

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine  
Суд Босне и Херцеговине

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Case Number: S1 1 K 003417 10 Krl (X-KR-09/823-1)

Date: Pronounced: 25 May 2012  
Written Verdict Issued: 22 August 2012

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Before the Panel composed of: Judge Mira Smajlović, President  
Judge Zoran Božić, member  
Judge Mitja Kozamernik, member

CASE OF PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

DUŠKO JEVIĆ  
MENDELJEV ĐURIĆ  
GORAN MARKOVIĆ  
NEĐO IKONIĆ

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VERDICT

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Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina: Ibro Bulić

Defense Counsel for the Accused Duško Jević, Attorneys Vera Lazić and Dragan Gotovac

Defense Counsel for the Accused Mendeljev Đurić, Attorneys Miodrag Stojanović and Miloš Perić

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<b>VERDICT</b> .....	<b>6</b>
<b>I. PROCEDURAL HISTORY</b> .....	<b>16</b>
A. INDICTMENT AND MAIN TRIAL .....	16
1. Closing arguments .....	17
B. GENERAL CONSIDERATION OF EVIDENCE OF THE CASE .....	23
1. Indirect evidence .....	32
<b>II. APPLICATION OF SUBSTANTIVE LAW</b> .....	<b>33</b>
A. APPLICABLE LAW .....	33
<b>III. SUMMARY OF THE CASES OF THE ICTY, THE INTERNATIONAL COURT OF JUSTICE AND THE COURT OF BIH ON THE EXISTENCE OF GENOCIDE IN SREBRENICA</b> .....	<b>34</b>
A. JOINT CRIMINAL ENTERPRISE .....	35
<b>IV. SUMMARY OF GENOCIDAL PLAN</b> .....	<b>40</b>
A. GENERAL OVERVIEW .....	40
B. ORGANIZATION OF VRS .....	41
1. Structure of the Main Staff .....	41
2. Level of Corps and Brigades .....	42
C. FORCES OF MINISTRY OF THE INTERIOR (RS MUP) – COMMAND AND CONTROL RELATION WITH VRS .....	42
1. Command Structure of Jahorina Training Center .....	44
D. PREPARATION FOR THE ATTACK .....	59
E. THE ATTACK ON AND THE FALL OF SREBRENICA .....	63
1. Character of the attack .....	66
<b>V. REALIZATION OF GENOCIDAL PLAN</b> .....	<b>68</b>
1. Arrival of the Accused in the Srebrenica Safe Area .....	69
2. Advance toward Potočari .....	71
3. Disarming of the Dutch Battalion members at the entrance to Potočari .....	72
4. Participation of Jahorina Training Center members in terrain search (the village of Budak) .....	73
<b>VI. FORCIBLE TRANSFER OF CIVILIANS</b> .....	<b>77</b>
1. General factual findings .....	77

2. Conclusion about the forcible character of the removal of civilians from Potočari...	81
3. Acts of the Accused Duško Jević and Mendeljev Đurić .....	86
4. Events in Potočari.....	92
<b>VII. FORCIBLE SEPARATION OF ABLE BODIED MEN .....</b>	<b>97</b>
1. General Factual Findings .....	97
2. The Acts of the Accused in the Separation of Able Bodied Men .....	99
<b>VIII. DEPLOYMENT OF MEMBERS OF THE SPECIAL BRIGADE ALONG THE ROAD DURING 12 AND 13 JULY .....</b>	<b>106</b>
1. General Findings.....	106
2. Acts of the Accused Duško Jević and Mendeljev Đurić in the Deployment of Members of the Unit along the Road on 12 July .....	106
3. Composition and Structure of the Column of Muslims Moving toward Tuzla .....	110
<b>B. SURRENDER OF MUSLIMS FROM THE COLUMN AND THEIR DETENTION IN A MEADOW IN SANDIĆI.....</b>	<b>116</b>
1. General Ratko Mladić Addressed the Prisoners in Sandići .....	118
<b>IX. THE KRAVICA WAREHOUSE/ HANGAR.....</b>	<b>123</b>
A. MASS EXECUTIONS.....	124
B. ARRIVAL OF THE ACCUSED DUŠKO JEVIĆ AND MENDELJEV ĐURIĆ WITH A PART OF I COMPANY IN FRONT OF THE HANGAR OF THE <i>KRAVICA</i> FC IN THE EVENING HOURS OF 13 JULY .....	130
C. LIQUIDATION OF SEVERAL DOZEN OF PRISONERS DURING 14 JULY.....	139
D. PARTICIPATION OF VOLUNTEERS IN LIQUIDATIONS IN THE <i>KRAVICA</i> FC WAREHOUSE ON 13 JULY.....	147
E. “OPPORTUNISTIC” KILLINGS OF PRISONERS ALONG THE ROAD DURING 13 JULY .....	149
F. REMOVAL AND BURIAL OF THE KILLED MEN FROM THE <i>KRAVICA</i> WAREHOUSE.....	156
1. General Factual Findings .....	157
2. Reburial of Bodies .....	161
3. Forensic Evidence in the Warehouse.....	163
<b>X. SEARCH OF THE TERRAIN ON 17/18 JULY 1995.....</b>	<b>169</b>
2. Individual killings of prisoners during the search .....	176
<b>XI. LEGAL QUALIFICATION OF THE CRIMINAL OFFENSE OF GENOCIDE .....</b>	<b>178</b>
1. Underlying acts of the criminal offense of Genocide.....	179

B. GENOCIDAL INTENT .....	183
<b>XII. RESPONSIBILITY OF THE ACCUSED FOR AIDING IN GENOCIDE .....</b>	<b>191</b>
1. Knowledge of the Accused of the genocidal intent of the principal perpetrators....	193
<b>XIII. CONCLUSION ABOUT THE RESPONSIBILITY OF THE ACCUSED DUŠKO JEVIĆ AND MENDELJEV ĐURIĆ .....</b>	<b>207</b>
<b>XIV. DECISION ON SENTENCE.....</b>	<b>209</b>
1. The purpose of punishment .....	209
2. Principles of meting out punishment.....	210
3. Individualization of punishment .....	212
<b>XV. ACQUITTING PART OF THE VERDICT RELATING TO THE ACCUSED GORAN MARKOVIĆ .....</b>	<b>214</b>
1. Participation in the search of the terrain (village of Budak) .....	214
2. Presence in Potočari, participation in the forcible transfer and separation of men	216
3. Participation in the executions in front of the Kravica warehouse .....	219
4. Search of the terrain on 17 and 18 July, killing of prisoners and escorting prisoners in the direction of Konjević Polje.....	225
<b>XVI. ACQUITTING PART OF THE VERDICT RELEVANT TO THE ACCUSED NEĐO IKONIĆ .....</b>	<b>227</b>
1. Deployment of members of the 2 <sup>nd</sup> Company along the road .....	227
2. Alibi of the Accused Ikonić for the events of 13 July .....	232
3. Surrender of 100-150 prisoners on 14 July in the AOR of the 2 <sup>nd</sup> Company .....	232
4. Search of the terrain on 17 July and taking the prisoners in the direction of Konjević Polje.....	236
<b>XVII. DECISION ON COSTS OF CRIMINAL PROCEEDINGS .....</b>	<b>238</b>
<b>XVIII. DECISION ON CLAIMS UNDER PROPERTY LAW .....</b>	<b>239</b>
<b>XIX. ANNEX I.....</b>	<b>240</b>
A. PROCEDURAL DECISIONS .....	240
1. Exclusion of the public and granting protective measures to witnesses.....	240
2. Resumption of the trial after the expiry of the statutory 30 (thirty) days .....	254
3. Digression in the presentation of evidence.....	255

4. Prohibition against contacts with witnesses for the Prosecution.....	256
5. Trial Motion 2 – Motion for acceptance of established facts.....	256
6. Introduction of previous statements of witnesses and mandatory disclosure of evidence .....	269
7. Tendering into evidence the statements given before the ICTY .....	270
8. Statements made by the Accused in their capacity as suspects .....	274
9. Admitting evidence under the Law on the Transfer of Cases.....	282
<b>XX. ANNEX II.....</b>	<b>284</b>
A. PRESENTED EVIDENCE .....	284
1. Examined witnesses for the Prosecution .....	284
2. Examined witnesses for the defense.....	286
3. Examined Court witnesses.....	287
4. Documentary evidence for the Prosecutor’s Office.....	287
1. Documentary evidence for the defense .....	299
2. Documentary evidence of the Court.....	302

## IN THE NAME OF BOSNIA AND HERZEGOVINA !

The Court of Bosnia and Herzegovina, sitting on the Panel composed of Judge Mira Smajlović, as the President, and Judge Zoran Božić and Judge Mitja Kozamernik, as the Panel members, with the participation of Legal Advisor – Assistant Lejla Kurtanović, as the record-taker, in the criminal case conducted against the Accused Duško Jević, Mendeljev Đurić, Goran Marković and Neđo Ikonić, for the criminal offense of Genocide, in violation of Article 171 (a) and (b) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), as read with Article 180(1) of the CC of BiH and Article 31 of the CC of BiH, based on the Indictment filed by the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-101/07 of 15 January 2010, confirmed on 22 January 2010, and the Indictment No. KT-RZ-82/08 of 12 March 2010, confirmed on 19 March 2010, merged into a single amended Indictment dated 6 March 2012, following the public main trial, from which the public was partially excluded, in the presence of the Accused Duško Jević and his Defense Counsel, Attorney Vera Lazić, the Accused Mendeljev Đurić and his Defense co-Counsel, Attorney Dragoslav Perić, the Accused Goran Marković and his Defense Counsel, Veljko Čivša, the Accused Neđo Ikonić and his Defense Counsel, Attorney Nenad Rubež and Attorney Dragiša Mihajlović, and the Prosecutor for the Prosecutor's Office of BiH, Ibro Bulić, on 24 May 2012 rendered, and on 25 May 2012, publicly announced the following:

### VERDICT

#### I

#### THE ACCUSED:

- 1. DUŠKO JEVIĆ, a.k.a. Staljin**, son of Branko and Draginja née Grbić, born on 21 June 1957 in the village of Vođenica, Municipality of Bosanski Petrovac, with residence in ..., at....; Personal Identification Number ..., citizen of ..., of ... ethnicity, married, with one child of age, pensioner, indigent, awarded a medal, no prior conviction, no other criminal proceedings pending, arrested at 10.25 hrs on 28 October 2009, in custody pursuant to the Decision of the Court of BiH;
- 2. MENDELJEV ĐURIĆ, a.k.a. Mane**, son of Tomo and Jela née Babić, born on 15 October 1960 in Olovo, with residence in..., at ....; Personal Identification Number ..., citizen of ..., of ... ethnicity, married with two children, pensioner, indigent, awarded a medal, no prior conviction, no other criminal proceedings pending, arrested at 10.26 hrs on 28 October 2009, in custody pursuant to the Decision of the Court of BiH;

### HAVE BEEN FOUND GUILTY

*Of the following:*

**I Duško Jević**, as an Assistant to Commander of the Special Police Brigade (SBP) of the RS MUP (Ministry of the Interior of Republika Srpska) and Commander of the Jahorina Training Center of the Special Police Brigade, **Mendeljev Đurić**, as the Commander of the 1st Company of the Jahorina Training Center, during the period from 10 July to 19 July 1995, knowingly aided members of a joint criminal enterprise (JCE), including some officers of the Main Staff of the Army of Republika Srpska (GŠ VRS) and senior security officers of the VRS and other members of the military and civilian leadership of Republika Srpska, who acted with the intent of partially destroying the group of Bosniak people by forcible transfer of around 40,000 women, children and elderly and summary executions of 7,000-8,000 Bosniak men, hence the Accused, being aware of the ongoing forcible transfer of civilians and that the Bosniak men would be executed summarily, ordered members of the 1st Company to participate in the forcible transfer of the Bosniak civilian population from Potočari, separation of the able-bodied men and their detention in the so-called *Bijela kuća* [White House], as a provisional detention place, and in the subsequent mass killing of the detained Bosniak men in the warehouse of the *Kravica* Farming Cooperative, in the manner as follows:

1. On 12 July 1995, fully aware of the plan of forcible transfer of the Bosniak civilian population, at the time when the Bosniak population were leaving their property, escaping to the UN Compound in Potočari, members of the 1st Company of the Jahorina Training Center under the order and supervision of **Duško Jević and Mendeljev Đurić**, having previously disarmed some members of the Dutch Battalion of the UN, together with other units of the police and the VRS, armed with automatic weapons, in accordance with tasks previously received from the Accused that all members of the Bosniak people should be directed to the collection center in Potočari, knowing that the Bosniak civilian population from the UN Safe Area of Srebrenica was assembling there and that it would be evacuated, they searched Bosniak houses in the settlement of Budak near Potočari, on which occasion one member of the 1st Company of the Jahorina Training Center activated a hand grenade and threw it into a house where there was a bedridden old Bosniak man, whereupon on 12 and 13 July, the Accused **Duško Jević and Mendeljev Đurić** ordered and supervised members of their unit to load Bosniak women and children aboard buses and trucks in Potočari, in coordination with members of the Military Police of the Bratunac Brigade, fully aware that the catastrophic humanitarian situation in which thousands of Bosniak civilians found themselves in without food, water, and accommodation, would facilitate the forcible transfer of the Bosniak civilian population, hence during the forcible transfer of and violence against the Bosniak civilians, in the afternoon of 12 July 1995, the Accused **Duško Jević and Mendeljev Đurić** deployed members of the 1st Company of the Jahorina Training Center along the Bratunac-Konjević Polje road, with a task to keep it passable in order to enable an unhindered passage of buses and trucks with the Bosniak women and children whom they had previously loaded onto the buses and trucks in Potočari, and in doing so the Accused were aware that the Bosniak population from Potočari would be forcibly transferred to the territory under the control of the Army of BiH;

2. On 12 and 13 July 1995, in Potočari, the Accused **Duško Jević and Mendeljev**

**Đurić**, aware of the plan of separating the able-bodied men and aware that these men would be summarily executed, ordered members of the 1st Company of the Jahorina Training Center to systematically separate in Potočari several hundred Bosniak men aged 16-70 from their families, on which occasion they were dispossessed of their personal belongings, including personal documents, money, and valuables, and were hit by rifle butts and kicked, whereupon they took one Bosniak man out of the bus aboard which were the women and children, knocked him down, and then took him away and killed him, whereupon they took the separated men to the nearby *White House*, where they kept them under guard and in front of which they had to leave their personal belongings, wherefrom N.M., member of the 1st Company of the Jahorina Training Center, singled out at least 9 Bosniak men from the group of men who were in the *White House*, and then took them to a nearby creek where he killed them by pistol, while the other men from the *White House* were transported by trucks and buses to the places of provisional detention in Bratunac, whereupon, starting from the noon of 13 July 1995, the Accused Jević and Đurić ordered that some members of the 1st Company of the Jahorina Training Center should deploy along the Bratunac-Konjević Polje road with a view to capturing the Bosniak boys and men who were trying to flee the UN Safe Area of Srebrenica through the woods, aware that those captured men would be summarily executed;

3. In the late afternoon of 13 July 1995, members of the 2nd Detachment of the Šekovići Special Police Brigade started the executions of around 1,000 captured Bosniak men detained in the *Kravica* Farming Cooperative Warehouse, firing against them from automatic rifles and throwing hand grenades into the warehouse; the Accused **Duško Jević** and **Mendeljev Đurić**, aware of the ongoing killing of Bosniak men, in the evening of 13 July issued an order for the deployment of members of the 1st Company in front, behind, and around the Kravica warehouse and along the Bratunac-Konjević Polje road, with a view of continuing the capture and execution of Bosniak men, so that when members of the 1st Company of the Training Center arrived at the referenced location and replaced members of the 2nd Šekovići Detachment, under the command and supervision of the Accused Jević and Đurić they continued the executions of the surviving Bosniak men in the warehouse in the course of the night, during which time two members of the 1st Company of the Jahorina Training Center were throwing hand grenades into the warehouse where the surviving captives were held, while at the same time some captives were being killed by members of the 1st Company along the road, thus several members of the 1st Company, including Dragan Crnogorac, executed 10 captured Bosniak men, including 6 wounded, on a meadow next to the Konjević Polje-Bratunac road, while one member of the 1st Company killed two captured Bosniaks, whereupon in the course of 14 July members of the 1st Company of the Training Center also carried out executions of the captured Bosniaks who were brought in small or big groups, the biggest one counting 50-100 men, by members of the Special Police Brigade deployed farther down the road, including members of the 1st Company, whereupon N.M., Platoon Commander of the 1st Company of the Jahorina Training Center, commanded the execution of several dozen captives who were brought, as well as the ones who were already in the warehouse, conducted in the manner that members of the



1st Company misleadingly called the survivors of the 13 July execution by fire, including the wounded, to get out of the warehouse, and after they got out they were ordered to line up in several ranks and kneel down, whereupon they were executed by fire, after which individuals from the 1st Company fired from pistols and automatic rifles killing the captives who were still showing signs of life, that is, did "the check" of the survivors, whereby members of the 1st Company, under the order and supervision of the Accused Jević and Đurić, participated in the execution of around 1,000 captives, whose dead bodies they afterward covered with hay in order to cover up the mass executions, and when the transportation of the dead bodies started, a member of the 1st Company shot at one survivor who managed to escape;

4. On 17 and 18 July 1995, carrying out the order of the Commander of the Special Police Brigade of the RS MUP, the Accused **Duško Jević** and **Mendeljev Đurić**, commanded and supervised members of the 1st Company of the Jahorina Training Center, who participated, together with members of the 2nd Company of the Jahorina Training Center and parts of the VRS Bratunac Brigade, in a search of the forested area above the Bratunac-Konjević Polje road with the aim of finding and capturing the Bosniak men, aware that these men would also be summarily executed, during which search members of the 1st Company committed a couple of murders and during which more than 100 men were captured, including several Bosniak boys, whom they brought near the Konjević Polje–Bratunac road, at the locality of the village of Pervani, seized their personal belongings, including personal documents, money and valuables, tied their hands at their backs, and then handed them over to members of another unit, who took them farther in the direction of Konjević Polje, whereupon the captives were executed, including Munib (father's name Hasan) Cvrk and Munir (father's name Munib) Cvrk, whose bodies were subsequently identified in a mass grave in Cerska,

**Therefore**, the Accused Duško Jević and the Accused Mendeljev Đurić ordered and supervised members of the 1st Company of the Jahorina Training Center to participate in the forcible transfer of the Bosniak women, children and elderly to the area outside Republika Srpska, in the killings and causing serious bodily and mental harm to the group of Bosniaks, whereby they aided and abetted their partial destruction as a national, religious and ethnical group,

**whereby** they committed the criminal offense of Genocide in violation of Article 171(a) and (b) of the CC of BiH, as read with Article 180(1) and Article 31 of the CC of BiH.

Therefore, pursuant to Article 285 of the Criminal Procedure Code of Bosnia and Herzegovina (CPC of BiH) and in application of Articles 39, 42b., and 48 of the CC of BiH, for the committed criminal offense the Panel of the Court of BiH sentences them to long-term imprisonment as follows:

**THE ACCUSED DUŠKO JEVIĆ TO LONG-TERM IMPRISONMENT OF  
35 (THIRTY-FIVE) YEARS**

**THE ACCUSED MENDELJEV ĐURIĆ TO LONG-TERM IMPRISONMENT OF**

## 30 (THIRTY) YEARS

Pursuant to Article 56(1) of the CC of BiH, the time the Accused have spent in custody starting from 28 October 2009 is credited towards the pronounced imprisonment sentence.

## II

Pursuant to Article 284(1)(c) of the CPC of BiH, the Accused:

3. **NEDO IKONIĆ**, son of Milenko and Nevenka née Dragić, born on 26 June 1966 in Visoko, BiH, Personal Identification Number ..., with residence in ..., at ..., citizen of ... and ..., of ... ethnicity, married, father of two minor children, awarded the Medal of Major Milan Tepić, convicted of immigration fraud in the United States; arrested on 20 January 2010 by the Border Police of BiH at the Sarajevo International Airport, in custody pursuant to the Decision of the Court of BiH;

## IS HEREBY ACQUITTED OF THE CHARGES

**That:**

As the Commander of the 2nd Company of the Jahorina Training Center, together with the Accused **Duško Jević**, as the Assistant Commander of the Special Police Brigade of the MUP RS and Commander of the Jahorina Training Center of the Special Police Brigade, and the Accused **Mendeljev Đurić**, as the Commander of the 1st Company of the Jahorina Training Center, during the period from 10 July to 19 July 1995, participated in a JCE of killing the Bosniak men and a JCE of forcible transfer of the Bosniak civilian population, sharing the common intent and plan with other members of the JCE, including General Ratko Mladić, VRS Commander; Colonel Ljubiša Beara, Chief of Security of the VRS Main Staff; General Radislav Krstić, Commander of the Drina Corps; Lieutenant Colonel Vujadin Popović, Assistant Commander for Security of the Drina Corps; Colonel Vinko Pandurević, Commander of the Zvornik Brigade; Lieutenant Colonel Dragan Obrenović, Deputy Commander and Chief-of-Staff of the Zvornik Brigade; Colonel Vidoje Blagojević, Commander of the Bratunac Brigade; Momir Nikolić, Assistant Commander for Security and Intelligence of the Bratunac Brigade; Dragan Jokić, Chief of Engineering Unit of the Zvornik Brigade; Miroslav Deronjić, civilian Commissioner for Srebrenica; Goran Sarić, Commander of the Special Police Brigade of RS MUP; Dragomir Vasić, Chief of Zvornik Public Security Center (CJB), and various other individuals and the military and the police units, including the units of the Drina Corps, units of the VRS Main Staff, units of the RS MUP, including the Jahorina Training Center of the Special Police Brigade of RS, 2nd Detachment of the Šekovići Special Police Brigade, companies of the Special Police Unit (PJP) of the Zvornik CJB, Police Station Bratunac, and Police Station Zvornik, the common intent and plan being to partially destroy the group of Bosniak people by forcible transfer of around 40,000 women, children and elderly and summary executions of 7,000-8,000 Bosniak men,

10

whereby they planned, instigated, ordered, and aided and abetted the perpetration of the criminal offenses described in the Indictment, and by acting individually and in concert with the other JCE members contributed to the execution of the following:

**a) Joint criminal enterprise of killing, as follows:**

1. During the period from 12 July 1995 to 18 July 1995, **Duško Jević, Mendeljev Đurić and Neđo Ikonić** deployed members of the 1st and the 2nd Companies of the Jahorina Training Center on and in the proximity of the Bratunac-Konjević Polje road, with a view to capturing and executing Bosniak boys and men who tried to escape from the UN Safe Area of Srebrenica breaking through the woods because they feared capture and execution, and the Accused ordered, supervised, aided and abetted and instigated with their presence their subordinates who, together with the 2nd Detachment of the Šekovići SBP, 1st Company of the Zvornik PJP CJB, and the VRS, participated in the capturing of several thousand Bosniak men and boys, whom they searched and dispossessed of their money, valuables and personal belongings, tied them and took them to provisional detention places, while they killed some of the captives along the road, including several wounded, 5-7 of them, who were killed by Dragan Crnogorac, while Aleksa Aco Golijanin ordered members of the Training Center, including Dragan Crnogorac, to execute 15-20 captured Bosniak men on a meadow next to the Konjević Polje-Bratunac road, whereupon he also participated in the killing of the captives, while Siniša Renovica, Platoon Commander of the 2nd Company, killed two Bosniak captives, and "Brko", Platoon Commander of the 2nd Company, killed at least one person, and on an undetermined date in the referenced period the Accused organized an operation of departure of volunteers, some 40-60 members of the 1st and the 2nd Companies, including T. and C., called "The Death Platoon", to carry out summary executions of the previously captured Bosniak men at the localities of the meadow in Sandići, the Kravica warehouse, and other unknown locations;

2. In the late afternoon of 13 July 1995, members of the 2nd Detachment started the executions of around 1,000 captured Bosniak men in the Kravica warehouse, shooting at them from automatic rifles and throwing hand grenades into the warehouse, whereupon **Duško Jević, Mendeljev Đurić and Neđo Ikonić**, aware of the ongoing killing of the Bosniak men, in the evening of 13 July, issued an order for deployment of their subordinates in front, behind, and around the Kravica warehouse and along the Bratunac-Konjević Polje road, with a view to capturing and executing the Bosniak men, the subordinates thus replacing the 2nd Šekovići Detachment, and under the command, leadership, and supervision of the Accused, continuing the executions of the surviving Bosniak men in the warehouse during the night and the following day, 14 July, while the Accused did not do anything for the surviving prisoners in that warehouse to be administered first aid or any medical care, whereby they instigated their subordinates to continue killing the captives, including even the ones who were showing signs of life lying among the bodies of the killed ones, on which occasion one Arkan and one Herzegovinian, members of the 1st Company of the Jahorina Training Center, threw hand grenades into the warehouse in which the surviving captives were held, while other

members of the Training Center executed by fire the Bosniak captives whom members of the 1st and the 2nd Companies brought throughout the whole day of 14 July from the direction of Konjević Polje in small and large groups, the largest one counting 50-100 men, while Neđo Milidragović, Platoon Commander of the 1st Company of the Jahorina Training Center, commanded over the execution of several dozen captives who were already in the warehouse and those who were brought subsequently, while the Accused Goran Marković called volunteers from his unit to do the executions, having previously lured the captives misleadingly to get out of the warehouse, and in order to get out of the warehouse the captives had to first remove the dead bodies from the warehouse exit, whereupon they lined up in several ranks the captives who had been severely wounded in the executions carried out in the Kravica warehouse during the previous day and night, ordered them to kneel down and then executed them, and, having executed all captives, individuals from the 1st and the 2nd Companies of the Jahorina Training Center, including Božidar Kuvelja, Zoran Ilić, and Arkan, fired from pistols and automatic rifles killing those captives who were showing signs of life, that is, did "the check" of those already executed, whereby they participated in the execution of more than 1,000 captives, whose dead bodies they covered with hay in order to cover up the mass executions, and when the transportation of the dead bodies started, members of the Training Center shot one survivor who tried to escape;

3. On 17 and 18 July 1995, carrying out the order of Goran Sarić, Commander of the Special Police Brigade of RS MUP, **Duško Jević, Neđo Ikonić, and Mendeljev Đurić**, commanded, supervised, and with their presence instigated members of the 1st and the 2nd Companies of the Jahorina Training Center to do a search of the forested area above the Bratunac-Konjević Polje road together with parts of the VRS Bratunac Brigade, with the aim of finding and capturing the Bosniak men in order to execute them, and having captured them, they liquidated at least four of the captured Bosniaks; two of them were summarily executed by Neđo Milidragović, Platoon Commander of the 1st Company, with automatic rifle, and another prisoner by Aco Golijanin with automatic rifle under the order of the Accused Goran Marković, while the fourth Bosniak prisoner was summarily executed in the place called Jelah by Zoran Ilić, also a member of the 1st Company. They brought several hundred Bosniak men and several Bosniak boys near the Konjević Polje–Bratunac road, in the village of Pervani, seized their personal belongings, including personal identification documents, money and valuables, tied their hands behind their backs, and then took them to and detained in a warehouse at the crossroad in Konjević Polje, where they executed them, including Munib (father's name Hasan) Cvrk and Munir (father's name Munib) Cvrk, who were identified among the dead bodies in the mass grave in Cerska.

