ, Statement of Ramiz Bećirović, 11 August 1995
- D-2-14** Duties and tasks of the command staff and staff organs, approved by Major Vinko Pandurević
- D-2-15** Excerpt from the JNA Military Lexicon, 1981, single-man seniority term
- D-2-16** Draft Manual for the Work of Commands and Staffs
- D-2-17** Rules of service of military police of the armed forces of SFRY, 1985.
- D-2-18** Vehicle Log Sheet issued to Božidar Stankić
- D-2-19** Vehicle Log Sheet issued to Stevo Jović
- D-2-20** Roster of R-company members in July
- D-2-21** Photograph of Pilica Dom where the witness Ratko Tašić marked the spot where buses and trucks were parked in front of the Dom
- D-2-22** Photograph of Branjevo Farm where the Witness Milivoje Nikolić marked the spots where buses were parked, where soldiers were and where he was
- D-2-23** Photograph of the Kula School in Pilica, where the Witness Dragan Pantić marked the spot where he met Slavko Perić
- D-2-24** Report by the Expert Witness Stefan Karganović, Analysis of Muslim column losses due to mine fields, combat activities and other causes

- D-2-25** Report on forensic findings related to the Pilica execution site in July 1995, Expert Witness Ljubiša Simić
- D-2-26** Expert Report for the Defense of Slavko Perić, Expert Witness Petar Vuga, 5 January 2011
- D-2-27** Copy of the Death Certificate of Rajo Đorđić, issues by the Zvornik Military Post
- D-2-28** Part of the Transcript of Ljubomir Mitrović (pp. from 23638 to 23648)

X. ANNEX 3

CLAIMS UNDER PROPERTY LAW

KILLED PERSON	CLAIMANTS AND AGGRIEVED PARTIES	AMOUNT
Hasan Buljubašić	Hanija Buljibašić (wife) Jasmin Buljubašić (son) Jasmina Osmanović née Buljubašić (daughter)	
	Havka Cumurović	
	Aiša Alić	
Camil Jugović Fikret Jugović	Mejra Jugović (wife Camila) Bjelka Jugović (wife Fikreta) Šemsada Jugović (daughter of Fikret and Bjelka)	52,000.00 KM
Kadrija Peimanović	Hajrija Peimanović (wife) Narela Peimanović (daughter) Anel Peimanović (son) Aldina Peimanović (daughter) Anela Peimanović (daughter)	68,000.00 KM
Hasan (son of Salih) Begić	Mirso Begić (brother) Mirela Begić (daughter)	90,000.00 KM
Ibrahim Hamzabegović	Dedo Hamzabegović (son)	30,000.00 KM
Husein Ibrišević	Bajazit Ibrišević (son)	60,000.00 KM
Sado Ademović	Muška Ademović (daughter/sister-in-law)	60,000.00 KM
Muhamed Jašarević	Izeta Jašarević (wife) Admira Jašarević (daughter)	110,000.00 KM
Zahrudin Osmić	Bajro Osmić (father)	60,000.00 KM
	Mujo Cumurović	
Ramiz Kajić	Samka Kajić (wife) Samira Tulumović née Kajić (daughter) Samir Kajić (son) Selvira Kuduzović née Kajić	100,000.00 KM
Samir Đogaz	Razija Husejinović née Đogaz (sister)	100,000.00 KM
Samir Đogaz	Hanifa Đogaz (mother)	100,000.00 KM
Samir Đogaz	Đeva Djurović née Đogaz (sister)	100,000.00 KM
Hajro Gerović	Mevlija Gerović (wife)	20,000.00 KM
Muriz Kalić	Idriz Kalić (father) Ešef Kalić (mother)	250,000.00 KM
Esad Bešić	Ahmo Bešić (father)	100,000.00 KM
Smail Omerović	Sadeta Omerović (wife) Samira Hasanović née Omerović (daughter) Samir Omerović (son) Amir Omerović (son)	80,000.00 KM
Seid Jusić	Medina Jusić (wife)	
Mehmed Mehinović	Muhamed Mehinović (son)	
Bego Hasanović	Fatima Halilović née Hasanović (daughter)	
Nezir Cerimović	Cemil (Cerimović son)	
Mirza Hajdarević	Muniba Hajdarević (mother)	