**b) Joint criminal enterprise of forcible transfer of the Bosniak civilian population,** as follows:

1. During the period from 12 to 18 July 1995, **Duško Jević, Mendeljev Đurić and Neđo Ikonić** commanded, supervised, coordinated and by their presence instigated members of the Jahorina Training Center who kept the Bratunac-Konjević Polje road

passable in order to enable an unhindered passage of buses and trucks with the Bosniak women and children, whom they had previously loaded onto the buses and trucks in Potočari,

**Therefore**, that together with the Accused Duško Jević and Mendeljev Đurić, as a member of the joint criminal enterprise described in Counts (a) and (b) of the Indictment, he perpetrated, planned, instigated, and ordered the killing and causing serious bodily and mental harm to the group of Bosniaks, who, as Bosniaks from Eastern Bosnia, made up a significant part of the ethnic group of Bosniaks, and that he perpetrated, planned, instigated, and ordered forcible transfer of the Bosniak women, children and elderly to the areas outside Republika Srpska, with the intention to partially destroy the national, ethnic and religious group of Bosniaks,

**whereby** he would have committed the criminal offense of Genocide in violation of Article 171(1)(a) and (b) of the CC of BiH, as read with Article 180(1).

### III

Pursuant to Article 284(1)(c) of the CPC of B-H, the Accused:

**4. GORAN MARKOVIĆ**, son of Koja and Stanojka, née Vlajić, born on 8 November 1964 in Sarajevo, with residence in ..., at ..., temporarily residing in ..., Personal Identification Number ..., of ... ethnicity, citizen of ..., procedure to be granted the citizenship of ... underway, married with two minor children; pensioner, middle-income, awarded the Order of Miloš Obilić, no prior conviction, no other criminal proceedings pending, arrested at 11.15 hrs on 18 December 2009, in custody pursuant to the Decision of the Court of BiH;

### IS HEREBY ACQUITTED OF THE CHARGES

**That:**

During the period from 10 July to 19 July 1995, during a widespread and systematic attack of the army and the police of Republika Srpska against the Bosniak civilian population of the UN Safe Area of Srebrenica, aware of the attack, he commanded the 2nd Platoon of the 1st Company of the Jahorina Training Center by ordering, instigating, aiding and abetting the plan of partial destruction of the group of Bosniak people, by causing serious bodily and mental harm, by forcible transfer of the population, by separating men from their families, and by capturing and executing the Bosniak men from the UN Safe Area of Srebrenica,

**1.** On 12 July 1995, in the village of Budak near Potočari, at the time when Bosniak population were leaving their property, escaping to the UN Compound in Potočari, he commanded a platoon whose members, armed with automatic weapons, participated in

a search of the Bosniak houses with a view to collecting the Bosniak population and escorting them to the collection center in Potočari, aware that the Bosniak population from Potočari would be transferred against their own free will to the areas under the control of the Army of the Republic of BiH;

2. On 12 and 13 July 1995, he commanded a platoon whose members, together with other members of the 1st Company, participated in the forcible transfer of the civilian population from the UN compound in Potočari by buses and trucks to the areas under the control of the Army of R BiH, and they did so by loading onto the buses and trucks the women and children only, separating the men, more than 1,000 of them, not allowing them to get aboard the trucks and buses together with their families, having previously taken away their personal belongings, including personal documents, money and valuables, hitting them by rifle butts and kicking them, the strength of the blows knocking one Bosniak man down, and then they took them to the nearby *White House*, where they kept them under guard, wherefrom they were taken by trucks and buses to provisional places of detention in Bratunac, aware that those men would be summarily executed;

3. On 12 and 13 July 1995, he commanded the 2nd Platoon, whose members, together with other members of the 1st and the 2nd Companies of the Jahorina Training Center and members of other units of the VRS and the MUP, participated in the capturing of several thousand Bosniak men who were trying to escape the Safe Area through the woods, fearing they would be captured and executed by the RS MUP and VRS, whom they searched when they captured them, dispossessed of money and valuables, and ordered to put aside food, clothes and other objects they carried in their bags, whereupon they took them to the Kravica warehouse; by his presence the Accused instigated the killing of the captives, thus Aco Golijanin, the Accused's deputy, ordered the Training Center members to execute 15-20 captured Bosniak men on a meadow near the Konjević Polje-Bratunac road, in which killings Golijanin himself participated;

4. During the night of 13 July 1995 and on the following day, he commanded the 2nd Platoon, whose members were deployed on the Bratunac–Konjević Polje road near the Kravica Warehouse, and who, together with other members of the 1st Company, captured the Bosniak men and took them to the Kravica warehouse, where they were executed, while the Accused called volunteers from the 2nd Platoon to do the executions of the captives, thus aiding and abetting the killing of more than 1,000 captives;

5. On 17 and 18 July 1995, he commanded the 2nd Platoon, whose members, together with other members of the 1st and the 2nd Companies of the VRS Bratunac Brigade, participated in a search of the forested area above the Bratunac-Konjević Polje road with the aim of finding and capturing the Bosniak men, during which search they executed at least four Bosniak men, one of whom the Accused's deputy Aco Golijanin executed by fire on the order of Goran Marković, shooting at him from an automatic rifle at close range, while they brought several hundred Bosniak men whom they captured, including children, near the Konjević Polje–Bratunac road, in the village of Pervani, seized their personal belongings, including personal documents, money and valuables,

tied their hands behind their backs, and took them to and detained in a warehouse at the crossroad in Konjević Polje, where they executed them, including Munib (father's name Hasan) Cvrk and Munir (father's name Munib) Cvrk, whose bodies were identified in a mass grave in Cerska,

**Therefore**, that he aided and abetted a partial destruction of the group of Bosniak people by ordering, perpetrating and instigating the killing and causing serious bodily and mental harm to the group of Bosniaks, who, as Bosniaks from Eastern Bosnia, made up a significant part of the ethnic group of Bosniaks, and that he ordered, perpetrated and instigated the forcible transfer of the Bosniak women, children and elderly to the areas outside Republika Srpska,

**whereby he would have committed the criminal offense of** Genocide in violation of Article 171(1)(a) and (b) of the CC of BiH, as read with Article 31.

### III

Pursuant to Article 188(4) and Article 189(1) of the CPC of BiH, the Accused are relieved of the duty to reimburse the costs of the criminal proceedings.

### IV

Pursuant to Article 198(2) and (3) of the CPC of BiH, the injured parties and the relatives of the victims are hereby instructed to pursue their claims under property law in civil action.

## Reasoning

1. Pursuant to Article 281 of the CPC of BiH, the Panel conscientiously evaluated every piece of evidence and its correspondence with the rest of the evidence presented at the main trial, and, having previously analyzed the respective Prosecution and Defense arguments, concluded that it was proved during the proceedings that the Accused Duško Jević and Mendeljev Đurić had committed the criminal offense they were found guilty of.

2. The procedural decisions rendered in the course of the trial are contained in Annex 1, while Annex 2 contains a list of evidence presented during the proceedings, all of which makes a component part of the reasoning of the Verdict.

## I. PROCEDURAL HISTORY

### A. INDICTMENT AND MAIN TRIAL

3. On 15 January 2010, the Prosecutor's Office of BiH filed the Indictment No. KT-RZ-101/07, which was confirmed on 22 January 2010, charging the Accused Duško Jević, Mendeljev Đurić and Goran Marković with the perpetration of the criminal offense of Genocide, in violation of Article 171(a) and (b) of the CC of BiH, as read with Articles 29 and 180(1) of the CC of BiH.
4. On 12 March 2010, the Prosecutor's Office filed the Indictment No. KT-RZ-82/08, which was confirmed on 19 March 2010, charging the Accused Neđo Ikonić with the perpetration of the criminal offense of Genocide, in violation of Article 171(a) and (b) of the CC of BiH, as read with Articles 29 and 180(1) of the CC of BiH.
5. By the Decision No. X-KR-09/823 dated 19 April 2010, the Court of BiH merged the cases and conducted joined proceedings pursuant to the referenced confirmed Indictments by the Prosecutor's Office. The main trial in these proceedings commenced on 29 April 2010 with the reading of the Indictments and the opening statements.
6. After the presentation of the evidence proposed in the Indictment, on 14 April 2011 a status conference was held at which the Defense proposed its evidence and at which the Prosecution was requested to submit examination records for the witnesses who had been examined in the investigation but were not examined at the main trial and which the Defense considers to be exculpatory. In order to review the grounds for the referenced request, the Panel made a comparative analysis of the statements requested by the Defense, of which only some were in the possession of the Prosecutor, hence it was ordered that they be submitted to the Defense. The Defense Counsel were instructed to examine by themselves the remaining witnesses they considered had the relevant information about the events referred to in the confirmed and amended Indictment, which would be information favor of the Accused. The Panel considers this to be a component part of the defense provided to the accused persons in the proceedings.
7. After the presentation of the Defense evidence, the rebuttal and the rejoinder evidence was presented, as well as the evidence of the Court, listed in detail, together with the other presented evidence, in Annex 2 to the Verdict.
8. The Prosecutor in this case used the right set forth in Article 275 of the CPC of BiH envisaging the procedure of amending an Indictment. After the filing of an amended Indictment, at the hearing to set the main trial date held on 5 March 2012, the Panel ordered the Prosecution to file a corrected and comprehensible amended Indictment, which can be used as a basis for proceedings, which was done on 6 March 2012.
9. At the same hearing, the Panel instructed the Prosecutor to submit the evidence on property law claims by the injured parties, as it was not possible to grant the Prosecution's motion to examine the chairman of the Association, as a representative of<sup>16</sup>



the injured parties, given that the injured parties may act only through authorized proxies, which is a function that representatives of various victims' associations do not have.

## **1. Closing arguments**

### **(a) Prosecutor's Office**

10. The presentation of closing arguments started on 22 March 2012, which is when the Prosecutor commented on the evidence on the existence of a joint criminal enterprise and the direct participation of the Accused in the perpetration of the crime of Genocide in violation of Article 171 of the CC of BiH, which resulted in the death of more than 1,000 people. The Prosecutor also commented on the evidence on the strength and function of the units of the Jahorina Training Center, individual status of all the Accused, and the tasks they had before going to the Srebrenica field and the tasks they had in the context of the events for which they are charged by the confirmed Indictment.

11. The Prosecution's closing argument was organized in the manner that the Prosecutor first presented factual findings, including the attack on the Srebrenica Safe Area, and the evidence that the Bosniaks of Eastern Bosnia were to be destroyed immediately after the fall of the enclave. The following segment concerned the position of the Accused in the Jahorina Training Center and their participation in the operations in the field in Srebrenica. In that context, the Prosecution referred to the evidence and witnesses corroborating the conclusion on the participation of the Accused in the forcible transfer of civilians from Potočari, and the separation and capture of the Bosniak men and their mass execution, whereby the Prosecution presented its view of the Accused's contribution to the JCE of perpetration of genocide (which also comprises a JCE of forcible transfer and a JCE of killing the men).

12. In the closing argument the Prosecution also made reference to the evidence that corroborated all Counts of the Indictment, with respect to each Accused. Thus the Prosecution provided a very detailed evaluation of witnesses' statements, in terms of their contradiction or consistency with the previous statements.

13. The Prosecution also addressed the presented evidence corroborating the averments in the Indictment on the number of the killed in the Kravica Farming Cooperative, referring primarily to the forensic evidence in that respect and the facts established in the final judgments of the ICTY.

14. It was also stressed that the Prosecution witnesses were under a great pressure in this criminal case, so the majority of them were examined with protection measures in effect, and the majority of them were members of the unit commanded by the Accused. The witnesses' fear is best observed in the fact that they gave different statements about the same event they were present at, which can be regarded as their poor perception and inability to remember things, which is considered an honest mistake, whereas some others, in the Prosecution's opinion, did that with a view to deceiving the Court and protecting the Accused who were their superiors and to whom they are still loyal, hence

they attempted to influence the proceedings at hand.

15. The Prosecutor omitted some parts of the closing argument because they had been mentioned several times in previous closing arguments in the same context or because they concerned legal and theoretical issues that the Court would anyway take into account during the final evaluation of evidence. However, the Prosecutor stressed that the Defense would be provided with the full text so that they could prepare for their closing arguments.

16. In the end the Prosecutor moved the Court to find the Accused guilty on all Counts of the amended Indictment and sentence them to long-term imprisonment.

(b) Defense for the first Accused Duško Jević

17. The Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić, contested in her closing argument the averments in the amended Indictment, as she considered that the charges were exceeded with the adding of new persons that were allegedly members of the JCE together with the Accused, and the adding of the acts not featuring in the confirmed Indictment (such as the killings committed by Siniša Renovica, killings committed by the Platoon Commander of the 2nd Company, a.k.a. “Brko”, and the organizing of a death squad involving 40-60 persons, including T and C. The Counsel specified that thus a new Count for three Accused was added, charging them with command, supervision, coordination and instigation of the Center members to secure the road for passage of the women and children they had loaded forcibly.

18. The Counsel also pointed at the procedural situations in which the right to a defense was breached by preventing cross examination of the witnesses whose statements which had not been given in the investigation in this case this Panel admitted, and by admitting the statements of suspects Duško Jević and Mendeljev Đurić given to the ICTY investigators. According to the Defense, this should be considered unlawful evidence, in accordance with Article 10 of the CPC of BiH. According to the Defense, also irregular is the admission into evidence of the expert witnesses' reports, given that these witnesses have not been examined before the Trial Panel in this case.

19. In the closing argument the Defense also pointed at numerous protected witnesses who testified that they had given their statements under threat, that they were instructed how to answer during the examination in the investigation stage, and that the conversations preceding the examination had not been recorded in any way.

20. The Counsel also contested the concept of Joint Criminal Enterprise as a mode of liability, claiming that it was not set forth either in the CC of SFRY, in effect at the time of the perpetration, or in the CC of BiH, the law applied by the Court. The Defense then claims that the referenced mode of liability did not exist in customary international law at the time of the perpetration, either, and that it was introduced in jurisprudence only in 1999 through the ICTY case *Prosecutor v. Tadić*. The Counsel also contested in general terms the retroactive application of the CC of BiH, which is stricter on the perpetrator.

21. In addition to this, the Defense deems that, for the Accused to be found guilty of participation in a JCE, it was necessary to prove who its other members were, the existence of a common plan, and the attitude of the Accused toward these persons. To that end, the Counsel quoted a part of the statement of witness Momir Nikolić in the *Trbić* case, in which the witness denied the existence of any plan of killing the able bodied men from Srebrenica. Besides the JCE of killing, the Counsel also noted that the JCE of forcible transfer must be regarded through the role of the Accused Lj. Borovčanin, as the commander of the police units whose members the Accused were, stating that they came to the Srebrenica area in order to assist a military operation whose goal was a demilitarization of the enclave, in the opinion of the Defense, while the 28th Division was a legitimate military target.

22. The Counsel also claims that the Accused arrived in the field as the head of the Center, not as a deputy of Lj. Borovčanin, who commanded the whole operation and who had an office at the Bratunac SJB [Public Security Station], where all members of the unit were assigned tasks.

23. On the other hand, the Defense is of the opinion that the transfer of the population was a consequence of the *Krivaja 95* operation, but at the same time also a will of the Srebrenica inhabitants, who, according to the Defense, had wanted to leave even prior to the July events because of the unsatisfactory humanitarian conditions.

24. Finally, the Defense considers that the Prosecution did not prove the acts that the Accused is charged with or that they can be related to the Accused as a professional, employee of the MUP, colleague, and a man who had lived in Sarajevo until the outbreak of the conflict. Accordingly, the Defense stressed that he was a MUP employee who was too fair and disciplined in the execution of the assigned tasks and was awarded many decorations for his work. Based on the foregoing, the Defense proposed acquittal, as it was not proved that the Accused had committed the offense he was charged with.

(i) The Accused Duško Jević

25. In his closing argument, the Accused expressed remorse saying that he did not want a war, and, being taught to respect the institutions of the establishment, he never supported any crime and atrocities against anyone, those in Srebrenica included. He also claims that there must have been someone with criminal record in the units of the Jahorina Training Center, that is, among the persons brought from the Republic of Serbia, but he claims that he had no way of knowing it. He is resolute that the Center commanders did not take part in the planning of the *Krivaja 95* operation.

26. The Accused denied participation in the JCE with the co-Accused, in particular with Neđo Ikonić, and claimed he did not know when Ikonić came to the Srebrenica field. He also contested the unlawfulness of the transfer of civilians in which even the UNPROFOR members participated. In the closing argument the Accused also contested participation in the separation of men, adding that he had never seen a list of persons suspected of war crimes against Serbs.

27. In the end, the Accused moved the Court to acquit him because he had not participated in the commission of crimes or any unlawful acts, and had not instigated or aided anyone in it, either. He also claims that he would have been his own judge had he ever committed any crime, as his conscience is his sole guiding principle in life.

(c) Defense for the second Accused Mendeljev Đurić

28. In his closing argument, the Defense Counsel for the Accused, Attorney Miodrag Stojanović, stressed the fact that a large number of witnesses in this case enjoyed protection measures, that too many of them changed their statements at the main trial in comparison with the statements given in the investigation, while three of the witnesses examined before this Court signed plea agreements.

29. In addition to the numerous defects in the amended Indictment, the Counsel also pointed at the imprecision of the factual averments, manifested as a lack of definition of the mode of the Accused's participation in the perpetration. He also deems that individual charges in the Indictment were not proven (such as the killing incidents in Potočari and along the road), and that there is no link between these actions and the Accused Mendeljev Đurić. In that respect, the Counsel does not consider it proven that the Accused participated in the JCE or that the committed crimes were a foreseeable consequence of that JCE.

30. In the closing argument, the Counsel presented an analysis of the legal regulations related to the elements of the crime of Genocide, the source of which is contained in Article 2 of the Genocide Convention, setting forth that the intent is not killing in its own right, but that there must exist a clear intent of destroying, in whole or in part, one group as such. The Counsel added that in many of its judgments the ICTY established the existence of genocide in Srebrenica. However, he reiterated that genocide implied the execution of a considerable part of a group, which, in his opinion, is not the case with the executions that the Accused in this case were charged with.

31. In that respect the Counsel once again stressed the view of the Defense that the 28th Division was a legitimate military target, on which occasion 2,000-4,000 people got killed, and that this number is erroneously attributed to those killed in mass executions in the killing fields of Orahovac, Petkovci, Culture Center [Dom culture] in Kravica, and Branjevo, according to the Counsel.

32. In the end, the Counsel contested the Accused's participation in the JCE of forcible transfer, presenting the video footage showing the Accused Mendeljev coordinating the transfer of civilians. The Counsel deemed that the footage clearly showed the Accused's state of mind, that is, that he did not have the intention to forcibly transfer the population that wanted to leave that area on its own will. The Counsel considers the referenced conduct to be in accordance with the provisions of the Geneva Convention, setting forth an obligation of each warring party to evacuate the population from a zone affected by combat.

33. The Counsel also stressed that the Accused did not in any way participate in the

separation of men during his stay in Potočari, nor did he order the unit members to act in that way, claiming that he certainly was not aware that these men would subsequently be executed.

34. In the end, the Counsel stressed that the Accused was a MUP employee of many years who raised his family without hatred or intolerance towards other ethnicities, and that none of the examined witnesses said that the Accused had behaved with discriminatory intent toward anyone. According to the Counsel, this implies that the Accused would never think of or wish to destroy another national group, hence the Counsel moved the Court to acquit the Accused of the charges and terminate his custody.

(i) The Accused Mendeljev Đurić

35. In his closing argument the Accused reiterated the arguments of his Defense Counsel, voicing a sincere regret for all victims and their surviving relatives, who still feel the loss of their nearest kin. He claims that in the past years he wondered whether he contributed to the crime with his honest intentions, adding that he dedicated his whole life to the police career, during which he learned to strictly obey orders. He also claims that he found himself in a wrong place at a wrong time and that he was not informed of any plans related to the *Krivaja 95* operation.

36. Because of his family and friends he wanted to say that he had never killed anyone or ordered anyone's killing, and even if something like that had happened, it had happened without his knowledge and agreement. Consequently, he moved the Court to render an acquittal.

(d) Defense for the Accused Goran Marković

37. In his closing address, the Defense Counsel for the Accused Goran Marković addressed the numerous protection measures enjoyed by witnesses in this case, especially the witnesses to whom the Prosecutor arbitrarily attached pseudonyms during the investigation, due to which the statements of such witnesses were unavailable to the Defense until their examination at the main trial. In the opinion of the Defense, this had negative implications, not only on the cross examination of those particular witnesses, but also of the other witnesses whose credibility could be verified.

38. In addition, the Counsel claims that there were various witness-related manipulations, manifested as pressure by the investigators. He also thinks that some of the witnesses' testimonies were self-incriminating, as these witnesses testified without legal counsel although they are suspected of the same events.

39. The Counsel then clarified that he wrote the closing argument and that it had two parts, the first part relating to the facts and charges against the Accused, the second addressing the issue of application of substantive law. The Counsel delivered a brief outline of the referenced closing argument, focusing on the statements of the Prosecution witnesses who testified in favor of the Accused, in his opinion. These witnesses confirmed that the Accused was not aware of the plan of transfer of civilians,

that he was not in Potočari on 12 July, and that he was not in front of the Kravica warehouse in the evening of 13 July, either.

40. The Counsel stresses that all witnesses who used to see the Accused Goran Marković in those days confirm that he mostly transported food, that is, was occupied with quartermaster duties, while his deputy Aco Golijan commanded his Platoon in the field.

41. The Counsel then presented arguments and legal analysis of the criminal offense of Genocide in violation of Article 171 of the CC of BiH, that is, Article 141 of the CC of SFRY, commenting on the jurisprudence. He stressed that the quantity of information in the field is reduced in its course from a commanding officer to his subordinates, and given that, in the opinion of the Defense, the Accused was not in Potočari, he did not see the treatment of the men and was not present at the time of the execution.

42. Based on the foregoing, the Counsel moved the Court to acquit the Accused and terminate his custody.

(i) The Accused Goran Marković

43. In his closing argument, the Accused supported the arguments of his Counsel, adding that he had no connection whatsoever with the events he was charged of and that he felt sorry for all the people who got killed on that occasion. He also said that he had been in the special unit even before the conflict outbreak, and that neither then nor afterward did any of his colleagues or the persons who knew him have any objection to his conduct, as it was not discriminatory on ethnic basis in any way. He added that after the war he had contacts with the Bosniak population through the basketball club in Bijeljina whose chairman he was.

(e) Defense for the Accused Neđo Ikonić

44. In his closing argument, the Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, stressed that the amended Indictment charged the Accused with additional crimes, in terms of his participation in a JCE, the killings committed by Platoon Commander Siniša Renovica, and the calling of the volunteers and forming of the so-called "death squad", whereby the charges were exceeded to the detriment of the Accused.

45. The Counsel then contested that the Accused knew about the plans to attack the enclave and the plans of treatment of the separated and captured men, whereas he was not charged with the forcible transfer of civilians from Potočari at all. He added that the Accused Ikonić never participated in the rendering of any of the orders that, according to the Defense, constituted the fundamental documents for the events in the Safe Area, but it was the military and civilian leaderships that issued them. Given that the Accused was not aware of them, the Defense claims that he could not be aware of the preparations of the attack or the events following the fall of Srebrenica.

46. The Counsel claims that the only task the Accused had in the Srebrenica field was to secure the road between the villages of Hrnčići and Pervani, in order to prevent an armed column, that is, the 28th Division, from crossing it, and to protect the Serb civilian population.

47. The Counsel did not contest the mass killings of men, but did contest the Accused's participation in these activities, as he deems that the Prosecution failed to prove during the proceedings that with his actions the Accused aided the plan or shared the intent with principal perpetrators.

48. With respect to individual killings, the Counsel stresses that this Court has passed final judgments for those incidents and that those crimes were committed by members of the 1st Company, while the killings that Platoon Commander Siniša Renovica, member of the 2nd Company, was charged with, have not been proved beyond a reasonable doubt. With respect to the killing committed by the person nicknamed "Brko", also a member of the 2nd Company, the Counsel notes that the evidence in that respect is unclear and inconclusive, and does not relate the Accused Ikonić to the referenced event in any way.

49. In the opinion of the Counsel, it was also not proven that the Accused called volunteers or organized the so-called "death squad". In addition, the Defense also claims that the Indictment is unclear in that respect, as it does not provide specific facts about the squad's organizer, strength, or commander. He also claims that none of the witnesses confirmed that any member of the 2nd Company volunteered for any task.

50. Finally, the Counsel points at the lack of nexus between the acts of the Accused in terms of participation in the search of terrain on 17 and 18 July, when a large group of people was captured and transported to a warehouse in Konjević Polje, and the execution of these people by unknown perpetrators.

51. In view of the foregoing, he moved the Court to acquit the Accused.

(i) The Accused Neđo Ikonić

52. In the closing argument the Accused said that he was not aware of any killings for the whole duration of his field mission, let alone that he ordered them or incited anyone to commit them. He expressed regret for all victims and hoped that the Court would render a just decision.

## **B. GENERAL CONSIDERATION OF EVIDENCE OF THE CASE**

53. Article 3(1) of the CPC of BiH sets forth that the Accused is considered innocent of a crime until his/her guilt has been established by a final verdict.<sup>1</sup> The burden of proof

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<sup>1</sup> Article 3(1) of the CPC of BiH reads: "A person shall be considered innocent of a crime until his/her guilt has been established by a final verdict". This provision is in accordance with all main human rights

therefore lies with the Prosecutor, who must prove the guilt of the Accused beyond any reasonable doubt, in accordance with Article 3(2) of the CPC of BiH.<sup>2</sup> The fact that the Defense did not contest certain facts in the Indictment does not mean that the Panel accepted these facts as proven. The burden of proof lies with the Prosecutor for each charge during the whole course of the trial.

54. Accordingly, when determining whether the Prosecutor has proved the charges beyond any reasonable doubt, the Panel carefully considered if there existed any other reasonable interpretation of the tendered evidence besides the one accepted by the Panel, when, in accordance with the principle *In dubio pro reo*<sup>3</sup>, it decided that it was not proven that the Accused Goran Marković and Neđo Ikonić were guilty of the commission of the offense they were charged with in the amended Indictment.

55. Pursuant to Article 15 of the CPC of BiH, the Panel has the right to evaluate the evidence freely.<sup>4</sup> Therefore, the charges against the Accused were carefully examined, including all tendered evidence. When evaluating the evidence adduced at the main trial, the Panel paid due attention, among others, to the individual circumstances of each witness, their potential participation in the events, the risk of self-incrimination, and their relationship with the accused persons. The Panel also considered the consistency of evidence given by every witness in direct or cross examination, and in case of considerable deviation, made a comparison between the respective witness' testimony and his statements in the investigation.

56. Sometimes a witness' oral testimony differed from the statement given in the investigation. However, it should be borne in mind that 18 years has elapsed since the events described in the Indictment, so it is justified to expect that the passage of time affected the accuracy and reliability of the witnesses' recollection. It is also a fact that due to the nature of criminal proceedings a witness may be asked a different question at the main trial than the ones asked in previous interviews, so it is justified to expect that a witness will remember additional details after certain questions are made more specific. Naturally, the Panel also had in mind that a large number of witnesses were personally in the field at the same place and time as the Accused, and that by avoiding to answer certain questions they were trying to protect themselves from self-incrimination, which the law allows. The Panel carefully considered such situations when determining the importance that should be attached to such evidence.

57. The Panel directly observed the witnesses in the course of testimony and took into account their conduct, voice and reaction to certain questions. The Panel could thus see

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instruments. See, European Convention on Human Rights, Article 6(2); International Covenant on Civil and Political Rights, Article 14(2).

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

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

<sup>4</sup> Article 15 of the CPC of BiH reads: "The right of the Court, Prosecutor ... to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules".



for itself that the majority of the witnesses felt subjectively different when giving a statement to the Prosecutor than when sharing the same courtroom with the Accused, which must have influenced their direct evidence. For example, presenting the details of an accused's participation in an event in his presence must represent an additional burden for a witness when giving evidence at the main trial.

58. When considering the oral evidence before the Panel, certain inconsistencies and inaccuracies between a witness' previous statements and oral evidence, or between different witnesses, constitute a relevant factor when evaluating the gravity and they do not necessarily discredit the witness' full evidence. If a witness has told in detail the essence of the events concerned, peripheral deviations do not necessarily call into question the truthfulness of such evidence.

59. The Panel carefully considered the evidence given by all Prosecution and Defense witnesses regarding the averments in the Indictment. When it comes to the witnesses' statements, the Panel considered them in order to establish whether they confirmed beyond a reasonable doubt the facts cited in the Indictment, being aware at every moment that it was exceptionally difficult for the witnesses/injured parties to testify in this case, as they had had to testify earlier about the July 1995 events. The fact that their testimonies were often repeated (in this and other cases) constitutes a circumstance that is beyond anyone's control, and it is also an indisputable fact that there are only a few survivors who can testify about the crimes committed in Srebrenica in July 1995.

60. When evaluating the witnesses' statements, the Panel was mindful of the fact that some witnesses testified about the relevant events by presenting the facts that they had actually heard from others. Such evidence was treated as circumstantial evidence and was not attached the same importance as the direct evidence.

61. With respect to certain witnesses, the Panel considers that parts of their testimony were not sincere, either because of personal interests, or because of the friendship with and loyalty to some of the Accused, or because of personal interest to influence the outcome of the proceedings. When rendering its decision, the Panel took into account a witness' manner of testifying and his conduct, and evaluated the inner consistency of the evidence that the witness gave before the Panel.

62. The Panel determined that even the witnesses who were not reliable and were not telling the truth in certain parts of their evidence, were reliable and telling the truth about the other facts they testified about, hence the Panel did not fully disregard their evidence, as it would not be in the interest of justice or in accordance with the obligation of free evaluation of evidence. The Panel, therefore, evaluated the reliability and sincerity of each witness and evaluated the reliability and accuracy of every fact that the witnesses testified about accordingly. The Panel will present the evaluation of the credibility of individual testimonies in the part of the Verdict addressing the guilt of the Accused Duško Jević and Mendeljev Đurić by individual Counts in the Indictment, and in the part addressing the acquittal.

63. The protected witness S-101 claimed at the main trial that SIPA investigator Bajro Kulovac exerted pressure on him during the investigation to testify about the events he had not been present at and had no direct knowledge of. Therefore, on 17 January 2011, witness S-101 confronted Muris Brkić, investigator of the Prosecutor's Office of BiH, and SIPA investigator Bajro Kulovac respectively.

64. In other words, the protected witness claims that the investigators had contacted him frequently and visited him at his family house, exerting various kinds of pressure so that he would confirm in his statement the presence of the Accused Duško Jević and Mendeljev Đurić in Potočari at the time of the transport of civilians in front of the *White House*, a locality where the Muslim men were held and then executed.

65. However, the Panel notes that at the main trial this witness did not vary completely from the statement he had given in the investigation. At the hearing when he was confronted with investigator Bajro Kulovac, he stated that he was sticking to the statement he had given before the Court, as *"there is nothing disputable"* in it. Investigator Kulovac claims that in the case at hand this was a witness who *"provided the greatest amount of information in investigating the events concerned and who helped in the investigation"*.

66. Investigator Muris Brkić also claims: *"This was one of the most complex investigations as we did not have an integral list of the unit members, so we relied on testimonies. We would learn the names or nicknames from the other examined members of the unit, and when we learned of witness S-101 we were thrilled for having a new witness for this case. He was a witness to wish for during the first examination, as he freely gave an account of what had happened to him. He gave important information that we had no knowledge of before"*.

67. The Panel finds the aforementioned to be very important as the witness obviously demonstrated a will for cooperation at the beginning, partially also because, as he said, he was revolted by the then behavior of the instructors toward the so-called "deserters", that is, persons extradited from the Republic of Serbia.

68. When analyzing the evidence given by witness S-101, who was inconsistent in only one part of his testimony -- that related to the events in and around the Kravica warehouse -- while he was absolutely consistent in the remaining part, it is important to note that at the main trial this witness consistently confirmed many events referred to in his statements in the investigation stage<sup>5</sup>, from his arrival at the Srebrenica area, the unit's tasks in Potočari, the presence of the Accused, to the description of the events in front of the Kravica warehouse. In the statement given to the Prosecutor's Office on 10

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<sup>5</sup> T-103 Witness Examination Record for S-101, 26 March 2009; T-104 Witness Examination Record for S-101, 27 March 2009; T-105 Witness Examination Record for S-101, 10 November 2010; T-106 Witness Examination Record for S-101, 26 May 2010; T- 208 Official Note by investigator Muris Brkić No. KT-RZ-101/07, 24 February 2011, on the interview with witness S-101.

November 2009 (T-105, page 3 of the transcript), the witness emphasized that he was seeking "the strongest possible kind of protection", especially in Ilić's case. However, at the main trial he decided to change his evidence explaining that he had been forced to give statements on these events by investigator Bajro Kulovac.

69. The Panel noticed while the witness was giving evidence that he had a lot of relevant and first-hand information on the events that are the subject of the Indictment, but it also had to bear in mind the unacceptable pressures by the prosecution authorities, confirmed by his wife, who was examined as witness S-127. The Panel, therefore, decided that it will not base conclusions regarding any relevant fact in this case solely or decisively on the evidence given by this witness. In other words, in its final evaluation, the Panel regarded this witness' evidence in the light of the other presented pieces of evidence, hence only those parts of his statement that were corroborated by the other presented documentary evidence and statements of the examined witnesses were taken as relevant.

70. In the rebuttal stage, a number of members of the Training Center were examined who in some parts deviated from the statements they had given in the investigation. The Court, therefore, treated their statements with particular attention, comparing their consistency with the other adduced evidence in each specific case. In the course of the examination of these witnesses the Panel gained an impression that they possessed very important and comprehensive knowledge on the relevant events, as in the Srebrenica area they eyewitnessed the majority of the events that the Accused are charged with. For that very reason, and probably attempting to protect themselves from self-incrimination, the witnesses tried to modify their statements at the main trial.

71. The best indication of the relevance of the information possessed by this group of witnesses for the case is the statement of witness S-119, who was granted immunity by the decision of the Chief Prosecutor for the events that happened in the Srebrenica area, starting from the search of the village of Budak to the executions in the Kravica warehouse. The decision was rendered exactly in order for the witness to state everything he knew about the events relevant to the Indictment without fear of self-incrimination. Given the foregoing, and the fact that this witness has no interest in testifying in favor or to the detriment of the Accused, the Panel gave full credence to this witness' testimony.

72. The Trial Panel carried out a detailed evaluation of the findings of expert witnesses that the Prosecution and the Defense presented related to the events described in the Indictment. When evaluating the probative value of the expert witnesses' findings the Panel took into account the professional skills of a particular expert witness, the methodology employed, and the matching of their findings with the other pieces of evidence accepted by the Panel.

73. In the course of the proceedings the Defense contested the finding and opinion of expert witness Vedo Tuco, specialist in forensic medicine, as it was of the opinion that the witness had not made his finding in accordance with the rules of the trade, and had

not clarified during the oral presentation which part of his finding was his original work and which part was taken over from other expert witnesses and investigators of the ICTY. In the case at hand the Panel finds that the expert witness clarified the scope and the subject of the forensic analysis, stating that since 1997 he participated in the exhumation of mortal remains from around 100 (one hundred) mass graves.

74. Given that the expert witness was engaged in several cases before this Court concerning the identified DNA profiles of victims from primary and mass graves in Srebrenica, he clarified at the main trial that in the case at hand he was engaged by the Prosecution to draft a supplementary medical forensic analysis regarding the new identifications made since the last forensic analysis. Accordingly, the Panel concludes that the referenced Finding and Opinion was made in accordance with the provisions of the CPC of BiH, and the Panel gave the evaluation of its probative value in the part of the Verdict related to the number of those killed in the Kravica warehouse, in which the Finding was evaluated in the context of all the other presented evidence concerning that circumstance.

75. The Defense also contested the applicability of the report by Richard Butler (professional military intelligence officer). However, the Panel finds that, when drafting his reports, the expert witness restricted his analysis only to the documentary evidence compiled in the searches of the VRS Main Staff and the Zvornik Brigade. The documentation was verified by the ICTY and was afterward used in some proceedings before the ICTY. According to expert witness Butler, in order to prove the authenticity and lawfulness of the obtained documentation, great attention was paid to details so that, for example, the technician who had made a recording was interviewed in order to examine the circumstances surrounding the making of that recording.

76. Also, the expert witness had an ICTY order for all the actions he conducted and he took a professional approach to the drafting of the Finding, without offering subjective conclusions (which the Panel would not have accepted anyway) and without using witness statements (which is correct, as only a trial panel can evaluate witness statements). The Defense claimed in the proceedings that by examining Butler as a witness, the Prosecutor prevented the Defense from examining Butler about his reports, which is unacceptable given that the referenced evidence was admitted pursuant to Article 6 of the Law on the Transfer of Cases, which clearly stipulates in Paragraph (4) that nothing in this provision shall prejudice the defendant's right to request the attendance of an expert witness or to call an expert witness of his own to challenge the statement of an expert witness given before the ICTY.

77. In line with the foregoing, the Panel deemed that after the admission of the report that Richard Butler made in the capacity as a witness, the Defense was entitled to cross examination<sup>6</sup>. The Defense used that right at the main trial held on 19 September 2011.

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<sup>6</sup> Richard Butler was cross-examined as a witness at the main trial on 19 September 2011.

78. To corroborate the presented arguments about the military character of the column of Muslims from Srebrenica, the demilitarization of the protected enclave, the competences and responsibilities of the Accused, the Defense engaged expert witness Radovan Radinović<sup>7</sup>, retired Lieutenant General, former chief of the Department for Combat Readiness in the General Staff of the Armed Forces of Yugoslavia. Given that it is an operations department within the General Staff, the Defense was of the opinion that this expert witness possessed relevant practical knowledge of the subject of the analysis, hence he could provide an explanation of the actual situation in the armed force of Republika Srpska at the time relevant to the Indictment, primarily with respect to the police structures as a component of the armed forces.

79. In the case at hand, the Panel accepts the Finding and Opinion of the expert witness in the part referring to legal regulations and the command structure under the principle of unity of command, typical for the armed forces of the former Yugoslavia. However, it does not accept the expert witness' conclusion that the police forces in the Srebrenica theater were absolutely subordinated to the VRS at the time relevant to the Indictment, which will be elaborated in detail in the part of the Verdict related to the structure of the Jahorina Training Center and its command staff, both at the training time and the time of execution of tasks in the field.

80. The Defense also examined expert witness Stefan Karganović<sup>8</sup>, chairman of the *Srebrenica Historical Project* non-governmental organization, about similar circumstances.

81. Pursuant to Article 95 of the CPC of BiH, expert evaluation shall be ordered when the findings and opinion of a person possessing the necessary specialized knowledge are required to establish or evaluate some important facts. If the referenced scientific, technical or other specialized knowledge will assist the Court in evaluating the evidence or clarifying disputable facts, an expert, as a special witness, may testify by providing his findings on the facts and opinion that contains the evaluation of the facts.

82. In the case at hand, expert witness Karganović is a lawyer by profession and the chairman of a non-governmental organization whose mission is to compile comprehensive and complete information related to the events in the Srebrenica area in 1992-1995. The organization's most important publication that the expert witness referred to is the monograph entitled *Deconstruction of a Virtual Genocide*, whose goal is to present a comprehensive summary of the findings about the events in Srebrenica in July 1995. The book, published in the B/C/S and the English language versions, also addresses the atrocities in the Serb villages in the Srebrenica environs.

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<sup>7</sup> Expert evaluation report by General Radovan Radinović, *The Role and Command Responsibility of Duško Jević in the Krivaja 95 Operation*. The expert witness was examined about the evaluation at the main trial held on 26 May 2011.

<sup>8</sup> OII-11 Report by Stefan Karganović.

83. The Panel concludes that the referenced person, having a degree in law, is not competent to present his views about the events in Srebrenica in the capacity as an expert witness, given that a person with the relevant specialized knowledge which the Court does not have is engaged as an expert witness, which does not apply in this case. An admission of expert witness' conclusions based on a large quantity of materials that were not presented as evidence in these proceedings would mean a breach of the principle of oral and direct presentation, as well as the principle of free evaluation of evidence. Specifically, the referenced expert witness does not possess any professional military knowledge and did not even serve the army, hence this Panel finds his interpretation of the events to be irrelevant.

84. The *Analysis of the Muslim Column's Losses Due to Mine Fields, Combat Activities and Other Causes* is very unprofessional and unfounded and contrary to the facts established in a large number of related final judgments by the Court of BiH and the ICTY. That is to say, it is indisputable that a certain number of persons got killed as the column was on the move and those losses were caused by the shelling of the column and mine fields, while a certain number of persons in the column were killed in the clashes during a breakthrough action in Baljkovica.

85. However, the Panel does not accept the number that the expert witness indicates in his report, and this conclusion of the Panel is corroborated by the evidence adduced in these proceedings. Thus the majority of the examined witnesses who had participated in the terrain search on 17 and 18 July as members of the 1st and the 2nd Companies of the Jahorina Training Center, stated that several bodies of the killed had indeed been found on that occasion. However, it is clear from their testimony that that number is insignificant viewed in the context of the men killed in mass executions in the warehouse of the Kravica Farming Cooperative.

86. Also corroborating this conclusion is the fact that the persons who got killed in the breakthrough attempt were mostly buried at the places where they were afterward found, that is, there were not that many of them so as to be buried in mass graves. Expert witness Karganović is also not aware that there was any mass burial of the victims in the column.

87. What cannot be disregarded is the fact that the organization in which the witness is employed is funded from the Republika Srpska budget, which means that it is obliged to submit operations report to the Republika Srpska Government, whereby the organization's "non-governmental" character is called into question. This does not necessarily affect the independence of its work, but it was regarded as a relevant factor when evaluating the credibility of the expert witness.

88. Therefore, the Panel accepted this witness' statement only in the parts consistent with the other facts established in the proceedings, such as the assertion that a certain number of people got killed in the area around Konjević Polje, Kravica and Baljkovica, or the parts of the statement that simply provide more details about the events, such is the reference to all locations where the column of the 28th Division and the VRS members

clashed.

89. The Panel also notes that there was ample documentary evidence in this case and that it was of particular importance. During the trial several documents that were contested by the Defense were tendered as evidence, whereas a major number of the Prosecution evidence was also tendered as the Defense evidence. In any case, the Panel evaluated every document contested by the Defense in order to decide on its authenticity and probative value.

90. Given the many expert evaluations conducted in these proceedings, it is necessary to emphasize that none of them obliged this Panel unconditionally when rendering the final decision and that an expert witness' opinion was not accepted if it turned out to be absolutely contrary to the facts established in the evidentiary proceedings.

91. In order to familiarize themselves with the buildings and roads that the witnesses in this case testified about, the Panel decided to make a site visit, on which occasion the Defense Counsel for all the Accused were provided with an opportunity to visit the area of Srebrenica and Potočari and the Bratunac-Konjević Polje road. On that occasion the locations of the elementary school in Bratunac, where members of the 1st Company had been deployed, and the school in Konjević Polje, where members of the 2nd Company had been deployed, were noted on the record.

92. The Panel dismissed the Defense motion that witness Tomislav Krstović should also join the site visit, given that he had been unsure about certain locations while giving evidence, so he would not be able to brief the Panel about them on the ground.

93. The referenced procedural action was documented in the Site Visit Record and the AV footage.<sup>9</sup>

94. Finally, in these criminal proceedings the Accused resorted to their right to remain silent, pursuant to Article 6(3) of the CPC of BiH<sup>10</sup> and Article 6 of the European Convention on Human Rights (ECHR)<sup>11</sup>, which envisage that no defendant is obliged to testify against himself, hence the Panel finds it necessary to emphasize that no detrimental conclusions were drawn from this circumstance.

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<sup>9</sup> The referenced was tendered as evidence of the Court No. S-1 at the main trial hearing of 20 February 2012, at which the video material of the site visit was presented.

<sup>10</sup> Article 6(3) of the CPC of BiH reads that "the accused shall not be bound to present his defense or to answer questions posed to him".

<sup>11</sup> Although it is not explicitly stated in Article 6 of the European Convention on Human Rights, the European Court of Human Rights holds that the right to remain silent and the right not to incriminate oneself are commonly recognized international standards that constitute the key of the principle of fair trial pursuant to Article 6(1) of the ECHR. These rights are closely related to the principle based on Article 6(2) that everyone charged with a criminal offense shall be presumed innocent until proven guilty according to law. See, *Saunders v. the United Kingdom* (Application 19187/91), Judgment of 17 December 1996 (1997); *R. v. Director of Serious Fraud Office, ex parte Smith*, 3 WLR 66 (1992).

## 1. Indirect evidence

95. The BiH legislation adopted the principle of free evaluation of evidence stipulating that the evaluation shall not be limited by the rules determined in advance. The Panel is obligated to conscientiously evaluate every item of evidence and its correspondence with the rest of the evidence and, based on such evaluation, conclude whether or not a fact has been proved. The Panel's task is to establish truthfully and completely the incriminating and the exculpatory facts related to the accused. In other words, the standard that shall be applied when establishing the state of facts is to determine whether a reasonable trier of facts would reach the same conclusion beyond a reasonable doubt.

96. In accordance with the principle of free evaluation of evidence, in the course of the main trial the relevant facts may be established with direct and indirect, that is, circumstantial evidence. Direct evidence is the evidence by which a disputable fact is established directly. If the truthfulness of a disputable fact is established by other facts, that constitutes indirect evidence. The Panel established certain relevant facts from the Indictment on the basis of indirect evidence – indicia. There is ample evidence in this case indicating certain circumstances which, taken together, indicate the existence of specific facts. The conclusion that shall be drawn on the basis of such evidence must be the only possible reasonable conclusion.

97. The jurisprudence established the rule of indirect evidence, stipulating that indicia must appear as a firmly closed circle that allows for only one justified conclusion about the relevant fact and that objectively rules out a possibility of any other conclusion about that fact. Pursuant to this view, the basis for a conviction may lie only with such series of facts established by circumstantial evidence that are established beyond doubt and logically and firmly mutually connected so that they form a closed circle and lead with absolute certainty to the only possible conclusion – that it was exactly the accused who committed the offense he is charged with in an indictment and that the adduced evidence rules out any other possibility.<sup>12</sup>

98. The Constitutional Court of BiH concluded that establishing facts by circumstantial evidence is not in contravention of the principle of a fair trial stipulated in Article 6(1) of the ECHR.<sup>13</sup>

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<sup>12</sup> *Commentary on the Criminal Procedure Code of BiH*, Council of Europe and European Commission 2005, Article 281, p. 716.

<sup>13</sup> AP 5/05 (Constitutional Court of BiH), 2006, para. 31.



## II. APPLICATION OF SUBSTANTIVE LAW

### A. APPLICABLE LAW

99. Concerning the time of perpetration of the offense and provisions of the substantive law that was in effect at the time, the Court finds two legal principles to be relevant: the principle of legality and the principle of time constraints regarding applicability of the Criminal Code.

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

101. Pursuant to Article 2(2) of the Constitution of BiH, the ECHR has priority over all laws of BiH, and Article 7(1) of the ECHR also stipulates the principle of legality. However, the referenced provision of the ECHR stipulates the general principle prohibiting the imposing of a heavier penalty than the one that was applicable at the time of the perpetration, but does not stipulate the application of the most lenient law.

102. In addition to this, the referenced issue was also addressed in Article 4a) of the CC of BiH, stipulating 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".

103. Article 7(2) of the ECHR also stipulates the same exception. It reads that Paragraph (1) of Article 7 "...shall not prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations."<sup>14</sup> This provision is relevant as it provides a possibility to depart from the principles referred to in Articles 3 and 4 of the CC of BiH (and Article 7(1) of the ECHR) in the described circumstances and from the application of the Criminal Code that was in effect at the time of the perpetration.

104. The Court stresses that the criminal offense that the Accused has been found guilty of constitutes a criminal offense under customary international law. It, therefore, falls under the standard of "general principles of international law", set forth in Article 4a) of the Law on the Amendments to the Criminal Code of BiH, and "the general principles

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<sup>14</sup> See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights, ratified by Bosnia and Herzegovina, as it contains similar provisions.

of law recognized by civilized nations", set forth in Paragraph (2) of Article 7 of the ECHR, for which reason the CC of BiH may be applied in the case at hand.

105. Genocide was defined as a criminal offense in the CC of SFRY and in the adopted CC of SFRY that was applied in BiH in 1995. The maximum punishment for the criminal offense of genocide under the CC of SFRY and the adopted CC in BiH in 1995 was death penalty, which could be substituted with imprisonment for a term of 20 years under certain circumstances.

106. Under the 2003 Criminal Code of BiH, the referenced offense carried the sentence of long term imprisonment for a term of not less than 10 years or long term imprisonment for a term of 21-45 years. The Court considers the imprisonment sentences stipulated by this law to be more lenient than the death penalty that was prescribed by the adopted CC of SFRY, in effect at the time of perpetration in 1995. Therefore, the 2003 CC of BiH is more lenient to the perpetrator and the Court decided to apply it in the case at hand.

107. The Trial Panel notes that this Verdict finds the accused persons guilty of aiding and abetting a genocide, which will be explained in detail in the next section, while "criminal liability for aiding [and abetting ] cannot exist if the criminal offense that the accused is charged with as an aider [or abettor] was actually not perpetrated"<sup>15</sup>. The Panel will, therefore, first present the conclusions on the committed genocide.

### **III. SUMMARY OF THE CASES OF THE ICTY, THE INTERNATIONAL COURT OF JUSTICE AND THE COURT OF BIH ON THE EXISTENCE OF GENOCIDE IN SREBRENICA**

108. The International Court of Justice concluded that the acts committed by VRS members following the fall of Srebrenica in July 1995 were committed with the specific intent to destroy in part a group of Muslims of Bosnia and Herzegovina as such, and, accordingly, that these were acts of genocide, committed by members of the VRS in and around Srebrenica from about 13 July 1995.<sup>16</sup>

109. The ICTY Trial Chamber in *Krstić* concluded that "the intent to kill all the Bosnian Muslim men of military age in Srebrenica constitutes an intent to destroy in part the Bosnian Muslim group within the meaning of Article 4 and therefore must be qualified as a genocide".<sup>17</sup>

110. The ICTY Appeals Chamber in the same case confirmed these conclusions stating: "The Appeals Chamber states unequivocally that the law condemns, in

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<sup>15</sup> Appeals Chamber Judgment in *Aleksovski*, para. 165.