Idriz Sabić	Mina Sabić née Suljić (wife)	
Aziz Salkić	Kadira Mandžić (relative)	
Cazim Cakanović	Jusuf Cakanović (son)	12,000.00 KM
Cazim Cakanović	Hilmo Cakanović (son)	12,000.00 KM
Cazim Cakanović	Mejra Cakanović (wife)	20,000.00 KM
Nusret Omerović	Fadila Omerović (wife)	
Đemo Nuhanović	Hafiza Harbaš née Nuhanović (sister)	100,000.00 KM
Kadir Ibrahimović	Raza Ibrahimović (mother)	20,000.00 KM
Sejdalija Mustafić	Fatima Mustafić (wife) Senada Mustafić (daughter) Sead Mustafić (son)	60,000.00 KM
Nedžad Numanović	Jasna Soljankić (sister)	
Kadrija Delić	Hajra Delić (wife) Alma Delić (daughter) Amir Delić (son)	60,000.00 KM
Salko Mustafić	Fikret Mustafić (son)	20,000.00 KM
Seval Krlić	Amira Krlić (wife)	
Esed Nuhanović	Meva Nuhanović (wife) Ahmedin Nuhanović (son) Senada Sulejmanović née Nuhanović (daughter)	80,000.00 KM
Hamed Brdarević	Azira Brdarević (wife) Mensur Rizvanović (son) Smajo Brdarević (son) Mejra Brdarević (daughter) Ahmedina Brdarević (daughter)	100,000.00 KM
Husein Hasić	Muša Hasić (wife)	20,000.00 KM
Hasan Rizvanović	Mensur Rizvanović (son) Mula Hasić (daughter) Munira Rizvanović (wife)	
Zekir Alemić	Mejra Zuhrić (close relative)	
Senad Uvalić	Zajim Uvalić (sister)	
Adem Omerović	Muška Halilović (daughter)	5,000.00 KM
Hasan Bektić	Ajša Bektić (wife)	5,000.00 KM
Džemal Hasanović	Emina Hasanović (daughter)	20,000.00 KM
Alija Salkić	Osman Salkić (son)	
Islam Rahmić	Emina Rahmić (wife) Mirsad Rahmić (son) Adnan Rahmić (son) Amela Rahmić (daughter)	80,000.00 KM
Saban Rahmić	Ajka Rahmić (wife) Mirsada Karić (daughter) Kiram Rahmić (son)	60,000.00 KM
Nezir Džananović	Zekir Dažnanović (son)	20,000.00 KM
Safet Salihović Remzad Salihović	Remzija Salihović (wife and mother)	100,000.00 KM
Ibrahim Ademović	Ešefa Halilović (daughter)	50,000.00 KM
Ibrahim Ademović	Fahrudin Ademović (son)	50,000.00 KM
Sakib Hukić	Sadeta Hukić (mother)	100,000.00 KM
Azmir Kardašević	Hazir Kardašević (brother)	100,000.00 KM
Muhamed Salkić Ađem Salkić	Kada Salkić (mother)	500,000.00 €
Bajro Mujić	Hamed Mujić (son)	200,000.00 KM
Semso Ibrahimović	Merka Ibrahimović (wife) Razija Omerović (daughter) Remzija Muhić (daughter) Revda Ibrahimović (daughter) Dževad Ibrahimović (son)	250,000.00 KM
Juso Smajić	Suada Omerović (daughter)-20,000.00 KM, to his sister Sena Halilović – 20,000.00 KM and to his brother Dževad Smajić – 20,000.00 KM	60,000.00 KM