<sup>16</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, para. 297.

appropriate terms, the deep and lasting injury inflicted, and calls the massacre at Srebrenica by its proper name: genocide. Those responsible will bear this stigma, and it will serve as a warning to those who may in future contemplate the commission of such a heinous act."

111. The ICTY Trial Chamber in *Blagojević and Jokić* reached a similar conclusion and established that genocide was committed and that over 7,000 Bosnian Muslim men from Srebrenica were massacred. The Trial Chamber found that the Bosnian Serb forces not only knew that the combination of the killings of the men with the forcible transfer of the women, children and elderly, would inevitably result in the physical disappearance of the Bosnian Muslim population of Srebrenica, but clearly intended through these acts to physically destroy this group.<sup>18</sup>

112. The separation of the men from the rest of the Bosnian Muslim population shows the intent to segregate the community and ultimately to bring about the destruction of the Bosnian Muslims of Srebrenica. The Bosnian Muslim men were stripped of their personal belongings and identification, detained, and finally taken to execution sites, where the Bosnian Serb forces deliberately and systematically killed them, solely on the basis of their ethnicity.<sup>19</sup>

113. The Judgment of the ICTY Appeals Chamber did not annul the finding that the crimes committed by the Bosnian Serb forces constitute genocide.

114. Finally, in the case of *Prosecutor's Office of BiH v. Miloš Stupar et al.*<sup>20</sup>, and the case of *Prosecutor's Office of BiH v. Milorad Trbić*, the Court of BiH concluded that genocide was committed in Srebrenica, which was also confirmed by the Appellate Panels in the respective cases.

#### **A. JOINT CRIMINAL ENTERPRISE**

115. The Amended Indictment charged the Accused Duško Jević and the Accused Mendeljev Đurić that they participated in a JCE of killing the men and a JCE of forcible transfer of the Bosniak civilian population, sharing the intent and the plan with other JCE members, by planning, instigating, ordering, and aiding in the perpetration of the criminal offenses listed individually in the Indictment.

116. The Indictment charged the Accused Duško Jević, Mendeljev Đurić, and Neđo Ikonić with the participation in the JCE of killing the men and transferring the population, with members of the VRS Main Staff and RS MUP identified individually in the Indictment, which was not proved beyond any reasonable doubt during the proceedings.

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<sup>17</sup> *Krstić*, Trial Chamber Judgment, para. 598.

<sup>18</sup> *Blagojević and Jokić*, Trial Judgment, paras. 671-677.

<sup>19</sup> *Blagojević and Jokić*, Trial Judgment, para. 674.

<sup>20</sup> *Miloš Stupar et al.*, Trial Judgment, p. 103.

117. Therefore, the Panel was not obliged to establish the identity of the other members of the JCE whose goal was a forcible transfer of the population and killing of the men from Srebrenica, but it is certain that those were men from the military and civilian leadership of Republika Srpska.

118. The ICTY Appeals Chamber in *Tadić* accepts Joint Criminal Enterprise as a mode of co-perpetration, which is warranted by the very nature of the crimes which are committed most commonly in wartime situations.<sup>21</sup> Most of the time these crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design.<sup>22</sup> Although only some members of the group may physically perpetrate the criminal act, the participation and contribution of the other members of the group is often vital in facilitating the commission of the offense in question.<sup>23</sup> "It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question."<sup>24</sup>

119. "The rationale behind JCE liability is to reflect the exact degree of responsibility of those who in some way made it possible for the perpetrators physically to carry out the criminal acts."<sup>25</sup> Specifically: "Under these circumstances, to hold criminally liable as a perpetrator only the person who materially performs the criminal act would disregard the role as co-perpetrators of all those who in some way made it possible for the perpetrator physically to carry out that criminal act. At the same time, depending upon the circumstances, to hold the latter liable only as aiders and abettors might understate the degree of their criminal responsibility."<sup>26</sup> Therefore, "international criminal responsibility embraces actions perpetrated by a collectivity of persons in furtherance of a common criminal design."<sup>27</sup>

120. Joint Criminal Enterprise is not a crime by itself, but a manner of commission of a crime.<sup>28</sup> In July 1995, JCE in general, and especially the basic JCE, constituted a part of customary international law and its elements and definition were well-established.<sup>29</sup>

121. The Panel accepted the relevant international jurisprudence that established that: (1) a JCE is a form of coperpetration establishing an individual criminal responsibility; (2)

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<sup>21</sup> *Prosecutor v. Tadić*, IT-95-1-A, Appeals Chamber Judgment, 15 July 1999 (*Tadić Appeals Judgment*), para. 191.

<sup>22</sup> *Tadić Appeals Judgment*, para. 191.

<sup>23</sup> *Tadić Appeals Judgment*, para. 191.

<sup>24</sup> *Tadić Appeals Judgment*, para. 191.

<sup>25</sup> *Prosecutor v. Brđanin*, IT-99-36-A, Judgment, 3 April 2007 (*Brđanin Appeals Judgment*), para. 405.

<sup>26</sup> *Tadić Appeals Judgment*, para. 192.

<sup>27</sup> *Tadić Appeals Judgment*, para. 193.

<sup>28</sup> *Rašević and Todović*, First Instance Verdict, p. 111.

<sup>29</sup> *Tadić*, Trial Judgment, para. 669. *Tadić*, Appeals Judgment, para. 220; *Prosecutor v. Stakić*, IT-97-24-A, Appeals Chamber Judgment, 22 March 2006, (*Stakić Appeals Judgment*) para. 62 (ditto); *Prosecutor v. Vasiljević*, IT-98-32-A, Appeals Chamber Judgment, 23 February 2004, (*Vasiljević Appeals Judgment*) para. 96-99 (ditto).

the “perpetration” includes a knowing participation in a JCE; (3) the elements of a JCE are established in customary international law and they are identifiable.

122. The Appeals Chamber in *Tadić* was the first ICTY chamber to establish and clearly articulate three categories of Joint Criminal Enterprise that existed in international law at the relevant time. These categories were established in subsequent cases before the ICTY as follows: the first category is “general” or “basic”, the second category is “systemic”, and the third category is “extended” JCE.

123. The general or basic kind of JCE is qualified as a common acting of a group of people who possess the same criminal intention and act with a view to effecting a “common design”. If such group commits a crime pursuant to the common design, the persons who voluntarily participated in one aspect of that design and intended a criminal result may be considered criminally responsible as co-perpetrators.<sup>30</sup> “An example is a plan formulated by the participants in the joint criminal enterprise to kill where, although each of the participants may carry out a different role, each of them has the intent to kill.”<sup>31</sup>

124. The accused must have the intent to perpetrate a crime (this being the shared intent on the part of all co-perpetrators)<sup>32</sup> and the intent to participate in a common plan aimed at its commission.<sup>33</sup> Where the common criminal purpose includes perpetration of a crime that requires special intent, a participant must share that intent.<sup>34</sup>

125. It was not proven in the proceedings that the Accused Duško Jević and Mendeljev Đurić shared a common plan with members of the VRS Main Staff, or that they shared the intent with the principal perpetrators of Genocide<sup>35</sup>, so the Panel could not conclude beyond any reasonable doubt that the Accused were also members of the JCE, as charged by the amended Indictment, which argues that with their acts, that is, by ordering and supervising members of the 1st Company when undertaking the activities they have been found guilty of, the Accused aided and abetted the realization of a genocidal plan, designed and implemented by the most senior civilian and military leadership of Republika Srpska.

126. The Indictment charged the Accused in this case with participation in an “extended” JCE with members of the VRS Main Staff and the civilian leadership of Republika Srpska whose names were listed in the Indictment. However, given that the Prosecution offered no evidence to corroborate the foregoing, the Panel omitted the

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<sup>30</sup> *Tadić*, Appeals Judgment, para. 196.

<sup>31</sup> *Vasiljević*, Appeals Judgment, para. 97.

<sup>32</sup> *Vasiljević*, Appeals Judgment, paras 97,101; *Krnojelac*, Appeals Judgment, para. 31 (emphasis added).

<sup>33</sup> *Brđanin*, Appeals Judgment, para. 365 quoting Appeals Judgment in *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, 28 February 2005 (*Kvočka et al.* Appeals Judgment) para. 82 (requiring “intent to effect the common purpose”).

<sup>34</sup> *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgment, 2 October 2001 (*Kvočka et al.* Trial Judgment), para. 288.

<sup>35</sup> That is, Trbić, Blagojević and others who were sentenced by/in a final verdict, as indicated earlier.

referenced persons from the operative part of the Verdict. The Panel finds it useful to note that, with respect to the facts, the Indictment did not specify the form of JCE it charged the Accused with, as the elements of “basic” JCE overlapped with the elements of “extended” JCE in the description of the facts.

127. Also, within the “extended” JCE the Indictment argued the existence of two “minor” JCEs, created for the needs of realization of the genocidal plan, namely: (1) the forcible transfer JCE, and (2) the killing of men JCE.

128. In that respect the Panel primarily analyzed the elements of both “narrower” JCEs as follows: (1) the existence of a common plan and purpose, and (2) plurality of persons.

129. **With respect to the forcible transfer JCE** the Panel notes that (1) the operation of transferring civilians from Potočari had been planned long before the meetings held at the *Fontana* hotel and that the VRS Main Staff, that is, General Mladić had the exclusive competence for it. All available means of transport and manpower were mobilized for that purpose, so, in addition to the Military Police of the Bratunac Brigade, the 1st Company of the Jahorina Training Center also participated in the transport of civilians. The foregoing clearly indicates that the transfer operation was a result of an agreement of the military and civilian leaderships of RS whereas the Muslim representatives at the meeting had only the “observing” role. (2) It is obvious that several persons, that is, perpetrators participated in the drafting of such plan and the implementation thereof.

130. However, it was not proven during the proceedings that the Accused Duško Jević and Mendeljev Đurić were members of that “narrower” JCE of forcible transfer by participating in the creation of the plan of forcible transfer together with its other members, primarily General Ratko Mladić, who commanded that operation. Under the order of the Accused Duško Jević and Mendeljev Đurić, members of the 1st Company undoubtedly actively participated in loading the women, children and the elderly on board the buses in Potočari and in securing the road for the passage of these convoys, which the Accused ordered, being aware that the humanitarian disaster that befell the population after days of shelling and deprivation of humanitarian catastrophe [as rendered in the original text; translator's note] would bring about their forcible transfer. Acting with intent when undertaking these actions, the Accused gave a considerable contribution as the operation of forcible transfer of civilians from Potočari was one of the steps in effecting the genocidal plan of the JCE members.

131. The Accused’s aiding acts in that respect will be explained in more detail in the part of the Verdict related to the forcible transfer of civilians.

132. **With respect to the existence of the JCE of killing the men**, the Panel notes that the operation of killing the Bosniak men was carried out over a short time period, following a similar killing pattern, at the locations close to one another, often by perpetrators who actively participated in the operation at more than one of those locations. This leaves no room for any other conclusion but that there existed a plan for the operation of killing the men from Srebrenica, whose implementation started in Potočari, at the time the transport of civilians was being organized, when men were

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separated and detained in the *White House*, wherefrom they were transported to Bratunac and afterward to other places of detention and execution.

133. Also, an inevitable conclusion is that both the making of such a plan and its implementation involved a plurality of perpetrators, who were mentioned in general as members of the principal JCE in the operative part of the Verdict.

134. Therefore, it is obvious that there existed two minor JCEs within the principal JCE and that they were formed as stages in the realization of the genocidal plan.

135. Responsibility for a JCE is equally applied with respect to the criminal offense of Genocide and all other criminal offenses stipulated in Articles 172-175 of the CC of BiH. A proof that an individual genocidal intent exists or the awareness that others possess it does not lead *ipso facto* to the conclusion that the person possessing it was a participant in a JCE whose purpose was genocide. Likewise, the proof of genocidal intent does not in any way depend on the proof of participation in a JCE whose purpose is the commission of genocide.

136. Responsibility for JCE requires a proof of intent different than the one required for special genocidal intent, that is, requires additional proof of membership in a JCE whose purpose is to commit genocide together with the intent to commit the criminal offense of genocide.

137. Joint action requires a certain degree of reciprocity and interaction, which was not proved in this case. What was proved beyond doubt is that the Accused acted pursuant to a plan of those who were responsible for the creation and execution thereof, but the Prosecutor's Office did not offer evidence that the Accused and the architects of the plan cooperated in any way.

138. Therefore, the evidence presented at the main trial does not provide sufficient grounds for the Trial Panel to conclude beyond a reasonable doubt that the Accused Duško Jević and Mendeljev Đurić shared a plan or agreement to kill the captives with some members of the JCE of killing the men, or that they shared with them the same special intent to destroy the group, although they were aware of it. The Panel did not conclude that the Accused acted as co-perpetrators within any JCE, but concluded that their acts may be characterized as acts of aiding and that their responsibility should be established in that respect.<sup>36</sup>

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<sup>36</sup> See the part of the Verdict concerning the Accused's responsibility for aiding.

## IV. SUMMARY OF GENOCIDAL PLAN

### A. GENERAL OVERVIEW

139. Given the fact that the Panel concluded on the basis of the adduced evidence that the Accused were aware of the genocidal intent<sup>37</sup> of the principal members of the JCE, in the text below it will address the details of the genocidal plan whose implementation the Accused aided.

140. In order to better understand the contribution of the Accused to the implementation of the genocidal plan, the Panel finds it useful to elaborate on the period preceding the attack on the Srebrenica Safe Area, given that the events crucial for this case happened in the period between March and November 1995.<sup>38</sup> In that context the Panel will comment on the organization and manner of operation of the armed forces of Republika Srpska, whose component was the Special Police Brigade, that is, the Jahorina Training Center to which the Accused belonged.

141. As stated in the facts accepted by this Panel, reacting to the international community's pressure to end the war and the ongoing efforts to strike a peace agreement through negotiations, as early as in March RS President Radovan Karadžić issued a directive to the VRS regarding a long-term strategy of the VRS forces in the enclave.

142. This directive, known as *Directive 7*, specifically reads that the VRS should complete the physical separation of the Srebrenica and Žepa enclaves, preventing even communication between individuals between the two enclaves. By planned and well-thought-out combat operations, an unbearable situation of total insecurity was to be created, with no hope of further survival or life for the inhabitants of Srebrenica.

143. As foreseen in the Directive, in mid-1995 the humanitarian situation for Bosnian Muslim civilians and military in the enclave became disastrous, whereupon 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 it directed the Drina Corps to, *inter alia*, conduct "active combat operations ... around the enclaves".

144. Acting pursuant to the Directive, on 31 May 1995, Bosnian Serb forces captured the Echo observation post<sup>39</sup>, 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. Following this, the then commander of the Drina Corps, Major General Milenko Živanović, signed two orders on 2 July 1995,

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<sup>37</sup> *Prosecutor v. Jelisić*, IT-95-10-A, Appeals Chamber Judgment, para. 48; *Prosecutor v. Brđanin*, IT-99-36-T, Trial Chamber Judgment, para. 705; *Prosecutor v. Rutaganda*, ICTR-96-3-A, Appeals Chamber Judgment, para. 525.

<sup>38</sup> Established Facts in the Trial Panel's Decision of 1 July 2010.

<sup>39</sup> Established Fact No. 4; Panel Decision of 1 July 2010.



laying out the plans for the attack on the enclave and ordering various units of the Drina Corps to ready themselves for combat. The operation was code-named "Krivaja 95". The VRS offensive on Srebrenica officially began on 6 July 1995.

## **B. ORGANIZATION OF VRS**

145. Given the large size of the armed forces that participated in the attack on Srebrenica, the Panel finds it useful to briefly address their organizational and hierarchical structure for a better understanding of the sequence of the events relevant to the Indictment, starting from the preparations that preceded the attack, that is, the execution of the *Krivaja 95* operation.

146. At the relevant time the President of Republika Srpska was Radovan Karadžić, who was also the Supreme Commander of the VRS.

147. According to the finding and opinion of expert witness Richard Butler, the organization, structure and methodology of the VRS operations at that time were identical to the regulations that had been in effect in the former JNA, hence the command and control over the RS army was based on the principle of unity of command.<sup>40</sup>

### **1. Structure of the Main Staff**

148. As established in the final Verdicts of this Court, the Main Staff was the supreme military command organ of the VRS, whose Commander in 1995 was Colonel General Ratko Mladić. The Command of the Main Staff was in Han Pijesak, while the forward command post was in Bijeljina. The Main Staff consisted of two branches and six departments. Two independent units were directly subordinated to the Main Staff -- the 65th Protection Regiment and the 10th Sabotage Detachment.

149. In July 1995, key personalities in the Main Staff, in addition to Colonel General Ratko Mladić, were also Colonel General Manojlo Milovanović, Chief of the Main Staff and Deputy to General Mladić; Colonel General Milan Gvero, Assistant Commander for Moral, Religious and Legal Affairs; Major General Zdravko Tolimir, Assistant Commander for Security and Intelligence; Major General Radivoje Miletić, Deputy Chief of the Main Staff and Chief of Operations; Colonel Ljubiša Beara, Chief of the Main Staff Security Administration; Colonel Radoslav Janković, officer of the Main Staff Intelligence Administration; Colonel Milovan Stanković, officer of the Main Staff Intelligence Administration; Lieutenant Colonel Dragomir Keserović, officer of the Main Staff Security Administration; Colonel Bogdan Sladojević, officer of the Main Staff Operations

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<sup>40</sup> S-4 (23)(Report on Combat Readiness of the Zvornik Infantry Brigade for the period from 1 January to 31 December 1994).

Department; Colonel Neđo Trkulja, Main Staff Operations Department, Chief of Armored Units.<sup>41</sup>

## **2. Level of Corps and Brigades**

150. The VRS had six Corps that were deployed in different geographical areas. Those were the 1st Krajina Corps, the 2nd Krajina Corps, the East Bosnia Corps, the Herzegovina Corps, the Sarajevo-Romanija Corps, and the Drina Corps. All the Corps were directly under the command of the VRS Main Staff.<sup>42</sup> The basic combat components of the Corps were Brigades, used for combat operations in all combat conditions. As such, they were under direct command of a Corps.<sup>43</sup>

It was established beyond doubt in the proceedings that members of the Jahorina Training Center operated in Bratunac Brigade's zone of responsibility. At that time the 8th Battalion of the Zvornik Brigade was deployed in the Bratunac Brigade zone of responsibility and became more famous as the 4th Battalion with headquarters in Kravica.<sup>44</sup>

### **C. FORCES OF MINISTRY OF THE INTERIOR (RS MUP) – COMMAND AND CONTROL RELATION WITH VRS**

151. The Armed Forces of Republika Srpska consisted of the forces of the Army (VRS) and the police units and forces of the Ministry of the Interior (MUP). In July 1995, the acting Minister of the Interior was Tomislav Kovač and the civil police were organized in two departments: regular police force and special police brigade.<sup>45</sup>

152. In addition, the RS *Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War* stipulates:<sup>46</sup> "Police units assigned to combat operations by an order of the Supreme Commander of the Armed Forces shall be resubordinated to the commander of the unit in whose zone of responsibility they are performing combat tasks".

153. It follows clearly from the aforesaid that these forces, when used under the purview of national defense, are directed by the President of the Republic.<sup>47</sup> In addition, under an imminent threat of war or a state of war, the law gives the Minister of the

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<sup>41</sup> T-81 (*Srebrenica Military Narrative (Revised) Operation Krivaja 95*, dated 1 November 2002, by Richard Butler) (*Butler Report*) para. 2.20.

<sup>42</sup> T-82 (Richard Butler's *VRS Main Staff Command Responsibility Report*, dated 9 June 2006) (*Butler VRS Main Staff Command Responsibility Report*) para. 1.0

<sup>43</sup> T-82 (*Butler VRS Main Staff Command Responsibility Report*) para. 1.0

<sup>44</sup> T-81 (*Butler Report*) para. 2.8.

<sup>45</sup> Also confirmed by the Established Fact No. 49 in the Panel's Decision No. X-KR-09/823-1 of 1 July 2010.

<sup>46</sup> Dated 29 November 1994, Chapter IV, Article 14.

<sup>47</sup> T-81 (*Butler VRS Brigade Command Responsibility Report*), para. 6.0.

Interior the powers to establish special police units for the purpose of performing combat tasks.<sup>48</sup>

154. Under Article 7 of the Law, RS President shall establish the organization of the police forces and issue orders for their engagement in times of war, and the police may be resubordinated to a military command under the Minister's orders.

155. In addition to the usual police duties of protecting public peace and order, some members of the regular police forces also carried out duties within special police forces or companies of the PJP [Special Police Unit].<sup>49</sup>

156. One such unit was the Special Police Unit (PJP) Zvornik. According to witness Radomir Pantić, who was the Commander of the Police Station in Milići in July 1995, and at the same time also the Commander of the 1st Company of the Zvornik PJP, this Unit comprised regular policemen from the Police Stations in Vlasenica, Šekovići, Bratunac, Kozluk, Zvornik, Osmaci, and Milići. The Company had three platoons, each consisting of 25 men. Platoon commanders were Elvis Đurić, one "Cviko", and Dušan Mičić. At that time the chief commander at the PJP level, that is, Commander of these units was Danilo Zoljić. At that time the witness was familiar with the composition and the operating manner of the Special Police Brigade commanded by Goran Sarić.

157. According to the ICTY judgments, the Special Police Brigade was "a combat unit of the MUP" and its commander was Goran Sarić<sup>50</sup>, Deputy Mišo Garačanin, and Assistant Ljubomir Borovčanin. The Brigade headquarters was in Pale, where the office of the Minister of the Interior was also located, in which Deputy Minister Tomislav Kovač was at the relevant time. He was examined about the referenced circumstances as a Prosecution witness.

158. In his evidence he stresses that at that time, according to his estimate, there was no need to engage the police in the Srebrenica theater, as the Drina Corps forces had sufficient "*strength to cope with the forces of the Army of BiH, which was weakened by Commander Naser Orić's pull-out*". The witness allegedly conveyed his disagreement with the engagement of the police to President Karadžić as well, but he persisted in his decision to have two detachments of special police sent to the field.

159. Public Security Centers (CJB) coordinated the activities of local Public Security Stations (SJB), that is, police stations in their respective areas. In the Srebrenica area, SJBs were subordinated to the Zvornik CJB, whose Chief was Dragomir Vasić.<sup>51</sup>

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<sup>48</sup> T-81 (*Butler VRS Brigade Command Responsibility Report*), para. 6.1.

<sup>49</sup> Also confirmed by the Established Fact No. 52 in the Panel's Decision No. X-KR-09/823-1 of 1 July 2010.

<sup>50</sup> Also confirmed by the Established Fact No. 50 in the Panel's Decision No. X-KR-09/823-1 of 1 July 2010.

<sup>51</sup> Also confirmed by the Established Fact No. 51 in the Panel's Decision No. X-KR-09/823-1 of 1 July 2010.

## **1. Command Structure of Jahorina Training Center**

160. Witness Mladenko Borovčanin, who had been employed in the MUP of the Republic of Bosnia and Herzegovina before the conflict in BiH, explains that the Training Center on Mt. Jahorina was defined by the Law on Internal Affairs. The Ministry of the Interior established it by engaging respective personnel of the Special Police Brigade and the Training Center in Banja Luka. At that time a law came into effect which stipulated that military service may be done through training for police duties. At the request of the Defense, the witness confirmed that the recruit training curriculum was adopted annually in this Center.

161. Defense expert witness Mile Matijević was examined about the functioning of the police organs, the internal organization of police units, and the role and the status of the Training Center within that system<sup>52</sup>. He claims that in the 1992-1995 period the Training Center operated in accordance with the Rulebook on internal organization in effect at the time. The Center was headed by the director and it also comprised a high school headed by schoolmaster. The overall education system was regulated by the Law on Internal Affairs and the Rulebook on Internal Organization, while the curriculum established the scope and contents of the education, training and advanced training. According to the expert witness, the Jahorina Center was actually a part of the Training Center in Banja Luka. Members of the special unit were engaged to conduct training and they carried out the commanding officers' duties in the Center.

162. The expert witness claims that the Center did not have any connection with the Special Police Brigade, and he is not aware that the training recruits were engaged for some tasks during July 1995. However, he confirmed later in his evidence that the Minister could engage the Center personnel for the establishment of one or more units for MUP's needs.

163. According to the presented evidence, the Special Police Brigade had 10 detachments of 200 men each, the detachments being deployed in Jahorina, Šekovići, Trebinje, Janja, Doboje, Banja Luka, Prijedor, Ilidža, and Foča, and a headquarters support unit in Janja. With respect to the command structure they were directly subordinated to the Minister of the Interior and the Supreme Commander of the Armed Forces, President R. Karadžić<sup>53</sup>. According to the examined witnesses, these units had the status of combat units, that is, they possessed heavy weapons (armored vehicles, tanks, Praga self-propelled anti-aircraft guns and other self-propelled large caliber guns).

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<sup>52</sup> OII-9 Finding and Opinion of expert witness Mile Matijević, elaborated on orally at the main trial on 6 June 2011.

<sup>53</sup> Chart of responsibility tendered as T-110 and the chart of the Special Police Brigade structure tendered as T-109.

164. According to the evidence by witness Ljuban Popržen, who testified in detail about these circumstances, the Jahorina Training Center had the characteristics of a police academy and was a part of the RS MUP organization-wise.

165. Witness Tomislav Krstović, a Platoon Commander, was also one of the instructors who regarded the Jahorina Training Center as a school center only, whose commanding officer was the Accused Duško Jević. He clarified that at that time Jević was directly superior to everyone, while the training instructors were at the same time also the platoon commanders and had the company commanders as their immediate superiors, whereby, in the opinion of the Panel, this witness only confirmed the conclusion presented above on the existence of a precise hierarchy, organization and status of the individual Accused during the stay on Mt. Jahorina (chief of Center – training instructors). In the opinion of the Panel, the same formation was transferred to the Srebrenica field in July 1995, where the commanders of companies and platoons were subordinated to the Accused Jević as a direct commanding officer.<sup>54</sup>

166. Pursuant to the foregoing, the Panel did not accept the conclusion of Defense expert witness Mile Matijević that “deserters“, although organized into units that used military titles (for example, a squad, platoon, company, detachment), were not organized into combat units and did not undertake tactical activities.

167. Witness Radovan Sladoje clarified that the two companies had three platoons each, hence the 1st (First) Company, commanded by the Accused Mendeljev Đurić, consisted of the 1st (First) Platoon, commanded by the Accused Goran Marković, the 2nd (Second) Platoon, commanded by Tomo Krstović, and the 3rd (Third) Platoon, commanded by Jevto Doder. The Accused Neđo Ikonić commanded the 2nd Company, and Platoon Commanders were witness Radovan Sladoje, Duško Kusmuk, and Dejan Radojković. Only Duško Kusmuk of the referenced persons stayed in the Jahorina Center, instead of whom Siniša Renovica went to the Srebrenica theater as the commander of one of the 2nd Company’s platoons. Renovica was also examined as a Prosecution witness.

168. Duško Kusmuk was a taekwondo instructor in the Special Police Brigade in 1992-1995 period, and he claims that other instructors, members of the police brigade, came to Jahorina after him, namely Duško Jević, Mane Đurić, Goran Marković, and Neđo Ikonić. Witness Kusmuk also remembers Platoon Commanders Ljuban Popržen and Jevto Doder, who were also examined as witnesses for the Prosecution.

169. On the other hand, the young men who arrived from Serbia, the so-called “deserters“, were divided into two companies sub-divided into platoons. In the opinion of witness Radovan Sladoje, one of the Platoon Commanders, the “deserters“ were rather disciplined, that is, they obeyed the superiors’ orders, while Duško Jević was “*a true commanding officer. Serious, strict and honest.*“

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<sup>54</sup> Witness Tomislav Krstović examined on 6 December 2010.

170. Protected witness S-101, who was a member of the Jahorina Training Center at the relevant time, remembers very well the instructors and the commanding personnel, including the Accused Duško Jević, Mendeljev Đurić, and Neđo Ikonić, whom he identified in the courtroom. Explaining in detail their attitude toward the “deserters”, he states that the Accused Jević commanded the greatest authority and his warnings were mostly reduced to the following: *“It should not cross anyone’s mind to flee from Jahorina”*. Anyway, *“the discipline was such that one had to carry out every order”*.

171. However, despite that there were some persons who enjoyed certain privileges, according to the witness, such as one “Hercegovac”, “Crnogorac”, and “Arkan.” These persons’ participation in the execution of civilians in the Kravica hangar was notable, which will be presented in detail in the reasoning below.

172. Witness Radomir Pantić also thinks that the Center’s leading officials were very professional and trained for the jobs they performed, since some of them had been members of the special police even before the war. However, he stated explicitly that when the “deserters” arrived, *“suspicious persons joined the MUP ranks”*, and he did not have positive opinion about all the instructors either, as they were different personalities which inevitably affected their attitude toward the colleagues and the job.

173. The Panel is of the opinion that that was not the case with the Accused, as they had been assigned to police duties and tasks long before the period concerned. Under the Decision<sup>55</sup> of the MUP of the Serb Republic of Bosnia and Herzegovina dated 1 April 1992, the Accused Mendeljev Đurić was appointed the Commander of the 2nd Platoon of the Company for Special Duties and Tasks, and in November 1992 he was appointed Commander of the Bijeljina Police Detachment in the Special Police Brigade<sup>56</sup>.

174. On 24 February 1994, the Accused Mendeljev Đurić was temporarily assigned to the post of instructor for mines and explosive ordnance in the Special Police Brigade, which post he held during the period concerned<sup>57</sup>, and under the Decision dated 17 March 1996 he was appointed Assistant Commander for Operations and Training in the Special Police Brigade<sup>58</sup>.

175. According to the then instructor, witness Ljuban Popržen, Duško Jević was actually the Assistant Commander for Operations and Training. He directed the instructor training program and reported to the MUP or the Brigade Command (Borovčanin or Savić). His specific duties and tasks were primarily the training, command, order and discipline, while the instructors’ primary role was to train recruits in different disciplines.

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<sup>55</sup> T-123 (Decision of the MUP of the Serb Republic of BiH No. 10/86 of 1 April 1992 appointing Mendeljev Đurić to the post of the Commander of the 2nd Platoon of the Company for Special Duties and Tasks.

<sup>56</sup> T-124 (Decision of Sarajevo MUP No. 09-3229 of 20 November 1992 appointing Mendeljev Đurić to the post of Commander of the Bijeljina Police Detachment in the Special Police Brigade).

<sup>57</sup> T-120 (Decision assigning Mendeljev Đurić to compulsory work service No. 08/1-120-3794 of 13 November 1995).

<sup>58</sup> Decision appointing Mendeljev Đurić the Assistant Commander for Operations and Training in the Special Police Brigade Command No. 09/3-120-1130 of 17 March 1996.

Thus the Accused Goran Marković was in charge of diving<sup>59</sup>, witness Popržen conducted training for raids, Dejan Radojković was in charge of dog training, and the Accused Neđo Ikonić for sports training (judo and taekwondo).<sup>60</sup>

176. Although at that time they did not have official decisions on appointment but were issued with them only afterward, in the opinion of the Panel, at the relevant time and prior to it, the Accused *de facto* carried out the tasks of instructors in the Jahorina Training Center in the respective specialties they were trained for. It was established beyond any reasonable doubt in the course of the proceedings that the instructors acted as platoon commanders while in the field.

177. The foregoing was confirmed by witnesses Radomir Pantić (Commander of the 1st Company of Zvornik PJP), Milenko Pepić (member of the 2nd Detachment of the Šekovići Special Police), Radovan Sladoje (Commander of the 1st Platoon of the 2nd Company), Goran Sarić (Commander of the Special Police Brigade), and Tomislav Krstović (one of the instructors), who explained in detail the structure and the manner of the Brigade's operations, saying that it also had its command or the so-called headquarters support units, logistics and special police detachments in the field. Deputies to Commander Sarić were Ljubomir Borovčanin (Chief-of-Staff), Milutin Eraković, Duško Jević (training and education sector), and Vitomir Kapuran (logistics).

178. Witness Mladenko Borovčanin<sup>61</sup> added that members of the Detachment had two or three kinds of uniforms and two-piece overalls, and there were even some "*black and blue combinations*". They had special insignia of the Brigade, an emblem worn on the left sleeve, including numbers, with numbers up to 1000 denoting the Brigade Command, 1001 the 1st Detachment, and 2001 the 2nd Detachment. The Accused Duško Jević had the mark 5 on his sleeve, signifying that he was an Assistant to Brigade Commander.

179. Despite the fact that the Training Center members had different uniforms and identification emblems and numbers on their sleeves, the Panel established beyond any reasonable doubt during the proceedings that at that time "deserters" were engaged in the Srebrenica theater, that is, persons brought by force from the Republic of Serbia, who were then issued with camouflage uniforms without insignia and light blue bullet-proof vests, which was confirmed by all witnesses examined about this. Given the foregoing, the Panel did not find it necessary to analyze why the Training Center members did not have insignia when they were in the field, given that the only relevant procedure in the context of the Indictment was to examine their presence, command

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<sup>59</sup> T-127 Decision No. 08/1-120-137 of 20 January 1996 on the appointment of Goran (father's name Kojo) Marković a diving instructor in the Training Center Sarajevo, Bijeljina OBP [Intelligence and Security]; T-126 (Certificate by RS MUP, Police Brigade, for Bijeljina ATD [anti-terrorist operations] verifying that Goran (father's name Kojo) Marković was a member of the RS MUP in the period from 4 April 1992 to 30 June 1996).

<sup>60</sup> OIV-6 Decision of the Ministry of the Interior of Republika Srpska on the appointment of the Accused Neđo Ikonić the special training instructor in the Special Police Brigade as of 23 February 1994, No. 09-6528, dated 24 February 1994.

<sup>61</sup> Defense witness Mladenko Borovčanin testified at the main trial on 28 April 2011.

structure and participation in the acts as charged. This is elaborated on in the part of the Verdict related to the criminal responsibility of the Accused Jević and the Accused Đurić.

180. However, it should be stressed that the strength of the Brigade did not include special units of the police center (for example, the Special Police Unit of the Zvornik Center). Every Public Security Center had such a unit on its strength, and its members were the local people who did not possess heavy weapons. Special Police Units (PJPs) were component parts of the Regional Public Security Center in Zvornik (CJB), under the command of Dragomir Vasić and his deputy Mane Đurić. The *Butler Report* describes six nominal police companies which were organized to supplement the military forces or to conduct security searches in the Drina Corps rear. The organization thereof was under the command of Danilo Zoljić.<sup>62</sup>

(a) Status of deserters within the Training Center

181. The examined witnesses, members of the Jahorina Training Center, confirmed in their respective evidence the forceful bringing of “deserters” from Serbia.

182. The witnesses who were examined about this circumstance claim that they were arrested by the MUP of Serbia, whereupon they were transported by buses to Janja where they stated whether they wanted to join the units of the VRS or the MUP within the Armed Forces of Republika Srpska. The ones who opted for the police units were sent to the Jahorina Training Center, whose chief was the Accused Duško Jević.

183. Witness S-105 had gone to Serbia in order not to wage war since he had been only 18. In Serbia he lived with his family in Knjaževac, and he was arrested in Kać near Novi Sad. After that, together with other arrested persons he was transported to prison in Sremska Mitrovica, where a considerable number of “deserters” were already held. They were finally transported to Janja, to the barracks, where one person addressed them. He asked the witness whether he wanted to join the police forces, which appeared preferable at first moment as the witness attempted to avoid going to the frontline.

184. On that occasion the witness’ brother was also arrested and they both signed that they would be members of the Special Police Brigade, whereupon they were transferred to Jahorina, to a hotel, where they were issued with uniforms and automatic weapons.

185. On Jahorina they were assigned to two companies, each having approximately 100 men. The witness remembers that Duško Jević was in charge and that Jević was a short man and had moustache at the time (the witness identified him in the courtroom), and that there was also an instructor named Mendeljev there, but the witness did not know them that well as he was in Neđo Milidragović’s platoon. They were called “*Specijala Jahorina*”. The protected witness S-119 was in the same platoon and he claims that instructor Neđo was “*very strict; I feared him*”.

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<sup>62</sup> At that time every Public Security Center had its PJP battalions or companies, hence the Zvornik PJP, commanded by Danilo Zoljić, was also in the field at that time.



186. Protected witness S-104 describes in an almost identical manner the arrival on Jahorina and adds that an individual's choice was not quite respected in Janja, since the men who did the recruiting had some lists and they mostly mobilized men younger than 35 to the police units.

187. The examined witnesses, mainly protected witnesses, claim that upon arriving at Jahorina they were named the "deserters", which some of them considered to be a derogatory term, as did witness S-101. Several of the examined witnesses claim that the commanding staff often had a "hostile attitude" toward them.

188. Unlike the instructors who were professional long-standing employees of the MUP, responsible behavior was not expected from the "deserters", who, as Defense witness Milan Stojčinović said<sup>63</sup>, *"arrived in flip-flops and slippers and were disoriented, not too young, not too old. We did not hope we would make something out of them ... for a couple of days we trained them in patriotism and infantry. We had a task to turn them into any sort of military, so we got down to work"*.

189. According to witness Tomislav Krstović, Commander of one Platoon and instructor for training on Jahorina, even the "deserters" who were brought from Serbia were trained in handling weapons as part of classroom training, which was definitely one of the first tasks. The foregoing was also confirmed by witness S-100, who claims that the training on Jahorina lasted around 20 days and that it included fitness training, target practice and the like. All were trained to handle rifle, which they knew from before as they had all served the army, and they also had shooting practice with blank ammunition rifles, hand-held launchers and *Zolja* hand-held rocket launchers.

190. Therefore, although brought by force, the "deserters" had to be disciplined on Jahorina and obey the superiors' orders while undergoing training to take part in combat operations.

(b) Order to engage the Training Center members in the Srebrenica theater

191. Under the Order<sup>64</sup> of Tomislav Kovač, Commander of Police Staff in Pale, No. 64/95 of 10 July 1995, the MUP units were also engaged in the campaign on Srebrenica as follows: the 2nd Special Police Detachment from Šekovići, the 1st Company of Zvornik PJP, a mixed company of joint forces of the MUP of Republika Srpska and the MUP of Serbia and the Serb Republic, and a company from the Jahorina Training Center camp. Ljubiša Borovčanin, until then a deputy to Special Police Brigade Commander Goran Sarić, was appointed the commander of this newly formed unit.

192. Witness Živorad Lakić, member of the Bijeljina Police Station, claims that at that time they followed the organization of MUP, while the Special Police Brigade of

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<sup>63</sup> Defense witness Milan Stojčinović testified at the main trial on 23 May 2011.

<sup>64</sup> Order of Tomislav Kovač, Commander of Police Staff in Pale, No. 64/95 of 10 July 1995.

Republika Srpska had its own command structure and was organized into detachments. In that respect, witness Tomislav Kovač pointed at the differences in the respective modes of operation of the RS army and the police, as throughout the whole war General Ratko Mladić had aspirations to place every segment of civilian government under his control. It was so during the Srebrenica campaign, when he addressed the police officers in the presence of Ljubomir Borovčanin telling them: *“You, Tomo Kovač’s gang, what do you want, this is our victory!”*

193. When analyzing the referenced Order, witness Tomislav Kovač, who was a Deputy Minister of the Interior of Republika Srpska in July 1995, explained that the company of the Zvornik PJP existed as an established formation, while the mixed company of the joint forces of the MUP of Serb Krajina constituted a volunteer force, which were not under the MUP competence at all and actually never showed up in Srebrenica. They were under the command of the Sarajevo-Romanija Corps and were engaged in the area of Trnovo and Treskavica, but he knows that a company of the Jahorina Training Center was engaged pursuant to the referenced Order.

194. In July 1995, witness Sarić stayed in the Vogošća region, as the Army of BiH launched an offensive in that region aimed at lifting the blockade of Sarajevo. He learned at that time that the Accused Duško Jević stayed on Jahorina and that he received an order to train some units, but he did not have more detailed information about it, since that was *“ordered by someone above me, so my consent was not required”*. He remembers that at that time Deputy Minister Tomislav Kovač requested a withdrawal of the 2nd Šekovići Detachment from Vogošća toward Konjević Polje and Srebrenica. As the reason, it was said that they were withdrawing temporarily because Zvornik was in jeopardy.

195. The witness clarified that pursuant to the referenced order for the engagement of the police forces in the Srebrenica region, the Special Police Brigade was never engaged in full capacity but that combat groups were most often set up. In line with the Order, Ljubomir Borovčanin was appointed the commander of these units in the field, just as the witness was the commander of the units in the Vogošća region. He thinks that the Accused Duško Jević was his deputy at that time, as part of the tasks they were engaged for.

196. Witness Sarić also emphasized that, as the commander, he never had to know or directly address every member of the Brigade, but executed his authorities through his deputy and subordinated companies’ and platoons’ commanders. Thus in the case at hand Borovčanin commanded the units quoted in the Order, while Jević was his deputy in the field.

197. Witness Ljuban Popržen is also aware of the foregoing. At that time he was one of the instructors who stayed on Jahorina with 30-40 recruits, while the Accused Đurić, Mendeljev and Ikonić, together with two companies made up of the Training Center members, went to the Srebrenica war theater. At that time their superior was the Accused Duško Jević. The witness knows that it concerned some regular police task –

securing the Bratunac-Konjević Polje road.

(c) Resubordination and reporting in the field

198. Richard Butler stated that in practice units were indeed resubordinated when being dispatched for tasks, stressing that the MUP units had to be integrated under the command of the VRS during their use in designated tasks, but that not even then was the VRS control over them absolute, as the MUP units assigned to combat operations retained their own internal command framework and maintained their organizational integrity.<sup>65</sup>

199. In order to explain more clearly the relation between the army and the police, expert witness Butler clarified during the cross examination that *"a military commander may assign a task, but he does not exercise the same level of control as he does over military units"*.

200. The Defense contested the foregoing conclusion of the expert witness throughout the whole proceedings, claiming that at the time relevant to the Indictment the Accused did not have command roles in the units that were dispatched from the Jahorina Training Center, and that all the tasks in the field were assigned by a military commanding officer who was a direct superior. According to the finding and opinion of the Defense expert witness, in the specific case the Center members were resubordinated to the Bratunac Brigade at the relevant time, because they were deployed to tasks within its zone of responsibility

201. With a view to proving the referenced hypothesis, the Defense for the Accused Duško Jević tendered into the case file a considerable quantity of documentary evidence corroborating the argument that the companies from Jahorina were resubordinated to the Bratunac Brigade.<sup>66</sup>

202. Retired Lieutenant General Radovan Radinović, military expert witness for the Defense, conducted an expertise on this circumstance. The expert witness offered a theory that when the police forces, as a component of the Armed Forces, arrive in the field, they are resubordinated to the most senior command conducting operations in the referenced zone of responsibility. In the specific case, that was the Drina Corps, and he based that conclusion on the fact that Borovčanin had to report to General Krstić upon arriving in the field.

203. However, the expert witness could not clarify why Borovčanin did not file a single report about all activities in the field to the allegedly superior Command of the Drina Corps, but sent every report to the Police Headquarters in Pale instead. The witness himself expressed surprise about it saying: *"I did not come across a report sent to the Command of the Drina Corps, although it was to be expected and it would have been natural"*. *"He reported to his chain-of-command only, not to the army."* The Panel notes

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<sup>65</sup> T-82 (*Butler VRS Brigade Command Responsibility Report*), para. 6.3.

<sup>66</sup> Documentary evidence of the Defense tendered into evidence at the main trial on 16 May 2011.

that in that context the expert witness completely neglects the notion of *coordination*<sup>67</sup>, which he also elaborated on at the beginning of his presentation, attempting to confirm at any cost the resubordination of the Training Center members to the army, but so as to show that the MUP command structure did not function in the field at all.

204. In any case, the Panel did not accept the referenced conclusion of expert witness Radinović as it is obvious from the witnesses' statements and the tendered documentary evidence that orders to the Center members came from Ljubomir Borovčanin, who sent the reports on the situation in the field to the headquarters of the Special Police Brigade in Pale, that is, Deputy Minister Tomislav Kovač.

205. The foregoing also challenges the averments of witness Tomislav Kovač, who claims that the Training Center unit did not send any reports to the MUP and that they fell within the army's competence.

206. Even after the presentation of a dispatch sent by Dragomir Vasić, Chief of Zvornik CJB, mentioning the death of around 8,000 Muslim soldiers and engagement of MUP members, witness Tomislav Kovač continued denying any connection among the headquarters in Pale, the RS MUP, and the units in the field under Ljubomir Borovčanin's command.

207. The Panel considers such conduct of witness Kovač to be understandable, given that in July 1995, as a Deputy Minister, he practically carried out the duties of the Minister who was absent, so in this way the witness obviously tries to avoid establishment of any responsibility over the activities of the police force in July 1995. The witness insists that the only reason why he came to the Srebrenica area was to form a new police station, although later in his evidence he personally refers to the situation in which he refused a resubordination of the police unit at the request of Bratunac Brigade Commander Vinko Pandurević. However, he does not deny that he approved the engagement of a part of the police forces to provide security to the Zvornik town and its environs because of risk from members of the Army of BiH who were moving around that region.

208. In his evidence witness Kovač also referred to many situations in the field of which he allegedly was not informed, which is untrue given that he was present in the Srebrenica area and had contacts with General Mladić and Police Station Chief Dragomir Vasić, who did inform him that *"there is chaos on the ground with pillages of companies and property happening"*. At the same meeting Kovač learned from Vasić of the incident involving the Šekovići special unit when one member of the Special Police was killed.

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<sup>67</sup> The foregoing was also confirmed by the Established Facts Nos. 53 and 54 accepted in the Panel's Decision No. X-KR-09/823-1 of 1 July 2010. A series of registered intercepted conversations shows a close cooperation and coordination between the MUP units and the Drina Corps units, especially the Engineers Battalion, which units carried out a coordinated operation of blocking the Bosnian Muslims' column. We learn from the intercepted conversation of 20.40 hrs of 13 July that Gen Krstić talked with Col Borovčanin, inquired about the situation on the ground and said that they would keep in touch.

209. Therefore, the role of this witness at that time was not insignificant at all and the MUP units never lost their chain-of-command with respect to issuing orders and reporting to MUP organs about the undertaken activities, as established long before the deployment in the Srebrenica area. According to Defense witness Mladenko Borovčanin, there was a regular reporting in the Brigade on one-month, three-month, six-month and annual levels. According to him, all units reported through regular channels to the Brigade Commander, who forwarded the reports to the Minister of the Interior. The witness confirmed in cross examination that *“the chain-of-command was preserved”* in the Srebrenica field.

210. Therefore, in that part the Panel accepts expert witness Butler's conclusion that the MUP units that were dispatched to combat operations retained their command structure and organizational unity, which was confirmed by Defense expert witness Mile Matijević stating that *“the police forces could be engaged by the army to conduct combat operations, but their engagement was ordered by the Minister of the Interior, who decided on a unit formation, and the commanding officer who was to report to the military commanding officer in charge in a certain area”*. That is what Ljubomir Borovčanin did when he arrived in Bratunac on 11 July 1995.

211. According to the recollection of witness Radomir Pantić, Commander of the 1st Company of the Zvornik PJP, Borovčanin arrived in Bratunac on 11 July, which was also confirmed by Defense witness Neđo Jovičić, who came to Bratunac as part of Borovčanin's entourage as his driver<sup>68</sup>. On that occasion Borovčanin drove a *Toledo*, while the witness drove in a *Pinzgauer* vehicle with a journalist from the Brigade, Aleksa Aleksić. They first dropped by the Police Station in Bratunac and then to the forward command post in Pribičevac.

212. Witness Jovičić was not sure whether Borovčanin met with General Krstić in Pribičevac, but remembers that Borovčanin mainly communicated via radio and used the call-signs “Laser 2” and “Pine Tree”, and he also remembers that the Accused Duško Jević used the call-signs “Laser” and “Stalin”. The witness explained that “Laser” was a call-sign for all members of the Special Brigade. In the statement he gave as a suspect<sup>69</sup>, the Accused Đurić clarified that his call-sign in the field was “Ash Tree (*Jasen*)”. He added that the Accused Jević did not inspect the units in the field much, as they mostly communicated via radio.

213. Although witness Goran Sarić attempted in his evidence to confirm that members of the combat group under Borovčanin's control did not send reports to the MUP headquarters, he did not have an explanation for the origin of the information dispatches

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<sup>68</sup> Witness Neđo Jovičić was assigned as Lj. Borovčanin's driver. He was issued with a *SEAT Toledo* vehicle. He was issued with a decision that he was a member of the MUP. His base was in Janja.

<sup>69</sup> Statement the Accused gave as a suspect to ICTY investigators, accepted by the Panel under the Decision of 12 December 2011.

sent to the headquarters about the engagement of MUP members in the Srebrenica field in July 1995.<sup>70</sup>

214. Dragomir Vasić also testified about the referenced circumstance. In July 1995, he was the Chief of Security Services Center (CSB) in Zvornik. He confirmed that he was familiar with the contents of the dispatch of 13 July 1995, whose paragraph 2 refers to the execution of around 8,000 persons captured in the woods near Konjević Polje. He added that during one report General Mladić said that he and the army would be pursuing a campaign on Žepa *“and you should finish off the remaining commandos in the woods!”* The witness responded to it that there were too few members of the MUP for such a large number of people referred to in the dispatch.

215. This witness also categorically claims that he did not have any knowledge of the *Krivaja 95* plan or the military plans of the VRS Main Staff or the Drina Corps, and that a prevailing view was *“there where Mladić is, there is no room for police command”*.

216. However, neither he nor Defense expert witness Radovan Radinović could explain why Ljubomir Borovčanin informed only his superiors in the police structures about all undertaken activities<sup>71</sup>, with witness Radinović confirming that in the documentation submitted to him he did not notice a single report of Borovčanin's sent to the Bratunac Brigade Command.

217. Witness Mićo Gavrić also explicitly stated that, as the Chief of Artillery of the Bratunac Brigade, he was informed of the order for terrain search<sup>72</sup> that his Commander had received from General Jovanović. He is also aware that the MUP units were supposed to take part in the search. The witness added that his task involved only a *link-up* of the units referred to in the order and stressed that on that occasion each participant still received orders from his immediate superiors. That was also the case with the Accused Jević, although he personally came to the Bratunac Brigade to receive the task.

218. The 3rd Infantry Battalion of around 300 troops, commanded by Dragan Zekić, and the 1st Company, commanded by Duško Jević, were supposed to take part in the search. In that respect the witness did not deny that he told the Accused Jević after the search: *“Under the order of the Command you will take these people to Konjević Polje”*. However, he reiterated that he was not a direct superior to members of the Jahorina Training Center in the field, stating: *“I had influence on Zekić, but not on Jević. We did cooperate, but I could not order him around. Dragan maintained contacts with his men and Duško with his.”*

219. Witness Gavrić then specifies that his role in the search was a link-up of the military and the police units and categorically claims that he did not give any direct

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<sup>70</sup> Prosecution documentary evidence No. T-8, T-9, T-10, T-11, T-12 and T-15.

<sup>71</sup> Prosecution documentary evidence No. T-14.