Orić Selmir	Orić Esma (wife) -20.000,00 KM, to their child Samra Orić -15.000,00 KM	35,000.00 KM
Omer Imamović	Hajrija Imamović (wife)	240,000.00 KM
Nevzet Imamović	Safija Imamović (mother)	240,000.00 KM
Sahin Mešanović	Samsa Mešanović (wife)	300,000.00 KM
Abdulrahman Ademović	Alaga Ademović (son) Hedija Avdić (daughter)	
Munir Alić	Zekira Alić (wife)	
Junuz Mujić	Suada Mujić (wife)	
Besim Alić	Mafija Alić (wife)	
Muhamed Ahmetović	Zilka Ahmetović (wife)	
Osman Smajlović	Zijad Smajlović (son)	
Hašim Gabeljić	Munevera Gabeljić (wife)	
Hilmo Subašić	Munira Subašić (wife)	
Rijad Fejzić	Sabaheta Fejzić (mother)	
Omer Sahomerović	Zumra Sahomerović (wife)	
Redžo Malagić	Raha Malagić (daughter)	
Mustafa Gurgić	Ramiza Gurdic (mother)	
Mehrudin Gurdic	Ramiza Gurdic (mother)	
Zaim Nikić	Fahira Ibrisević (daughter)	
Feho Husejnović	Hatidža Husejnović (wife)	
Džemal Avdić	Razija Catić (daughter)	
Džemal Karić	Hurija Karić (wife)	
Ahmo Omerović	Suada Omerović (wife)	
Nedžad Begić	Behara Hasanović (wife)	
Nermin Hasanović	Behara Hasanović	
Rifet Burić	Saha Pršeš (sister)	
Samir Begić	Enisa Begić (sister)	
Asim Smajlović	Tahira Hajdarević	
Hilmo Subašić	Vahidin Subašić (son)	
Himzo Bosno	Nizama Bosno (wife)	
Sakib Alić	Medija Alić (wife)	
Mujo Hasanović	Muhidin Hasanović (son) Muša Durgutović (daughter) Raza Imamović (daughter) Ajka Brkić (daughter) Ševala Hasanović (daughter)	475,000.00 KM
Mujo Hadžić	Hazim Hadžić (son)	40,000.00 KM for each of the eight children of the deceased Mujo Hadžić
Mehmed Mehmedović	Rukija Bešić (daughter)	70,000.00 KM
Semso Sinanović	Mehmed Sinanović (son)	
Rudolf Hren	Rarbara Hren	100,000.00 KM
Sadik Smajlović	Kadira Smajlović (wife)	98,000.00 KM
Omer Cvrk	Ramiza Cvrk (mother) Muhamed Cvrk (brother) Nermina Talović (sister) Fatima Karić (sister)	240.00 KM
Bahrudin Efendić	Rumša Efendić (mother) Hajrudin Efendić (father)	120,000.00 KM
Muhamed Jahić	Zumra Jahić (mother) Nihad Jahić (brother) Suvada Osmić (sister) Mirsada Jahić (sister) Nihada Jahić (sister)	140,000.00 KM
Salih Jahić	Fatima Jahić (mother) Mirfeta Jahić (sister)	80,000.00 KM

Husein Sabanović	Hurija Šabanović (wife) Sejdo Šabanović (son) Sabaheta Mustafić (sister) Sevleta Hodžić (daughter)	240,000.00 KM
Husein Sabanović	Hurija Šabanović (wife) Sejdo Šabanović (son) Sabaheta Mustafić (daughter) Sevleta Hodžić (daughter)	240,000.00 KM
Sadik Saranović	Saranović Hadžić (wife)	60,000.00 KM
Elvis Salkić	Sevka Salkić (mother) Advo Salkić (brother)	80,000.00 KM
Hamed Halilović	Himzo Halilović (father)	60,000.00 KM
Hasan Hafizović	Muša Hafizović (wife) AmeHafizović I (son)	120,000.00 KM
Esmin Salihović	Kadira Salihović (mother) Esma Malagić (sister)	80,000.00 KM
Sabrija Salihović	Kadira Salihović (mother) Esma Malagić (sister)	80,000.00 KM
Meho Salihović	Kadira Salihović (wife) Esma Malagić (daughter)	120,000.00 KM
J usufTepić	Safija Tepić (wife) Mujo Tepić (son) Mahmut Tepić (son) Midhat Tepić (son)	240,000.00 KM
Nedžib Smajlović	Kada Smajlović (wife) Edhem Smajlović (son) Hedib Smajlović (son) Zahir Smajlović (son) Hediba Smajlović (daughter)	300,000.00 KM
Rizo Parić	Dževahira Parić (wife) Ahmed Parić (son) Alema Parić (daughter)	180,000.00 KM
Abid Gabeljić	Zemina Gabeljić (wife) Nizama Gabeljić (daughter) Abedina Gabeljić (daughter) Senada Hajdarbegović (daughter) Ešef Gabeljić (son)	300,000.00 KM
Bahrudin Uzunović	Hajrija Uzunović (mother)	60,000.00 KM
Halid Begić	Ševala Begić (wife) Sanid Begić (son) Damir Begić (son) Halida Begić (daughter)	240,000.00 KM
Zulfo Smajlović	Remzija Salihović	20,000.00 KM
Zajim Mehić	Himza Mehić (wife) Emina Bečić (daughter)	
Behadil Husić	Ajka Husić (mother) Begajeta Ademović (daughter)	
Fadil Husić	Ajka Husić (mother) Begajeta Ademović (sister) Razija Husić (wife) Azmir Husić (son) Fadi Husić I (son)	
Fikret Husić	Ajka Husić (mother) Begajeta Ademović (sister)	
Murat Korkutović	Abida Korkutović (wife) Ramiza Korkutović (daughter)	
Jasmin Salihović	Fatima Salihović (mother)	
Safet Hamzabegović	Vasvija Hamzabegović (mother)	
Saiba Jahić	Razija Jahić (wife) Meldina Gagulić (daughter) Meldin Jahić (son)	
Fikret Osmanović	Merima Osmanović (wife)	60,000.00 KM