<sup>72</sup> According to the descriptions provided by the witness, it was the first order that he got from Commander Blagojević on 14 July and it concerned the terrain search on 17 July.

executive orders, but that he only informed the superior Command on the situation on the ground. He corroborated the foregoing with the averment that the roles of all participants were already clearly defined at a meeting in the Bratunac Brigade in which he did not participate, but was subsequently informed of its course by Colonel Blagojević.

220. The Panel accepts the Finding and Opinion of expert witness Radinović in the part related to the coordination of the military and the police forces, as that was also established in numerous ICTY judgments which read that there was *a close cooperation and coordination* between the units of the MUP and the Drina Corps, which was also corroborated by the established facts in this case.<sup>73</sup>

221. Details of that cooperation were referred to in this Court's final Verdict against Milorad Trbić, reading that as early as on 11 July, that is, before it learned of the forming and movement of the Bosnian Muslims' column, the VRS Main Staff ordered the Drina Corps to undertake precautionary measures and to achieve agreement and cooperation with the MUP bodies with a view to preventing the Bosnian Muslim forces' entry to or exit out of the enclave.<sup>74</sup>

222. Given that the VRS orders in relation to the MUP units use the terms "agreement" and "cooperation", it has been concluded that there did not exist an absolute and exclusive control of the VRS over the MUP units. The Panel also cannot accept the averment of the Defense that at the relevant time the Accused did not have the functional, legal, hierarchical, and ultimately also the operational role in the field while commanding the units of the Jahorina Training Center. Witness Jevto Doder, who was the Commander of one of the Platoons of the Jahorina Training Center's 1st Company, categorically confirms that during the operation in Srebrenica he had full control over members of his unit.

223. Therefore, the Defense attempted to corroborate the averment of the army's control over the Center units with the finding and opinion of expert witness Radovan Radinović, although he stated explicitly in his oral presentation that *"the police force headquarters commanded the units operationally; they issued orders for the utilization of the police units"*.

224. The expert witness clarified the manner of engagement of the police force in the Srebrenica field, stating: *"The Command of the Drina Corps requested from the Main Staff the engagement of police forces. They forwarded the request to the Supreme Commander, and he to the MUP, which then requested from the Police Force Headquarters the engagement of the Special Police and the Security Stations in the field"*.

225. The foregoing absolutely clearly shows the vertical chain-of-command over the police structures, which, according to the adduced evidence, was retained during the

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<sup>73</sup> Decision to accept the established facts dated 1 July 2010.

<sup>74</sup> Final verdict by this Court No. X-KR-07/386 of 16 October 2009.

deployment in Srebrenica in July 1995. Defense expert witness Mile Matijević also agreed with the foregoing, adding that in the field *“police commanding officer retains the command over his unit”*.

226. The expert witness did not answer the question how he concluded, in the specific case, that members of the Special Police Brigade were resubordinated to the army, hence the Panel inferred that his finding in that respect, which was in favor of the Accused, was ill-founded in an attempt to exculpate them for the events in Srebrenica. Therefore, in this way the expert witness attempted to devoid their roles in the field of any significance, although there is no ground for such a conclusion in the adduced evidence.

227. Contrary to that, the adduced evidence shows a very good communication by way of exchange of dispatches among the headquarters in Pale, Zvornik CJB Chief Radomir Vasić, and Ljubomir Borovčanin, who informed the superior command about the situation on the ground in the Bratunac Brigade zone of responsibility. Thus the Special Police Brigade Commander, witness Goran Sarić, had an opportunity to see the final report on the engagement of the units since he forwarded it to the RS MUP, so he stressed that it did not mention the killings of the Muslim men.

228. This witness clarified during cross examination that it was possible for some of the deserters from the Jahorina Training Center to be used in the field under a direct order of Commander Krstić or Mladić, but that there was no need for it in reality, as they would always contact Ljubomir Borovčanin, as the Commander of that combat group, prior to it. In that respect the witness stressed that in such case the Center members would have been obliged to obey the order, but only if it had been lawful. If the deserters or the Center members had been given unlawful orders bypassing the hierarchy, they would not have been able to carry them out without consulting their immediate superiors, that being Lj. Borovčanin for the police forces in the field in the specific case.

229. Although in his evidence witness Goran Sarić tried to confirm that the police forces were subordinated to the military command, he nevertheless emphasized at the end of his statement that providing security to the Bratunac-Konjević Polje road, conducted by the Training Center members, is exclusively a police task, adding that the terrain search they also participated in may be a military and a police task alike.

230. The then instructor in the Training Center, witness Ljuban Popržen, stated explicitly that throughout the whole operation the Accused filed reports to the Command, that is, that he was subordinated to the Command of the Special Police Brigade that was a component of the MUP.

231. Therefore, the Defense did not succeed in corroborating, with a single piece of adduced evidence, the averment that the Jahorina Training Center was absolutely subordinated to the VRS at the relevant time, that is, to the Drina Corps or Commanders of the Bratunac Brigade, in the manner that rules out the Accused's command over the subordinated units in the field.



232. It is exactly with respect to the Accused's attitude toward the subordinated members of the Jahorina Training Center that it is useful to point at the explanation by witness Kovač, who in his evidence obviously attempted to reduce the importance of the MUP's commanding role in the activities in Srebrenica. He, nevertheless, answered a specific question on the position of the Accused Duško Jević in the Srebrenica field by stating that at that moment his obligations as the head of the Jahorina Training Center ceased, as in the field he received a new tactical duty from Borovčanin, that is, "*as usual, commanded the people with whom he had come*". In addition to it, that was not the first situation in which the Accused Duško Jević effectively commanded the units in the field, given that he had commanded the Joint Forces in the region of Foča even before the outbreak of the war conflict, according to this witness.

233. Therefore, the statements of the examined witnesses with which they attempted to minimize the role of the Accused in the Srebrenica field in July 1995 are unacceptable, given the fact that they were dispatched to the task as commanders who had and exercised effective control over their subordinates, which was confirmed by many examined witnesses.

234. In that context irrelevant are the objections by the Defense that in July 1995 the Accused did not have the ranks<sup>75</sup> or the official decisions of the internal affairs' organs on appointment to certain positions, given that all the adduced evidence indicates beyond a doubt the scope, nature, and character of their authority over the Jahorina Training Center members. Witness Radovan Sladoje, who was one of the platoon commanders at the time, claims that under the order they had received the platoons were lined up "*under full combat gear*".

235. This witness stated categorically that upon arriving in the Srebrenica area and deployment of the Center members along the road he knew at every moment where his subordinated police officers were, so that the probability of their doing something without his knowledge amounted to "1 percent". In addition, he also confirmed that at that time they received orders from the Accused Neđo Ikonić, and he from his immediate superior, the Accused Duško Jević, since, according to the witness, "*the rank hierarchy was respected*".

236. Therefore, there was no doubt among the Jahorina Training Center members regarding the command-issuing hierarchy, irrespective of the lack of ranks and official decisions on appointments, which the Defense insisted on during the proceedings.

237. Therefore, the structure of the Jahorina Training Center was absolutely clear and defined to everyone who held the post of instructor. It follows from the adduced evidence that the duties of every respective Accused, as well as the other platoon commanders, were known. In addition, the instructors were usually persons who had been police

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<sup>75</sup> According to expert witness Mile Matijević, the 1994 decision on the utilization of ranks was not applicable until October 1995, so the ranks were promoted as late as on 20 October 1995 at a ceremonial troop review.

officers for many years and certainly qualified to command a large group of people whom they trained in weapon handling.

238. As former members of the MUP, they were also familiar with the rules of international war law in armed forces, and compliance with the rules of warfare was ordered in the Supreme Commander's Order published in the *Official Gazette* on 13 June 1992. The Order stipulates that the Defense Minister of the Serb Republic of Bosnia and Herzegovina shall lay down an instruction for the treatment of captives.

239. According to witness Tomislav Krstović, Commander of one Platoon and a training instructor on Jahorina, even the so-called "deserters" who were brought from Serbia were trained to handle weapons as part of their classroom training, which was certainly one of the first tasks.

240. It follows from the Guidelines for establishing the criteria for criminal prosecution, passed that same year by the Military Prosecutor's Office attached to the VRS Main Staff<sup>76</sup>, that it was mandatory for the armed forces of the VRS to comply with the Instruction on the application of the rules of international law of war in armed forces, containing the principles and rules of international law of war in armed conflicts and prescribing the manner of application of these rules. Anyway, they are obliged to it also by the Order on the application of the rules of international law of war, referred to above.

241. The foregoing is relevant as it envisages an obligation for the commanding officers of the VRS as the order-issuing authority in the armed force whose members may commit or have committed an offense of this kind. It also envisages that the very knowledge of the command staff that subordinated units committed criminal offenses constitutes the grounds for liability for some of these offenses, if measures have not been undertaken to prevent the very act or the consequence thereof and to launch criminal prosecution against the perpetrators.

242. The guidelines also stipulate that pillaging and confiscating the movable property of the civilian population is an exceptionally negative conduct on the part of the armed forces members, which, in addition to the negative effect on the troops' morale, also constitutes the criminal offense of War Crimes against Civilians in violation of Article 142 of the CC of SFRY.

243. The referenced material was intended to all commanding officers of military units and institutions, police stations, Military Police and security organs, hence the Accused cannot ever claim to have any misunderstanding regarding the statutory criminal nature of the actions undertaken under their orders by members of the Jahorina Training Center.

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<sup>76</sup> T-129 (The 1992 Guidelines for establishing the criteria for criminal prosecution).

244. Before the Panel presents an evaluation of the Accused's participation in the events as charged, it will briefly address the events that preceded the attack, that is, that happened by 12 July 1995 in the territory of the Safe Area and beyond.

#### **D. PREPARATION FOR THE ATTACK**

245. On 2 November 1992, the VRS formed the Drina Corps as the last of its six corps formations.<sup>77</sup> It was formed in response to the growing security threat posed along the western regions of the Drina River by the Army of BiH strongholds in the mountainous regions of Cerska, Srebrenica, Žepa, Goražde and the outlying areas of Višegrad.<sup>78</sup>

246. Within the month of the formation of the Drina Corps, the forces of the Army of RBiH operating from Srebrenica began a two stage military campaign. Their first objective was to link up with another group in Cerska, thus isolating the VRS forces holding the towns of Bratunac and Skelani, and second, the actual capture of Bratunac itself.<sup>79</sup> By January 1993, the Army of RBiH successfully isolated the Bratunac area from the rest of the Drina Corps.<sup>80</sup>

247. In response, as indicated in Richard Butler's *Report*, on 19 November 1992, the military and political leadership of the VRS issued Operational Directive Four, directing the Drina Corps, to do as follows, among other things: "in the wider Podrinje region exhaust the enemy, inflict the heaviest possible losses on him and force him to leave the Birač, Žepa and Goražde areas together with the Muslim population".<sup>81</sup>

248. The Main Staff of the VRS and the Drina Corps initiated a major counter-offensive in late January 1993 to eliminate the strongholds of the Army of RBiH of Cerska and Srebrenica. The VRS forces continued to attack these areas through the spring and by early April 1993 they were within two kilometers of Srebrenica.<sup>82</sup>

249. The VRS attack on these areas, that is, the area of Eastern Bosnia, caused the concern of the UN Security Council over the pattern of hostilities by "Bosnian Serb paramilitary units" against towns and villages in this region, so the Council reaffirmed that any taking or acquisition of territory by the threat or use of force, including through the practice of "ethnic cleansing", is unlawful and unacceptable.<sup>83</sup>

250. The Security Council was deeply alarmed at the information provided to it by the Secretary General on the rapid deterioration of the situation in Srebrenica and its surrounding areas, as a result of the continued deliberate armed attacks and shelling of

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<sup>77</sup> T-81 (*Butler VRS Corps Command Responsibility Report*), para. 1.0.

<sup>78</sup> T-81 (*Butler Report*), para. 1.0.

<sup>79</sup> T-81 (*Butler Report*), para. 1.22.

<sup>80</sup> T-81 (*Butler Report*), para. 1.24.

<sup>81</sup> T-131 (Operational Directive Four of Main Staff str.pov. 02/5, 19 November 1992); T-81 (*Butler Report*), para. 1.22.

<sup>82</sup> T-81 (*Butler Report*), para. 1.25.

<sup>83</sup> UN Security Council Resolution of 21 February 1992 [date as rendered in the original text; translator's note].

the innocent civilian population by “Bosnian Serb paramilitary units”.<sup>84</sup> Another important tactic in the VRS strategy was to deprive the Srebrenica population from access to food, medicine and other necessities of a normal life.

251. For that reason, on 16 April 1993, the UN Security Council passed the Resolution No. 819 demanding that “all parties and others concerned treat Srebrenica and its surroundings as a *safe area* which should be free from any armed attack or any other hostile act”.<sup>85</sup> Under Security Council Resolution No. 824 Žepa and Goražde were also declared safe areas.

252. With the establishment of the safe areas, the confrontation lines around Srebrenica stabilized. However, small scale fighting continually flared up along the boundary of the enclave from mid-1993 through mid-1995. The continued activities of the units of the 28th Division of the ARBiH inside the enclave required the VRS forces to maintain a defensive perimeter, which ran opposite the enclave boundary.<sup>86</sup> Notwithstanding the UN Resolutions, the VRS continued the attacks against the safe areas and the obstructions of the humanitarian relief flow.

253. In 1995, the VRS forces expressed the view that the Army of RBiH might be planning a “spring offensive”<sup>87</sup>. Butler’s Report also refers to this forecast by the VRS of an offensive by the armed forces of the Army of RBiH. In line with these forecasts, on 8 March 1995, the Supreme Command of the Armed Forces of Republika Srpska issued a document entitled Directive No. 7.<sup>88</sup>

254. The Directive tasked the Drina Corps with the following:

... complete the physical separation of Srebrenica from Žepa, 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 and Žepa.

255. Witness Joseph Kingori,<sup>89</sup> a UN military observer, confirmed in his statement that the situation in Srebrenica upon his arrival was worrying with respect to food and health services for the population, and that the VRS was continually tightening the grip around the enclave, by gradually restricting the generally limited flow of humanitarian relief into the Srebrenica “safe area”. In March, April, May, and June, there was no delivery of fresh food, meat or dairy products into the enclave.

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<sup>84</sup> UN Security Council Resolution of 21 February 1992 [date as rendered in the original text; translator's note].

<sup>85</sup> UN Security Council Resolution of 21 February 1992 [date as rendered in the original text; translator's note].

<sup>86</sup> T-81 (*Butler Report*), para. 1.27.

<sup>87</sup> T-113 (Order for the defense and active combat operations, Operational No. 7, 20 March 1995).

<sup>88</sup> T-132 (Directive for Further Operations, operational number 7 DT, No. 2/2 -11, 8 March 1995); T- 82 (*Butler Report*), para. 1.37. Established Fact No. 1 in the Panel's Decision of 1 July 2010.

<sup>89</sup> Witness Joseph Kingori (Statement accepted pursuant to the Panel Decision of 26 August 2010).

256. On 20 March 1995, the Drina Corps Commander issued the Order for the defense and active combat operations, Operational No. 7, in line with the Directive issued by the VRS Supreme Command giving the order of the same contents to the Drina Corps.<sup>90</sup>

257. The Order reads further: "In the case that UNPROFOR forces leave Srebrenica and Žepa, the Drina Corps Command shall plan an operation named *Jadar* with the task of breaking up and destroying the Muslim forces in these enclaves and definitively liberating the Drina Valley region".<sup>91</sup>

258. General Mladić, Commander of the VRS Main Staff, subsequently issued the Directive<sup>92</sup> for further operations, Operational No. 7/1, instructing the conducting of the operation called "Coordinated Action 95", implying that other forces of the VRS will carry out coordinated actions with a view to creating an operational-strategic camouflage and improving the operational-tactical position by conducting planned combats and operations pursuant to the Directive No. 7 and active combat operations toward Bugojno, Travnik, Kladanj, Olovo, Vareš and around the enclaves of Srebrenica and Žepa, Goražde and the Bihać pocket.

259. On 8 April 1995, General Živanović issued the Order for Defense and Active Combat Operations, Operational No. 7/1<sup>93</sup>, ordering, among other things, an intensification of combat activities around the enclaves.

260. On 31 May 1995, the forces of the Drina Corps launched an operation called *Jadar-95*.<sup>94</sup>

261. The launch of this operation forced the UNPROFOR Dutch Battalion troops to abandon the Observation Post Echo, which was of strategic importance for the VRS in terms of the planned operation of capturing Srebrenica.<sup>95</sup>

262. On 16 June 1995, Republika Srpska President Radovan Karadžić issued an order with an objective of "final crushing and defeat of the enemy", establishing special measures of combat readiness for all armed forces, all state organs and organizations, all enterprises and institutions, and the entire population.<sup>96</sup>

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<sup>90</sup> T-113 (Order for the defense and active combat operations, Operational No. 7, 20 March 1995).

<sup>91</sup> T-113 (Order for the defense and active combat operations, Operational No. 7, 20 March 1995).

<sup>92</sup> T-133 (Directive for Further Operations, operational No. 7/1 DT, No. 02/2-15, 31 March 1995, issued by VRS Main Staff Commander, General Ratko Mladić), Established Fact No. 3 in the Panel Decision of 1 July 2010.

<sup>93</sup> T-114 (Order for the defense and active combat operations, Operational No. 7/1, 8 April 1995).

<sup>94</sup> T-135 (Order of the RS President, No. 01-1118/95, 16 June 1995).

<sup>95</sup> T- 81 (*Butler Report*), para. 1.38.

<sup>96</sup> T-135 (Order of the RS President, No. 01-1118/95, 16 June 1995).

263. The military preparations were soon completed for the operation *Krivaja 95*, the code name for the battle plan for the reduction of the UN designated “safe area” of Srebrenica.<sup>97</sup>

264. On 2 July 1995, Major General Milenko Živanović issued an Order for Active Combat Operations, Operational No. 1, code-named *Krivaja 95*.<sup>98</sup> It reads that based on Directives 7 and 7.1, the Drina Corps’ task is to conduct offensive activities, and in the depth of the Drina Corps’ zone of responsibility separate the enclaves of Srebrenica and Žepa as soon as possible and reduce them to the town proper.

265. The objective of this Order is as follows: “With a sudden attack completely separate and reduce the enclaves of Srebrenica and Žepa, improve the tactical position of the forces deep within the zone and create conditions for the elimination of the enclaves”.

266. The continuation of the preparations for the attack on Srebrenica is visible in the Order<sup>99</sup> of Vidoje Blagojević, the Commander of the 1st Bratunac Light Infantry Brigade, on full mobilization of all military conscripts doing compulsory work service by 18.00 hrs on 10 July 2012. The Order was issued based on the Order of the VRS Main Staff Commander with an objective of crushing the enemy’s offensive in the municipalities of Bratunac and Srebrenica.

267. In the proceedings the Defense examined military expert witness Radovan Radinović about the *Krivaja 95* plan. He stated that the referenced plan had originally been designed only as a control of the area between the enclaves of Žepa and Srebrenica, which was followed by “*a radical change of plan*”, since, as it is visible from the referenced order, the enclaves should only have been reduced to the town proper, which did not imply the very entrance into the towns.

268. This was also confirmed by expert witness Butler who said during cross examination that the objective of the original operation *Krivaja 95* changed over time, that is, that the Republic President subsequently authorized the expansion of the operation to include the capture of the town as well. According to Butler, such a decision of the President also pertained to Lj. Borovčanin and his units, meaning that they were supposed to leave the location they were in and go to the Srebrenica field.

269. The examined Defense witnesses also claim that the military operation of the separation of the enclaves of Žepa and Srebrenica began on 6 or 7 July. The reason for issuing such a Directive was the non-compliance with demilitarization that was ordered to Srebrenica after it had been declared a safe area, given that members of the Army continued with occasional incursions into the RS territory, which resulted in a large

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<sup>97</sup> T- 81 (*Butler Report*), para. 1.38.; Established Facts No. 5, 6 and 7 in the Panel Decision of 1 July 2010.

<sup>98</sup> T-136 (Order to the Drina Corps for Active Combat Operations, No. 04/156-2, 2 July 1995).

<sup>99</sup> T-138 (Order Military Secret strictly confidential No. 04/654-58, 10 July 1995, ordering full mobilization based on the Order of the VRS Main Staff Commander).

number of civilian victims in Skelani, Kravica, Bjelovac and other places. In that context the witnesses also claim that everyone was in some way surprised with “*the swift fall of Srebrenica*“, but they explained it with the fact that military force Commander Naser Orić had left Srebrenica two months before.

270. Therefore, during the proceedings the Defense claimed that the objective of the *Krivaja 95* operation was exclusively the military objective of “reducing the enclave”, that is, separating the enclaves of Srebrenica and Žepa and controlling the territory between them, in order to prevent offensive actions of the 28th Division troops, and that, encouraged by the original success and lack of resistance, the forces of the VRS and the RS MUP continued the attack until the final capture of the enclave.

271. However, this argument of the Defense appears to be irrelevant given the events that followed the “reduction of the enclave”, that is, the military attack that lasted until 10 July 1995. That is to say, even if the Directives’ sole objective was the “reducing [of] the enclave” (although the ample adduced evidence tells to the contrary, for example, the Order of the Drina Corps Command dated 16 May 1995 referring to the “liberating of the enclaves”<sup>100</sup>), after the original attack and a complete lack of the resistance anticipated by the VRS and MUP RS forces, it is obvious that mainly civilians stayed in the enclave as well as a small number of able-bodied men, who, due to the exhaustion they had suffered for years under the conditions they had lived in and with the materiel they had at their disposal, were not capable of putting up a military resistance.

272. Despite that knowledge, the attack against the population of Srebrenica continued, which does not leave room for any other conclusion but that the activities undertaken after the “reduction of the enclave” possessed all aspects and characteristics of a widespread and systematic attack, that is, that a widespread and systematic attack on the civilian population followed as a direct consequence of the military attack on Srebrenica and its capture, in which the VRS military forces and the RS MUP units engaged in the Srebrenica region, participated.

#### **E. THE ATTACK ON AND THE FALL OF SREBRENICA**

273. As established in the ICTY judgments and the final verdict of this Court in the trial of the Accused Milorad Trbić, the VRS attack on Srebrenica commenced on 6 July 1995. The *Butler Report* also reads that the attack on Srebrenica started at 04.30 hrs on the referenced day when fire was opened on the positions where the troops of the 28th Infantry Division were deployed.

274. Witness Joseph Kingori confirmed in his statement that he had been awoken by shelling in the early morning hours of that day and that by 18.00 hrs around 250 shells had fallen in and around Srebrenica. There were killed and wounded people in the city

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

who were being transported to hospital. Many Prosecution witnesses who had been in Srebrenica at that time described in their evidence that shells were coming from all sides and that the shelling lasted until 11 July 1995.

275. In the coming days five Observation Posts of UNPROFOR's fell in a clash with the VRS troops advancing toward the town. The *Butler Report* also mentions the fall of UNPROFOR's Observation Posts. The defense forces of the Army of RBiH were pushed toward the town, and the UN military observers gained an impression based on the targets that were shelled that the VRS attack was aimed at causing maximal number of civilian casualties.<sup>101</sup>

276. That was also the opinion of one of the Dutch Battalion members, witness Joseph Kingori<sup>102</sup>, who described in his evidence:

"[the target] when we were going out for our patrols, was mainly the population, that is, the people in that area, the civilians. Because after the shelling for some period, you know, targeting the houses in that particular village, they would wait for some time then shell the same place again. According to our own assessment, that meant that they were waiting for the people to come out to pick the injured and maybe check the damage and all that, and then they would hit them again when they're still there.

In my opinion, the main reason was to make sure that they harassed these people in such a way that they are forced to leave the enclave, because as they had said earlier, they did not want the Muslims inside the enclave. They just wanted it for themselves: that is, the Serbs. So, they just wanted to cause fear, panic, and force the Muslims to flee that enclave."

277. Witness Van Duijn also confirmed this in his evidence.<sup>103</sup> According to him, the task of the platoons and the observation posts from January was *"to count the number of shootings and detonations that we heard or saw in the enclave. But from the 6th of July, we basically stopped because there was no counting the number because it was incessant and very intense."*

278. The VRS activities continued on 9 July 1995. President Karadžić issued a new order on that day giving the green light to capture Srebrenica.<sup>104</sup> The situation rapidly became critical for the civilian and military leadership of Srebrenica. By the evening of this day the VRS Drina Corps entered four kilometers within the enclave, stopping only one kilometer away from the Srebrenica town.<sup>105</sup>

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<sup>101</sup> Witness Joseph Kingori (Statement accepted pursuant to the Panel Decision of 26 August 2010).

<sup>102</sup> T-186 (Decision of the Court of 26 August 2010) Transcript of witness Joseph Kingori's testimony in *Krstić* of 31 March 2000).

<sup>103</sup> T-189 Transcript of Van Duijn's testimony in *Popović et al.* of 27 September 2006.

<sup>104</sup> Established Fact No. 13 in the Panel Decision of 1 July 2010.

<sup>105</sup> Established Fact No. 12 in the Panel Decision of 1 July 2010.



279. In the early morning hours of 10 July, the VRS forces continued the advance toward Srebrenica, including the advance toward the positions of UNPROFOR, more precisely, the *Bravo* company, which was the only significant unit between Srebrenica and the VRS troops. Colonel Karremans sent urgent request for NATO's close air support for the defense of the town, but no help arrived before the afternoon of 11 July.<sup>106</sup>

280. The *Butler Report* mentions the VRS forces that were pushing the Dutch Battalion forces toward the town. It also reads that the 10th Sabotage Detachment arrived just south of Srebrenica, and that after the southern defense line started collapsing, around 4,000 inhabitants, Bosnian Muslims who lived in the nearby Swedish Shelter Project for refugees, fled to the town of Srebrenica.<sup>107</sup>

281. It follows from the statements of many witnesses and the documentary evidence in the case that with the tactical shelling of the areas in and around Srebrenica, the population, fearing the uncertainty, was made to move toward the town of Srebrenica, knowing that they would seek shelter with UNPROFOR that was deployed in the PTT building.<sup>108</sup>

282. Witness Mićo Gavrić, the then Chief of Artillery of the Bratunac Brigade claims:

“We saw 95 percent of what was happening in the car battery factory, we saw it from an observation post of a UN unit, but I did not see movements of people until 13.00 hrs on 11 July. We saw people gathering. I was relatively well-informed. On around 5 or 6 July I was aware of the *Krivaja 95* operation and that our forces were advancing from Zeleni Jadar, and we also knew that their forces were leaving the field. I received information from an auxiliary observation post that a large number of inhabitants were gathering next to the petrol station. I later saw an enormous number of people moving; they looked like a black ribbon up to 50 meters wide at places.

Around 15.00 hrs I received a report from a third observation post that an enormous number of enemy soldiers were moving toward Jagličići and Kravica, which was on the exit road from Potočari, and as of that moment I was no longer interested in civilians.“

283. The foregoing is very important given the Defense claim that the movement of the column made up of parts of the 28th Division was an unknown even during the day of 12 July 1995.

284. The examined Prosecution witnesses, including Abida Huremović<sup>109</sup>, who lived in the Srebrenica area at that time, think that a grip around Srebrenica was tightening with the shelling of the environs. The military observers stated in their report that the

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<sup>106</sup> Established Fact No. 15 in the Panel Decision of 1 July 2010.

<sup>107</sup> Established Fact No. 11 in the Panel Decision of 1 July 2010.

<sup>108</sup> Witness Joseph Kingori (Statement accepted pursuant to the Panel Decision of 26 August 2010).

<sup>109</sup> Witness Abida Huremović examined at the main trial on 27 May 2010.

population of the surrounding villages fled to the Srebrenica town because their villages had been razed to the ground in the incessant shelling.

285. The established facts accepted in the trials before the ICTY and the final Verdict in *Trbić* state that this attack affected 40,000 people who lived in the Srebrenica enclave at the time.

286. The commenced attack continued on 11 July, that is, on the same day, around 14.30 hrs. At that time the NATO bombed the VRS tanks that were advancing toward the town, but the bombing was suspended after the VRS had threatened to kill the Dutch troops that were in captivity and to shell the UN Compound in Potočari where more than 20,000 civilians were sheltered.<sup>110</sup>

287. As the situation in Srebrenica progressively deteriorated, afraid of what might happen to them the inhabitants of the Srebrenica enclave set off toward the Dutch Battalion Compound in Potočari seeking protection<sup>111</sup>, so 20,000-25,000 refugees gathered in Potočari by the evening of that day.<sup>112</sup>

288. At the same time, as early as on the night of 10 July, men started gathering in the villages of Šušnjari and Jaglići together with a part of the 28th Division of the ARBiH. Between 10, 000 and 15,000 men, civilians and military alike, formed a column with the aim of reaching the territory under the ARBiH control. Around midnight of 11 July, the column started moving along the Konjević Polje-Bratunac axis. Approximately one third of the Bosnian Muslim column comprised soldiers of the 28th Division, while the other two thirds comprised Bosnian Muslim civilian men from Srebrenica.<sup>113</sup>

289. The VRS forces entered the town of Srebrenica on 11 July 1995 and the town was empty at that moment.<sup>114</sup> In the late afternoon on 11 July, General Mladić, accompanied by General Živanović (the then Commander of the Drina Corps), General Krstić (the then Deputy Commander and Chief-of-Staff of the Drina Corps), and other VRS officers, triumphantly strolled the deserted streets of Srebrenica.<sup>115</sup>

## **1. Character of the attack**

290. Evaluating the nature of the attack against Srebrenica carried out by the armed forces of the VRS, the Panel concluded that it had a character of a widespread and systematic attack directed against the Bosniak civilians.

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<sup>110</sup> Established Fact No. 17 in the Panel Decision of 1 July 2010.

<sup>111</sup> Established Fact No. 25 in the Panel Decision of 1 July 2010.

<sup>112</sup> Established Fact No. 26 in the Panel Decision of 1 July 2010. T-1 (Video material from Srebrenica related trials).

<sup>113</sup> T-81 (*Butler Report*), T-1 (Video material from Srebrenica related trials). Established Facts No. 18, 20 and 21 in the Panel Decision of 1 July 2010.

<sup>114</sup> T-1 (Video material from Srebrenica related trials).

<sup>115</sup> Established Fact No. 24 in the Panel Decision of 1 July 2010.

291. An attack may be widespread or committed on a large scale by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”<sup>116</sup> A systematic attack is expressed as “patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis.”<sup>117</sup>

292. The attack on the safe area began by the shelling of both Srebrenica and the surrounding villages and it lasted intensely for several days, whereby, according to protected witness A2, “*the grip around Srebrenica was tightening*”. The shelling was followed by the military take-over of Srebrenica, due to which the Bosniak population of the area started fleeing en masse, with one part, 20,000-30,000 of them, going to the UN Compound in Potočari, and the other of around 15,000 (mostly men) moving through the woods in order to reach the free territory.

293. During the proceedings evidence was adduced confirming beyond a doubt that the target of the conducted attack were the women, children and the elderly who were staying in unbearable conditions in Potočari and were then forcibly transferred, while the men were mistreated by the shelling of the column they were part of, ambushes and executions.

294. The Defense claimed that military targets were shelled, not civilian ones, during the attack on Srebrenica, thus contesting the argument in the Indictment that the objective of such an attack was mass murders and transfer of the Muslim population out of the enclave.

295. However, the adduced evidence indicates a different state of the facts. First of all, it cannot be accepted that the attack was a result of impulsive reactions or newly emerged conditions on the ground, given the intense preparations that had preceded the attack, visible in numerous orders and directives issued by the VRS military leadership.

296. Long before the attack many activities were also undertaken aimed at creating unbearable living conditions for the population in Srebrenica, manifested as the deprivation of humanitarian relief and lack of water, electricity, and medical care.

297. What should also be emphasized here is that, unlike the term armed conflict, the term “attack”, according to the accepted ICTY jurisprudence, “is not limited to the use of armed force, it also encompasses any mistreatment of the civilian population”.<sup>118</sup>

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<sup>116</sup> *Prosecutor v. Kordić and Čerkez*, No. IT-95-14/2-T, Judgment, 26 February 2001 (*Kordić and Čerkez Trial Judgment*), para. 179.

<sup>117</sup> *Prosecutor v. Kunarac et al.*, No. IT-96-23/1-A, Judgment, 12 June 2002 (*Kunarac et al. Appeal Judgment*), para. 94.

<sup>118</sup> *Vasiljević*, Trial Judgment, 29 November 2002, paras. 29,30.

298. Such mistreatment happened in Potočari, as, in addition to the shelling, the Muslims were also exposed to different forms of verbal, psychological and physical terror on a daily basis during the relevant period.

299. In addition, general mobilization and introduction of a high level combat alert were ordered, while the attack itself unfolded following a determined plan, starting with the shelling of the neighboring villages in order to have the Bosniak population gather in a small territory within the Srebrenica town and thereby generate additional panic and fear among them. Based on the adduced evidence, the Panel also concluded that both the VRS military forces and the MUP units, which were engaged in the Srebrenica area as of 10 July, participated in the attack.

300. After the entry in Srebrenica and subsequently in Potočari, a conduct that also indicates a high degree of organization continued. It was manifested as a uniform pattern of separation of the men from the others, their separate accommodation and subsequent transportation, as well as the organization of the transport of women, children and the elderly on the other side. The treatment of the captured men after their transport to the places of provisional detention and subsequent execution also shows the systematic nature and high degree of organization, also noticeable in the procedure of the covering of mass graves and subsequent relocation of human remains in the secondary graves.

301. The foregoing clearly indicates the existence of a clear plan and systematization of duties among all participants of the attack, so any implication that the consequences of such a well-organized, widespread and systematic attack were unforeseeable and unplanned is unacceptable.

302. Although the existence of a widespread and systematic attack in the region of Srebrenica was not crucial for establishing the existence of the crime of genocide, the Panel established that it did exist, as it directly preceded the forcible transfer of the population and the mass execution of the separated men.

## **V. REALIZATION OF GENOCIDAL PLAN**

303. Given the differences in statements, the Panel could not establish beyond any reasonable doubt at what moment the plan of mass executions was devised, but it beyond a doubt existed during the implementation of the operation and, as established in the numerous judgments by the ICTY and the Court of BiH, the highest command structures of the VRS and the RS MUP were aware of it.

304. The Panel shares this conclusion, which it reached having evaluated all circumstances of the case, especially the engagement of the units in the field, their efficiency and level of organization. The genocidal plan that was implemented at that time was implemented in several stages, such as the forcible transfer of the women and children, separation of the men from the women and children, forcing the men from the column to surrender, shelling the column, setting up ambushes, capturing the men and transferring them to certain locations for executions, and, ultimately, the mass executions that were conducted systematically, whereupon the burial of the killed into primary mass

graves was organized, as was the subsequent relocation of their remains to secondary mass graves, all of which will be explained in detail in the section that follows.

### **1. Arrival of the Accused in the Srebrenica Safe Area**

305. On the basis of the adduced evidence the Panel concluded that before setting off to the terrain in Srebrenica, Special Police Brigade Commander Goran Sarić addressed the gathered members of the Center, which was also confirmed by many witnesses, including witness S-101 and one of platoon instructors, Tomislav Krstović. Krstović claims that on that occasion Goran Sarić mentioned going to the Srebrenica field, the assumption being that he, too, actually conveyed an order issued by the MUP leadership, which afterward turned out to be accurate, as the order signed by the MUP Minister was afterward displayed in the media.

306. According to the statements of the majority of witnesses, including witness S-126<sup>119</sup>, members of the Jahorina Training Center were issued with camouflage uniforms and light blue bullet proof vests for the Srebrenica terrain, without any insignia or emblems of the Special Police Brigade or the MUP.

307. Protected witness S-102 was also present at the line-up of the Jahorina Training Center unit prior to its departure to the field, and recalls that Goran Sarić addressed the present men telling them that they would be moving in the direction of Srebrenica, without providing any details or precise instructions. He even said jokingly that they *"got scared like sissies, although the mission will be short and trouble-free"*. The witness thinks that the Accused Duško Jević and Mendeljev Đurić were present on that occasion. The troops were instructed which pieces of the equipment they should bring along. He also explained that they had two-piece camouflage uniforms and light blue bullet proof vests, and were armed with automatic rifle, live ammunition, and a combat set with 5 ammunition clips. Some of the witness' colleagues had hand grenades on them as well, which was also confirmed by witness S-126.

308. Witness Tomislav Krstović, one of the Platoon Commanders at that time, stated that the Accused Duško Jević lined up the unit and told the gathered: *"Gentlemen, I expect order and discipline from you!"* In the investigation he stated that on that occasion Jević had said: *"Gentlemen, we go to Srebrenica! The companies' and platoons' commanders, that is, instructors shall be responsible!"* According to this witness, on that occasion the Accused also told them that the 1st Company would be deployed in the Bjelovac school in Bratunac, and the 2nd Company in Konjević Polje.

309. Witness Tomislav Krstović added that after the address the Accused Duško Jević left in a black Mercedes jeep, driven by his driver Velomir Gajić, who confirmed this when he was examined as a witness. The Accused Mendeljev Đurić nicknamed "Mane" drove

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<sup>119</sup> Witness S-126 testified at the main trial on 21 October 2010.

in a *Golf 1*, while the Accused Goran Marković left in a white *Golf*. All of them went to the field with members of the 1st Company of the Jahorina Training Center, while, according to the adduced evidence, members of the 2nd Company, commanded by the Accused Neđo Ikonić, set off for Srebrenica the following day.

310. According to all examined witnesses, members of the 1st Company of the Training Center settled on the premises of the Bjelovac Elementary School in Bratunac in the afternoon of 11 July 1995, wherefrom they set off for reconnaissance of the terrain around the UN Compound in Potočari at dusk, which was recorded on a footage tendered into evidence and confirmed by the Accused Duško Jević in the investigation. The Accused stated that he informed Borovčanin about the gathering of a large number of people in the UN Compound in Potočari, and Borovčanin told him that he had already been informed about it and that talks were underway in Bratunac about the evacuation of these people.

311. That same afternoon all stations within the Zvornik CJB received a dispatch on resubordination of the units to Ljubomir Borovčanin. Witness Radomir Pantić, Commander of the 1st Company of the PJP, was informed about it, and the PJP unit that he commanded was armed with long and short barrels and everyone had 4 reserve clips each and one prepared. They probably also had hand grenades as that was customary, according to the witness. The first task that the witness' unit received in the evening of 11 July 1995 was to go to the locality known as the "Yellow Bridge" [*Žuti most*], where the demarcation line between the RS and the Srebrenica Safe Area was.<sup>120</sup>

312. According to witness Pantić, the units would always get specific tasks, but would not know all details of the attack or the context of events they were engaged in. He adds that they knew that Srebrenica was a safe area where Muslims lived and UNPROFOR members were deployed. That night they did not have any activities; they gathered and waited for further tasks. There was shooting in the distance, but they did not have information that the Serb army had taken the town or what was happening with the Muslim population. They learned that only in the morning of 12 July 1995.

313. Witness S-102 describes in detail that, upon arriving in Bjelovac, members of a unit of the 1st Company learned of the ongoing battles between the Army of BiH and the VRS in the wider area. The witness remembers that the Accused Mendeljev Đurić was standing in front of the school explaining the situation to those gathered, trying to raise the morale of the unit members with the following words: *"Everything that is happening will come to an end, so be cautious!"* Even before this address the witness concluded that they had been brought to the field for a reason and he expected tasks, which they actually got the following day, but at that moment the Accused did not give any other detail except the aforesaid.

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<sup>120</sup> Video footage of the site visit of 10 December 2010.

## 2. Advance toward Potočari

314. The Center members stayed overnight in the school and at around 05.00 hrs on the following day set off aboard buses toward Potočari. The Accused Duško Jević was with them on that occasion. The Accused knew at that time that once their units arrived in Potočari, they would participate in the transport of the population, which was also confirmed in the accepted statement of Momir Nikolić.

315. According to protected witness S-101, a part of the 1st Company arrived from the school in Bjelovac to the *Yellow Bridge* in the morning of 12 July. As far as the witness remembers, the Accused Mendeljev Đurić and "Neđo of Zvornik"<sup>121</sup> also participated in the execution of the referenced task. According to witness S-100, at that time the unit members were directly commanded by Platoon Commanders and, although the Accused Mendeljev Đurić went with them to this action, the witness did not receive any direct order from the Accused, although he still claims that the Accused Đurić did command that action by issuing instructions. Witness S-101 interprets the presence of the Accused Đurić in the same way, too.

316. While departing toward the referenced , witness S-101 noticed a tank that was supposed to act toward the village of Budak, which was on the right side of the road, while on the left side there was a group in which the witness was. Together with him on that occasion were the unit members, namely, one Siniša from Tuzla, *Hercegovac*, *the Rat*, and a couple of other guys.

317. As far as witness S-101 knew, and it was also confirmed by witness S-100, they moved toward the UN Compound, since the UN members had previously been issued with an ultimatum to disarm. As they did not comply with it, a part of the unit was dispatched to the ground with a task to disarm them. The units of the Training Center moved on the left and the right side and on the road leading to Potočari and they disarmed UNPROFOR members in the course of that movement.

318. The operation was commanded by the Accused Mendeljev Đurić, as he ordered the seized weapons to be taken to a Pinzgauer that belonged to the unit. During the operation of disarming the UN members the witness saw the Accused Duško Jević at the post talking to several members of the Dutch Battalion.<sup>122</sup> The disarming of the UNPROFOR members and the presence of the Accused Mendeljev Đurić at that time was also confirmed by witness Eelco Koster<sup>123</sup>

319. Witness Jevto Doder had the task to stay at the UN post during that time together with a few unit members. He was one of the platoon commanders at that time and

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<sup>121</sup> It was established in the course of the trial that Neđo Milidragović, Commander of a Platoon of the 1st Company, used the referenced nickname.

<sup>122</sup> T-1 Video footage tendered as the Prosecution exhibit.

<sup>123</sup> Witness Eelco Christian Martin Koster testified via video link on 22 December 2011.

describes that the Accused Duško Jević was in charge of deployment of persons at the post whose task was to prevent objects being taken away. The others passed by the and set off in the direction of Potočari with the task to search the Muslim houses. As far as he remembers, the Accused Jević, Đurić and Marković passed by with members of the 1st Company in that direction.

### **3. Disarming of the Dutch Battalion members at the entrance to Potočari**

320. On the basis of the adduced evidence the Panel concluded that on 12 July, the Accused Duško Jević and Mendeljev Đurić coordinated and supervised the Jahorina Training Center members who participated in the disarming of the UN members at the post at the entrance to Potočari.

321. Witness Tomislav Krstović, who was also one of the instructors on Mt. Jahorina (and a Platoon Commander in the field<sup>124</sup>), described in detail the manner in which the task was carried out. The witness does not remember whether it was the Accused Duško Jević or the Accused Mendeljev Đurić who gave the task to disarm the Dutch Battalion members. They entered the post without struggle and then the witness noticed that the UN soldiers had already put the rifles on one desk, on which there were also their helmets and bullet proof vests of the recognizable light blue color.

322. Witness Tomislav Krstović further described that the gate opened when they arrived in front of the post and the Accused Jević told everyone to just enter as there would be no resistance or struggle. The unit members took a part of the bullet proof vests, weapons and helmets, and some even put the bullet proof vests on. Then the unit members were given a task to remain at the post.

323. The foregoing was also confirmed by other examined witnesses, including Ljubodrag Gajić, who was in the immediate proximity of the Accused at that time as he interpreted their conversations with the UN members.

324. Expert witness Butler explained in his *Report* the lack of resistance on the part of UNPROFOR members<sup>125</sup>, stating that the tactics used from the beginning of the attack was the *maneuver* tactics to force the Dutch Battalion troops back by using fire but without actually firing directly on them, and it was successful. Due to this tactics, the Dutch Battalion troops did not suffer any casualties.

325. Therefore, the Panel concluded on the basis of the foregoing that the Accused coordinated the operation of disarming the UN members in order to absolutely prevent them from providing protection to the Bosniak civilian population that was in Potočari at that time, which would facilitate the realization of the genocidal plan through the forcible

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<sup>124</sup> Witness explained in his evidence that all training instructors on Mt. Jahorina would get the post of platoon commander in the field.



transfer of civilians and separation of the Bosniak men and their transport to the provisional detention places prior to the final mass execution.

#### **4. Participation of Jahorina Training Center members in terrain search (the village of Budak)**

326. On the basis of the adduced evidence the Panel concluded beyond a doubt that after the disarming of the UN troops at the post, a number of the Jahorina Training Center's 1st Company members, headed by the Accused Jević and Đurić and the Platoon Commanders, conducted a search of the terrain – the Muslim houses, on the left and the right side of the Bratunac-Srebrenica road. Those were the slopes to the right and left from Potočari.

327. Witness S-119 confirmed that the Accused Duško Jević and Mendeljev Đurić and his Platoon Commander Neđo Milidragović participated in the search.

328. As described earlier, the Accused Duško Jević did not deny in his statement to the ICTY investigators that the day before the evacuation of the civilians he came to the *Yellow Bridge* together with Borovčanin inspecting the terrain, and that already at that moment he knew that a search would follow whose objective would be to assemble the population in Potočari.

329. In the morning of 12 July, the 1st Company of the Zvornik PJP, commanded by witness Radomir Pantić, was given a task to lead through a mine field the units of the Bratunac Brigade that included mine disposal experts. The objective was to take control of the nearby elevation, but a soldier got killed on that occasion and they were sent back. The other task was to go through a corn field and inspect the terrain.

330. Members of the Jahorina Training Center also participated in the terrain search and "*formed a skirmish line*" upon arriving on the *Yellow Bridge*, so that one part of the unit conducted a search of the left part of the Bratunac-Srebrenica road (the village of Budak area), the other searched the right side of the terrain (behind the UN Compound), while the Accused Duško Jević and Mendeljev Đurić, together with several unit members, set off on the road toward Potočari and a UN post.

331. This was confirmed by witness Ljubodrag Gajić, who interpreted the field talks the Accused Jević and Đurić had with the UN members, due to which he did not move with the rest of his unit, but walked straight on the road toward the UN Compound. He also claims that a tank was moving in front of the unit members who moved on the road, while the rest of the unit was deployed to search the terrain to the right and to the left, as described earlier.

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<sup>125</sup> T-81 (*Srebrenica Military Narrative (Revised) Operation Krivaja 95*, dated 1 November 2002, by Richard Butler) (*Butler Report*) para. 3.15.

332. According to the adduced evidence, the Accused Goran Marković's Platoon, whose members were witnesses S-126 and S-104, conducted a search in the region of the village of Budak, located to the right side of the entrance to Potočari<sup>126</sup>, while the group commanded by Tomislav Krstović and Neđo Milidragović did a search of the terrain behind the UN Compound, that is, to the left of the Bratunac-Srebrenica road.<sup>127</sup>

333. Witness S-126 added in his evidence that the Accused Đurić was the one who ordered a search of the houses. A component part of the task was to hand over to this Accused all persons potentially discovered in the search. The witness clarified in the cross examination why he had not mentioned the Accused Mendeljev in his statement to the ICTY investigators, stressing that he could not remember all events with a chronological precision.

334. Witness S-104, member of the Platoon commanded by the Accused Goran Marković, could not be explicit in his evidence about the wording of the search order, but he assumed that all persons that might be found on that occasion were to be handed over to superior commanders. The witness could not answer about the instruction on the treatment of persons that were not able to move.

335. Unlike the witness S-104, protected witness S-110<sup>128</sup>, a member of the Šekovići Special Police Detachment at that time, claims that prior to the search of the village of Budak (to the right side of the Bratunac-Srebrenica road), they were told that all able bodied men found there were to be killed on the spot, while the women and children were to be taken to Potočari. Protected witness S-102 understood the task in the same way and claims that the order was: *"In case one sees formations or something else that would endanger us, to do that, and to take the women and children to Potočari."*

336. The task of taking the women and children to Potočari, should they be found during the search of the terrain, was also confirmed by protected witness S-100. However, it has remain unresolved what was the exact instruction in case of discovering able bodied men, given that the witnesses differ in that respect in their respective statements.

337. Witness Joseph Kingori also confirmed the existence of the obligation to take people to Potočari, wherefrom they would be transported farther, and that there was no other option for them. He described it as follows in his testimony<sup>129</sup>:

"As we approached Srebrenica, we could see dead bodies on the roadside, ... all the way up to the Srebrenica town itself. Inside there, we went to the hospital, where we found some six old women, and we told them there that we wanted to

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<sup>126</sup> Video footage of the site visit of 10 December 2010, presented at the main trial on 20 February 2012.

<sup>127</sup> The video footage made during the site visit clearly shows that when one moves on that road in the direction of Potočari, the village of Budak is to the right side and the UN Compound to the left side.

<sup>128</sup> Protected witness S-110 examined at the main hearing on 11 November and 29 November 2010.

<sup>129</sup> T- 186 (Decision of the Court of 26 August 2010) Transcript of the testimony of witness Joseph Kingori in *Krstić* of 3 April 2000).

go with them to Potočari, for their own safety, ... but one of the women said that she does not want to leave Srebrenica. She resisted. She said she cannot. Unfortunately, one of the BSA [Bosnian Serb Army] soldiers confronted us and said we've got to go with that woman, that woman has got to leave, otherwise they are going to shoot her."

338. The group of witness S-126 did not find anyone during the search since the houses in that area were empty from before, so the search was very brief, lasting for about an hour. This was also confirmed by witness S-104, who specified that the search lasted until 12.00 or 13.00 hrs approximately, when one man from the unit approached them and told them to get down to the main road.

339. At that place<sup>130</sup> witness S-104 noticed Commander Duško Jević and his own immediate commanding officer Goran Marković. They were arriving in a group with some officers. The same locality was also identified by witness S-102 as a "gathering point".

340. Based on the adduced evidence the Panel concludes that the Accused Duško Jević and Mendeljev Đurić participated in the terrain search with the knowledge and intention to have the entire civilian population transferred to Potočari, wherefrom it was to be forcibly transferred to the territory controlled by the Army of BiH. Thus witness S-126, who moved around the village of Budak, soon realized that the people had gathered en masse in the former factories in Potočari, while some of them took shelter within the UN Compound.<sup>131</sup>

341. Therefore, the Panel concluded that the Accused commanded and supervised members of the 1st Company who participated in the terrain search, aware that its objective was to assemble the entire civilian population in Potočari, where a large number of people had fled earlier seeking protection from heavy shelling in the UN Compound.

342. The Panel makes this conclusion on the basis of the fact that some of the more important circumstances of the attack and the "fall of Srebrenica" were obviously known to all commanders of the VRS and MUP units engaged in the war theater, and to everyone who could see the Dutch Battalion Compound and that hundreds, even thousands, of refugees were gathering there seeking protection, so it is clear that the situation was chaotic.

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<sup>130</sup> T-57 Witness S-104 marked this place on a photograph presented to him and it can be seen that it is an intersection of the main road leading toward Potočari and the road leading out of the village of Budak. The place is located at the very entrance to Potočari.

<sup>131</sup> The foregoing was also confirmed by the Established Fact No. 27 in the Panel's Decision No. X-KR-09/823-1 of 1 July 2010, accepting as proven the facts adjudicated in the ICTY final judgments in *Prosecutor v. Krstić* and *Prosecutor v. Blagojević and Jokić*.

(a) One member activated a hand grenade and threw it into a house killing a bedridden old man

343. Based on the adduced evidence the Panel also concluded that an incident happened in the search when one member of the 1st Company killed an old man he found in one of the houses. According to a witness, the old man was bedridden and could not go to Potočari where all civilians had to gather.