Hajrudin (son of Alija) Đogaz	Fatima Đogaz (wife) Elma Uyar née Đogaz (daughter) Dženifa Đogaz (daughter) Almer Đogaz (son)	240,000.00 KM
Mevludin Omerović	Safija Omerović née Majstorović (wife) Fahrudin Omerović (son)	150,000.00 KM
Sahin Halilović	Naza Đikanović née Halilović (daughter)	20,000,00 KM
Hasan Alić	Almasa Alić (wife) Elvir Alić (son)	60,000.00 KM
Elvis Alić	Almasa (Alić mother) Elvir Alić (brother)	60,000.00 KM
Ibrahim Ademović	Erdin Ademović (son)	50,000.00 KM
Ejub Nekić	Adnan Nekić (son) Rijada Nekić (daughter) Nizama Nekić (wife)	180,000.00 KM
Fehim Bešić	Jasmin Bešić (son) Hiba Bešić (wife) Ferisa Ademović née Bešić (daughter) Ramiza Jašarević née Bešić	
Alija Salkić	Osman Salkić (son)	
Huso Begović	Azra Begović (wife) Alma Šečerović née Begović (daughter) Aida Babić née Begović (daughter) Muhamed Begović (son)	
Hajrudin Salihović	Hasija Salihović (wife) Admir Salihović (son) Admira Skorupan née Salihović (daughter) Samira Crnčević née Salihović (daughter)	80,000.00 KM
Zijad Hasanović	Mevlida Osmanović (daughter)	
Hasan Velić	Rahima Velić	
Munib Imširović	Esma Imširović	
Memiš Suljić	Nazifa Selimović née Suljić (daughter)	12,000.00 KM
Kasim Omerović	Fata Omerović (mother)	60,000.00 KM
Bego Ibrišević	Mejra Ibrišević (wife) Hamdija Ibrišević (son) Almira Ibrišević (daughter)	60,000.00 KM
Safet Vejzović	Fadila Vejzović (wife) Nihada Vejzović (daughter) Nermin Vejzović (son)	60,000.00 KM
Nail Hasanović	Hasanović Mejaza (wife)	170,000.00 KM
Fehim Hamzabegović	Jusuf Hamzabegović (relative)	30,000.00 KM
Vehid Avdić	Hamida Avdić (mother)	20,000.00 KM
Nezir Jakupović	Izet Jakubović (son) Idriz Jakupović (son) Ramo Jakupović (son)	
Ahmed Mujkić	Samija Alić née Mujkić (daughter) Saliha Beganović née Mujkić (daughter)	100,000.00 KM - material damage  60,000.00 KM – non-material damage  10,000.00 KM – repossession of golden jewelry and personal valuable items

Osman (son of Smajo) Smajlović Omer (son of Osman) Smajlović Jusuf (son of Osman) Smajlović Samedin (son of Jusuf) Smajlović Fahrudin (son of Jusuf) Smajlović	Zijad (son of Osman) Smajlović Tima (daughter of Osman) Mešanović Tifa (daughter of Osman) Murselović Edin (son of Jusuf, grandson of Osman) Smajlović Emir (son of Omer, grandson of Osman) Smajlović Damir (son of Omer, grandson of Osman) Smajlović Esnefa (daughter of Omer, grandson of Osman) Smajlović	100,000.00 KM- material damage  210,000.00 KM- non-material damage  10,000.00 KM- repossession of golden jewelry and personal valuable items
Ibro Osmanović	Kada Husić (daughter) Ramiza Buljibašić (daughter) Emir Osmanović (son) Džeko Osmanović (son) Munevera Osmanović (wife)	100,000.00 KM
Alija Delić	Hadžira Delić (wife) Safet Delić (son) Biba Delić (daughter) Suljo Delić (son)	80,000.00 KM
Mustafa Alić	Mevlida Alić (wife)	
Hajro Mešanović	Zada Mešanović (wife) Ismet Mešanović (son) Abid Mešanović (son)	78,000.00 KM - non-material damage 84,000.00 KM- material damage
Mevludin Džanić	Hajrudin Džanić (brother)	50,000.00 KM
Amer Imamović	Hajrija Imamović (mother)	240,000.00 KM
Omer Imamović	Hajrija Imamović (wife)	240,000.00 KM
Nevzet Imamović	Safija Imamović (mother)	240,000.00 KM
Kasim Hasanović	Razija Hasanović (wife) Kasim Hasanović (son) Amira Hasanović (daughter) Asim Hasanović (son)	90,000.00 KM
Meho Mehić	Sabra Mehić (wife) Sabit Mehić (son) Sadik Mehić (son) Iša Mehić (daughter) Sadina Mehić (daughter)	
Ibrahim Muminović	Alija Muminović (son)	200,000.00 KM
Meho Hasanović	Senad Hasanović (son) Munira Hasanović (wife) Mehdija Smajlović née Hasanović (daughter)	60,000.00 KM
Ibrahim Dedić	Alija Dedić (wife)	
Dahmo Hasić	Sevlja Hasić (wife) Zelja Hasić (mother) Avdo Hasić (son) Adela Hasić (daughter) Adisa Hasić (daughter)	100,000.00 KM
Muhibija Osmanović	Kemal Osmanović (son)	100,000.00 KM
Avdo Husejinović	Ramiz Husejinović (son)	30,000.00 KM
Rešad Krdžić	Mejra Suljić (sister) Šida Krdžić (sister) Suljo Krdžić (brother) Sabra Smajlović (sister) Javra Mujčinović (sister) Šaha Suljić (sister)	180,000.00 KM
Behudin Nukić	Nermina Nukić (daughter)	20,000.00 KM

Muhamera Selimović	Medina Alić (sister) Ismail Selimović (father) Razija Dedić (sister) Rizo Selimović (brother)	
Hamdija Kuduzović	Fatima Cardaković (daughter)	
Mahmut Alić	Alija Alić (son) Aldin Alić (son)	
Husein Hajdarević	Senaid Hajdarević (son)	
Huso Jasarević	Kiram Jašarević (son)	
Salko Mustafić	Fikret Mustafić (son)	20,000.00 KM
Pembo Suljić Azmir Suljić	Azret Suljić (son of Pemba, brother of Azmir)	
Husein Jusić	Hidajeta Golić (sister)	
Azem Dautović	Nezira Dautović (wife) Amel Dautović (son)	
Jusuf Smajić	Zijada Alić (daughter) Jakub Smajić (son) Edin Smajić (son) Begajeta Hrustić (daughter) Malka Smajić (wife)	100,000.00 KM
Abid Ademović	Amil Ademović (son)	
Name is not indicated	Azra Husić	20,000.00 KM-material damage  10,000.00 KM- non-material damage
Name is not indicated	Rahima Jusić Muška Zukić née Jusić (sister) Muška Zukić (sister) Senada Zildžić née Jusić (sister) Adila Mustafić née Jusić (sister)	110,000.00 KM
Azem Husejinović	Džemila Husejinović (wife) Damir Husejinović (son) Alen Husejinović (son) Vahida Ćurić née Husejinović (daughter)	120,000.00 KM
Omer Suljić	Bahra Suljić (daughter)	150,000.00 KM
Mujo Hasanović	Muhidin Hasanović (son) Muša Durgutović (daughter) Raza Imamović (daughter) Ajka Brkić (daughter) Ševala Hasanović (daughter)	
Hajrudin Dervišević	Sabira Chrisostomidis (daughter) Amira Zagrljaća (daughter) Sabaheta Latifović (daughter)	
Omer Alić	Zumra Omerović (sister) Smajo Alić (brother) Ajiša Ibrahimović (sister)	14,000.00 KM
Rizvo Selimović	Bajro Selimović (son) Hašija Krdžić (daughter) Sabaheta Muminović (daughter)	150,000.00 KM

Note: the aggrieved parties Witness Q, Witness P6, and Munira Subašić stated at the main trial that they claimed damages but did not specify their claims