344. The referenced event was described by witness S-126, who heard an explosion during the search and afterward learned from his unit colleagues that one of the Center members had thrown a hand grenade into a house in which he found an old man. The witness could not comment on the identity of the Center member, but described him as *“a rather short man with curly hair, broad jaw line and harsh facial expression.”* He also heard that the Center member did it because the old man could not get out when he called him. The Defense insisted that the Center member threw a grenade out of fear.

345. Witness S-100 described that during the search of the village of Budak he “bumped into one invalid who was lying on the floor”. He informed his superior Neđo Milidragović about it and Milidragović came and ordered the witness to go away, whereupon a shot was heard. The witness concluded that Milidragović killed that man although he never talked about it with him.

346. The referenced killing during the search was also confirmed by witness S-119, who was in Neđo Milidragović's platoon. He cannot confirm whether the commanding officers were aware of this event, but it was overtly discussed.

347. In the opinion of this Panel, the fact that the referenced search constitutes a legitimate military action<sup>132</sup> does not mean that in the course of its conduct unlawful actions may be taken with impunity, such as the killing committed by the 1st Company members.

348. However, there is no evidence that the Accused Jević and Đurić, who moved on the main road, ever learned of the referenced killing, hence they could not be expected to prevent or punish such behavior.

349. In the case at hand the Panel states that the element of “knowledge” has not been met, stressing that in this part the Indictment failed to corroborate with facts the Accused's mode of responsibility.

350. That is to say, in this part the Indictment charged the Accused as members of the 3rd-category JCE of forcible transfer, so they were charged that they could foresee the

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<sup>132</sup> In the cross examination of 19 September 2011, expert witness Richard Butler stated that a terrain search is a military term and a result of every combat activity upon whose completion the terrain is searched in pursuit of the remaining parts of the enemy units. As such, the action is considered legitimate.

described event as a consequence of their actions. The Panel cannot accept this, primarily as it does not find it proven that the Accused were members of the JCE of forcible transfer.

351. Even if they had been members of a JCE, the Panel does not find it proven that the killing of a bedridden old man constituted a natural and foreseeable consequence of the actions of the Accused, given that at that time there was yet no violence or looting of the population, the occurrences that might have made the Accused aware that killings of individuals represented a natural and foreseeable consequence of such actions.

352. Consequently, a terrain search seemed at that moment as a formally legal action, conducted in the conditions in which members of the 1st Company found themselves, with the Accused Jević and Đurić, as superiors to the 1st Company members, knowing that the ultimate goal of this order was to take the civilians to Potočari with a view to their forcible transfer.

## VI. FORCIBLE TRANSFER OF CIVILIANS

### 1. General factual findings

353. The taking of Srebrenica on 11 July 1995 by the VRS resulted in a flight of the Bosniak population from the town and the neighboring villages, that is, as indicated earlier, in the gathering of more than 20,000 people in the UN Compound in Potočari, while the others spread around the surrounding factories and fields. According to the facts established in the ICTY cases, accepted pursuant to this Panel's Decision: "By the evening of 11 July 1995, around 20,000-25,000 Bosnian Muslim refugees gathered in Potočari."<sup>133</sup>

354. It follows clearly from the statements of eyewitnesses of the said events, including the Dutch Battalion members, that the conditions in Potočari at that time were unbearable. Thus protected witness A2 describes: "*We did not have anything to eat and that did not even cross our minds, as the people were just crying*". Protected witness S-113 describes the situation in Potočari on 11 July in the same way.

355. At that time VRS President Radovan Karadžić issued a Directive<sup>134</sup> appointing Miroslav Deronjić the civilian commissioner for Srebrenica. In one part the Directive reads that the commissioner shall ensure that the civilian population can freely choose

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<sup>133</sup> Established Fact No. 26, accepted by this Panel's Decision No. X-KR-09/823-1 of 1 July 2010, accepting as proven the facts adjudicated in the final ICTY judgments in *Prosecutor v. Krstić* and *Prosecutor v. Blagojević and Jokić*.

<sup>134</sup> OII-6 Directive on the appointment of civilian commissioner for the Municipality of Serb Srebrenica No. 01-1350/95 of 11 July 1995.

where they will live or move to, and that all citizens who participated in combat operations against the VRS shall be treated as prisoners of war.<sup>135</sup>

356. During the proceedings the Defense contested the illegitimacy of the transfer of population from Srebrenica, stating that it was a result of an agreement between the warring parties reached under the auspices of UNPROFOR. Consequently, the Defense considered the relevant actions of the Accused not to be criminal.

357. The Panel finds it indisputable that three meetings were held in the *Fontana* hotel in Bratunac about the transfer of the civilians from Potočari.

358. Solving the issue of a huge number of the gathered Muslims in Potočari was on the agenda of the first meeting held on 11 July around 20.30 hrs, attended by the VRS Commanders and UNPROFOR representatives.<sup>136</sup> At that meeting General Mladić requested the presence of representatives of the Bosniak people, at the same time threatening the Dutchbatt Commander that in case of an air strike against the VRS forces the UN Compound in Potočari and around 17,500 refugees in and around the Compound would be shelled.<sup>137</sup>

359. The second meeting took place at around 23:00 hrs on the same day. On behalf of the Bosniak people, the meeting was attended by Nesib Mandžić, who came there along with an UNPROFOR representative.<sup>138</sup> The civilian commissioner for Srebrenica, Miroslav Deronjić, was also present at the meeting. On this occasion, Mladić clearly emphasized the following to the Bosniak population representative: „*Choose whether to survive, stay or disappear*“.<sup>139</sup>

360. On the same occasion, Mladić „*insisted that the ways in which the population would be evacuated be defined by 10:00 hrs on the following day*“, which only indicates that the decision to remove civilians had already been made and was not a subject of negotiations.

361. Before the third meeting scheduled for 12 July at 10:00 hrs, a meeting was held at around 08:00 hrs in the Bratunac Brigade Command at which General Mladić asked all the present „*What are we going to do with the Muslims!?*“ Everyone responded that it should be found out what they wanted. Witness Ljubisav Simić<sup>140</sup>, who attended this meeting, also confirmed the foregoing. The witness testifies that on the referenced occasion, Mladić said: „*If during the surrender of weapons anyone suspected of having committed war crimes was found, he would be arrested and tried.*“ At first, this seemed reasonable and justified to the witness. Subsequently, however, having become informed

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<sup>135</sup> T-81 (*Butler Report*), para. 4.1.

<sup>136</sup> T-1 (Video material from Srebrenica related trials).

<sup>137</sup> T-235 Karremans' Report of 12 July 1995 on the results of the meetings with Mladić.

<sup>138</sup> The final Verdict in *Trbić* determined that the referenced representative was Pieter Boering. The Verdict refers in this part to his testimony in the *Popović* case, p. 1952.

<sup>139</sup> T-81 (*Butler Report*), para. 4.8.; T-1 (Video-footage of the trial in Srebrenica).

<sup>140</sup> Defense witness Ljubisav Simić testified at the main trial on 12 May 2011.

of the situation in Potočari, it seemed impossible to implement such an activity since, in his own words, „*it was impossible in that chaos to find those men who committed crimes.*“

362. The meeting in the *Fontana* Hotel scheduled for 10:00 hrs was held. In addition to witness Ljubisav Simić, the meeting was attended by Miroslav Deronjić, General Mladić, Drina Corps Commander Krstić, Chief of the CJB Zvornik- Dragomir Vasić and the UN Commander with his Deputy. Also present at the meeting were three representatives of the Muslim side, including Ibro Nuhanović and Ćamila Omanović<sup>141</sup>, who clearly said on this occasion: „*General, we have decided to leave this area.*“ This is also confirmed by the video-recording of the referenced meeting.<sup>142</sup>

363. Miroslav Deronjić, as the civilian commissioner whom Karadžić had instructed to attend the meeting, presented three options offered by Karadžić, namely that Bosniaks stay in Srebrenica, leave for third countries or go to Kladanj.

364. Mladić, however, disregarded his words and interrupted him abruptly. General Mladić again repeated to the Bosniak representatives that they could survive or disappear, and that for the purpose of their survival, the ARBiH forces should hand over their weapons and surrender, and that all men would be screened to separate possible war criminals among them.<sup>143</sup> On the other hand, he said: „*There is no need for your men to be killed, your husbands, brothers, neighbors. All you need to do is to say what you want. After you hand over the weapons, you can decide to stay in this territory or, if you would like to leave, go wherever you want. All wishes of any individual will be respected regardless of how many of you there are ...when the weapons are handed over, each individual will go wherever he says he wants to go...*“<sup>144</sup>

365. At that moment, a person entered the *Fontana* Hotel and notified all those present there that a stir-up had started among the population and that there was a possibility that an enormous number of persons would start walking toward Bratunac. Therefore, the President of the IO Bratunac and Ljubisav Simić made a plan of how to support the transportation of people to the territory controlled by the Army BiH. They noticed that on boarding the buses men were missing, but, at that point, this fact did not require any particular attention of theirs, that is, they stated that they did not give much thought to this since the situation was „*very agonizing itself*“.

366. Defense witness Ljubisav Simić, whose task was to organize the distribution of food and internment of the injured in the Health Center Bratunac, asked the Municipality of Ljubovija to provide their support since the Municipality of Bratunac had no resources

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<sup>141</sup> T-196, witness Ćamila Omanović, testimony in *Krstić*, p. 1093.

<sup>142</sup> T-1 Compiled video-recording by Zoran Petrović on Srebrenica, and a transcript thereof.

<sup>143</sup> T-196, witness Ćamila Omanović, testimony in *Krstić*, p. 1098; T-1 (Video-footage of the trial for the events in Srebrenica).

<sup>144</sup> T-1 (Video-footage of the trial for the events in Srebrenica).

to help all those who needed it. *"It was clear to me that we could only offer a symbolic support with what we had available, which was below the required level."*

367. Even though the transport of population was also discussed at the previous meetings, it was finally agreed at this meeting that the population would be removed to the territory under the ARBiH control. Mladić said that the VRS would provide buses, and that the UNPROFOR should provide fuel so that the transportation of population could be successfully completed.<sup>145</sup>

368. Before the described meeting at 10:00 hrs, Dragomir Vasić sent a Dispatch Note to the Police Forces Staff in Bijeljina and the Minister's office, which reads as follows:

„A meeting with the representatives of UNPROFOR, the International Red Cross, and a representative of Muslims from Srebrenica will start at 10:00 hrs, at which an agreement will be made to evacuate the civilian population from Potočari to Kladanj“.

369. Before the referenced meeting, witness Momir Nikolić<sup>146</sup> also met Lieutenant Colonel Popović and Kosorić in front of the Hotel. Popović described in detail to the witness that the women and children would be evacuated to Kladanj, and the able bodied men separated and detained. When asked by the witness about their subsequent destiny, he responded *„All Balijas should be killed!“*. Thereupon, according to his own words, the witness proposed that *Vuk Karadžić* Elementary School in Bratunac and *Đuro Pucar Stari* Secondary School Center in Bratunac, the building of the sport hall and a hangar be used as detention facilities. Also discussed as possible locations for their execution were the state-owned companies *Ciglana* in Bratunac and the *Sase* Mine in Sase.

370. According to this witness, his task was „to coordinate the forces deployed in Potočari regarding the separation, temporary detention and liquidation.“

371. The foregoing clearly suggests that at the time the meeting was held in the *Fontana* Hotel, the highest-ranking officers in the RS army and the MUP RS were aware of the plans and the real intentions toward the civilians and the men. Already at that point in time it became clear that Mladić's statements that the population could choose between staying in Srebrenica and leaving toward Kladanj were a mere formalism, with no realistic possibility to stay since the conditions had been created long beforehand which were on the verge of a humanitarian disaster<sup>147</sup>, while the soldiers' violent behavior created with the civilians a justified fear for their own safety.

372. Witness Kingori also thought that the removal of population was not really negotiated on 12 July at the meeting in the *Fontana* Hotel. The witness concluded so based on the fact that, on this occasion, Mladić in fact only stated that they would not

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<sup>145</sup> T-1 (Video-footage of the trial for the events in Srebrenica).

<sup>146</sup> T-183 Statements of Momir Nikolić accepted under the Decision No.: X-KR-09/823 of 26 August 2010.

<sup>147</sup> Established fact No. 2 from the Panel Decision of 1 July 2010.



wait for the UN to remove the population and the buses were brought there immediately. This meant, as the witness realized, that the decision was made and prepared earlier, and then merely presented at the mentioned meeting. The witness also testified that an officer who attended the meeting subsequently reported that the UN Battalion Commander did not fully agree with the evacuation of Muslims.

## **2. Conclusion about the forcible character of the removal of civilians from Potočari**

373. Already on 14 July 1995, the UN Security Council expressed concern as to the forcible removal of civilians from the Srebrenica “protected zone” carried out by the Bosnian Serbs, claiming it was a clear violation of their human rights.<sup>148</sup>

374. A report related to the Srebrenica events by the Dutch Brigade general on the task given to him by his Supreme Command addresses the main issues during this period, including the violations of warfare law concerning the forcible removal of civilians, separation of men and killings in Potočari.<sup>149</sup>

375. Admitted during the proceedings was a large body of evidence which undoubtedly shows that the removal was planned and organized. An issue was raised during the proceedings as to the incrimination of the acts of the Accused who had actively participated in the transport of civilians from Potočari.

376. In the ICTY Judgments and the final Verdict of the Court of BiH in *Milorad Trbić*, the Panels determined that the attack on Srebrenica affected around 40,000 citizens, whereupon Srebrenica remained completely depopulated. Given this fact, one of the issues that had to be discussed during the proceedings was whether the removal of the population from Potočari is considered a forcible resettlement/removal of 40,000 inhabitants from the Srebrenica enclave.

377. The foregoing should be viewed within the context of all events from the relevant period, viewed from the perspective of civilians, members of the Dutch Battalion, but also of the VRS members, who at the time knew the details and real reasons of the Muslim population resettlement. Witness Eelco Koster, as well as other members of the Dutch Battalion whose statements the Panel accepted in the Decision of 1 July 2011, testified that the transport of civilians “was officially being agreed” at the meetings in the *Fontana* Hotel, while none of the witnesses disputed that a water tank was brought and food distributed in Potočari on the critical day.

378. The referenced witnesses, however, also do not dispute that the men were separated, the population mistreated, and that the conditions in Potočari were at the level of a serious humanitarian crisis. Therefore an issue arises as to how it was possible at all

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<sup>148</sup> Established fact No 44 from the Panel Decision of X-KR-09/823-1 of 1 July 2010.

<sup>149</sup> Documentary evidence, Prosecution rebuttal admitted as T-233.

to stay in Potočari at the moment when the people were in panic, fearing for their own lives, exhausted by hunger and inhuman conditions of their detention.

379. Some members of the Training Centre present at the scene during the removal of civilians had the same course of thinking. Regarding the population gathered in Potočari, witness S-102 testified that „*They certainly did not go voluntarily but I think they were glad to leave the uncertainty.*” According to witness Koster, the refugees wanted to leave Potočari as he did not hear that anyone wanted to stay. The Defense stated this as an exculpatory circumstance having referred to the Defense witness who categorically asserted that „*The Muslims exclusively wanted to leave the area*“.

380. The Defense witness, Ljubisav Simić, also testified that the UN Commander stated they would provide fuel for the busses transporting the civilians and that, at the time, nobody opposed the evacuation.

381. The Defense obviously considered that such acting of the UN members (as apparent from the initial support to the removal of population) diminished the forcible character of the removal. The Panel, however, observes that, at the time, after check points were taken and men disarmed, the role of the UNPROFOR members became marginal, and that their presence was limited to a mere observation of the activities of the members of the RS military and the police in Potočari, wherein they were prevented from intervening in any way.<sup>150</sup>

382. The Panel, therefore, cannot consider that the civilians' wish to leave the territory to which they were brought by systematic shelling and killing, and from where they had only one exit to the safe territory, was sufficiently a voluntary consent, just as it is impossible to speak about a realistic choice between life and death; it cannot be likewise said in the case at hand that there existed a realistic possibility to choose between crossing over to the territory controlled by the Army BiH and the uncertainty of staying in the extremely inhumane conditions.

383. The protected witness A1 described in the same way the impossibility of their staying in Srebrenica. This witness testified that, on that day, the women and the children were leaving “*because they were forcing you, you had to go! The Serb soldiers are forcing us, offering trucks to us, cursing our Balijas' mothers and telling us to go to Turkey*”. The witness clarifies that he himself also decided to leave since around 105 people were killed in his village, while during their stay in Potočari Serb soldiers continually kept taking people away from the mass, whereupon nothing was heard about them ever again.

384. Witness A2 also testified that immediately upon their arrival, in addressing the gathered people, the VRS soldiers told her too: „*You see how nicely you have come*

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<sup>150</sup> The foregoing is best seen from the example about which witness Eelco Koster testified. When they found corpses of the killed men and tried to identify them, members of the VRS opened fire at them even though they clearly saw that the witness and his colleagues were UNPROFOR members.

*here, you could have done so in 1992 and there would have been no problems. Now, you will see what will happen to you!*" At the time, the witness also noticed that members of the VRS were disarming members of the DutchBat, seizing not only their personal weapons but also their clothing. This increased the gathered civilians' fear and disbelief because the members of the DutchBat were supposed to protect the gathered civilians, while it already became obvious that they could not even help themselves.

385. A video-recording from Potočari made during the days when the civilians were transported clearly shows the conditions in which they lived, which *per se* exclude any possibility to stay there. The people were interned in factories, on fields, expelled from their houses, with no food and drinking water. In all this, it cannot be disregarded that the entire operation was carried out during the hottest month of July, which made unbearable the already severe conditions. The witness Abida Huremović described the situation of general fear and hopelessness. This witness testified: *„It was no safety for me at all. I knew nothing, neither where to stay, nor where to go, nor what would happen to us. I have no one to address, I am simply afraid.“*

386. Therefore, the Defense's claims that the Muslim population wanted to leave voluntarily are unacceptable given the fact that they had no other real choice. In this context, it is therefore clear that the statements of witness Miladin Mlađenović *„that nobody forced the civilians into the trucks, they boarded them on their own,“* *„They wanted to go to Kladanj“* the Panel can characterize only as a necessary evil, in a situation when staying in the occupied Srebrenica constituted neither a certain nor a realistic possibility.

387. During the proceedings, the Defense also presented the document<sup>151</sup> addressed to the then President of the Presidency of RBiH, Alija Izetbegović. By this document, the Presidency of the Municipality of Srebrenica requested already on 9 July 1995 that a meeting be organized with the Serb side in order to find out possibilities to open a corridor to remove the population to the nearest free territory under the Army BiH control.

388. This clearly shows that under the foregoing request the Muslim side implied an agreement on the overall evacuation of the population, which certainly did not imply the abuse of the civilian population gathered in Potočari, the deprivation of the essential victuals and the separation of able bodied men who were then killed summarily. In addition, all the foregoing shows that no possibility whatsoever existed to negotiate any removal of civilians with the VRS Command, concretely with General Mlađić, because it is obvious that he merely *informed* those present at the meetings in the *Fontana* Hotel about his decisions.

389. The Defense also presented an excerpt from the book by Ibran Mustafić titled *„A Planned Chaos.“* In this excerpt, the author states that during the transportation of civilians, he noticed that Ćamila Omanović and the other Muslim representatives at the

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<sup>151</sup> OI-22 Letter of the Presidency of the Municipality Srebrenica sent to the Presidency of RBiH.

meetings held in the *Fontana* Hotel were also included in their transportation. The Panel, however, observes that during his testimony, the witness arbitrarily presents the events in Srebrenica, gives abusive names to Ćamila, Nesib Mandžić, Naser Orić and the other participants in these events, and presents the events in Srebrenica as a kind of „*agreed genocide*.“ According to the Panel, this can represent a subjective impression of the witness, or in the case at hand, a subjective impression of the author of the book, but is not proper and cannot be credible or relevant to the concrete case as no other adduced evidence confirmed these assertions of the witness. Also, it is symptomatic that this witness was also in a situation in which all separated able bodied men were killed, and thus it remains unclear in which way the Serb party “favored him”. According to his testimony, this is so because he contacted them just at the time when the men were separated.

390. As to the Defense objections that the evacuation on 12 and 13 July was carried out in compliance with the Geneva Conventions, the Panel was also mindful of Article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, which stipulates that “*the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.*”

391. In addition to the fact that the referenced provisions apply only in the cases of international armed conflicts, the Panel nevertheless decided to analyze them given that in the case at hand the subject of evacuation was a civilian population as a category protected under Common Article 3 of the 1949 Geneva Conventions, which is universally applicable in all types of conflicts.

392. In the specific case, the Panel finds that the requirements of the quoted Article have been satisfied given the fact that after the VRS entrance in Potočari, the shelling of the place itself ceased so that such kind of danger for the civilian population did not exist there any more. However, even though the population was allegedly offered a possibility of choice, the evidence adduced clearly shows that the decision on the removal of citizens was made even before the meetings in the Fontana Hotel, given that all the available means of transportation were engaged<sup>152</sup> and put into circulation immediately after the completion of the meeting. This implies that the decision on the need to engage them was made much earlier.

393. The treatment of civilians in Potočari also did not give any impression that any „good intentions“ on the part of members of the VRS and MUP RS possibly existed, but

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<sup>152</sup> T-140 (Order of the Drina Corps Command, strictly confidential No. 22/226 of 12 July 1995 by the Commander, Major General Milenko Živanović, concerning the securing of the evacuation from the Srebrenica enclave), T-228 ordered mobilization of all free trucks and buses, drivers ordered to report immediately to the Bratunac sport stadium.

rather the present members of the Dutch Bat<sup>153</sup> had an impression that „*There existed a wish among the Serbs that the Muslims leave, they clearly indicated it was their territory and that they did not want the Muslims to stay.*“

394. In their closing argument, the Defense also presented a part of the video-recording from Potočari depicting the moment when the accused Mendeljev Đurić addressed a member of the DutchBat telling him to go around the population and check *if anyone wanted to leave*, whereby, according to the Defense, the forcible character of the removal was denied. The Panel, however, observes that in the same video-recording, before the referenced addressing a UN soldier, the accused Mendeljev Đurić called out a person called „Miki“ telling him „*Miki, Miki! Come here to tell him to go up there to pick up those men!*“

395. At the moment when this sentence is to be translated to the UN member, the Accused changes it by seemingly withdrawing its order-like-character. Thus it is clear that addressing the DutchBat member is illusory for the reasons already explained by the Panel. The referenced conduct of the Accused will be more understandable in the subsequent part of the Verdict describing how a member of the unit hit a young man during the separation of men, which a member of the DutchBat saw, and the accused Đurić rebuked him. According to the witness S-101, the accused did so only because of the presence of the UN soldier, since in other cases platoon commanders did not sanction any unlawful behavior.

396. Bearing in mind that all the earlier presented reasons take away from the removal the character of legitimate evacuation, the Panel concluded that the removal of civilians from Potočari was carried out within the JCE of forcible removal. The final Verdicts of this Court and the Judgments of the ICTY also established that some other members of the GS VRS were members of the JCE, and had an intention to carry out a forcible removal as a step toward the realization of a genocidal goal.

397. The Panel does not find that in taking an active part in the forcible removal, the Accused acted with a genocidal intent or that they were members of that or any other JCE. However, the Accused were indeed aware of the genocidal intent of the main perpetrators, and by giving orders to members of the 1st Company to participate in the forcible removal of civilians and by controlling them they aided and abetted the commission of the criminal offense of Genocide.

398. As reasoned in the previous part of the Verdict, the Panel concludes that the participation of the Accused in the forcible separation of men from the women, mothers from their minor children, and the forcible removal of the civilians from Potočari, represents a mental injury to the aggrieved parties, because after such a tragedy the survived women who lost male members of their families (husbands, brothers, children) certainly were not fully capable to live normal and constructive lives.

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<sup>153</sup> Witness Joseph Kingori stated this during the cross-examination at the hearing on 31 October 2011.

### **3. Acts of the Accused Duško Jević and Mendeljev Đurić**

399. During the proceedings, the Panel has undoubtedly concluded that during 12 and 13 July 1995, members of the I and II Company of the Jahorina Training Center, upon the order and under control of the accused Duško Jević and Mendeljev Đurić, participated in the forcible removal of the population from Potočari.

400. In order to better understand the significance of their contribution to the realization of this segment of the genocidal plan, the Panel will further in the Verdict provide a detailed description of their acts in these tasks.

#### **(a) Resettlement of Civilians on 12 July**

401. Based on the evidence adduced, the Panel indisputably concluded that the accused Duško Jević and Mendeljev Đurić ordered and controlled the members of the I Company who participated in the acts of forcible removal of civilians starting from 12 July.

402. The presence of the accused Jević and Mendeljev in Potočari from the beginning of resettlement of civilians was confirmed by the evidence adduced and recorded in the video-recording that was tendered as evidence.

403. Ljubomir Borovčanin was also present in Potočari at the same time. He was escorted by witness Neđo Jovičić, and was present when Mladić personally addressed Borovčanin telling him that they were all „*Tomo Kovač's vultures*“. Witness Radomir Pantić noticed the accused Duško Jević in their company too.

404. Witness Eelco Koster confirmed the presence of the accused Jević and Đurić in Potočari. This witness described the arrival of the Serb soldiers in Potočari, and the seizure of the equipment and weapons from the DutchBat members. On this occasion, the witness spoke with the persons addressed as „Miki“ and „Mane“. From the video-recording<sup>154</sup> presented to the witness during his testimony, the witness recognized the referenced persons. „Mane“ was identified as the accused Mendeljev Đurić. It was indisputably established during the proceedings that the person nicknamed „Miki“ was, in fact, witness Ljubodrag Gajić. During his testimony, witness Gajić confirmed that on the critical occasion he was in Potočari, mostly as an interpreter for the accused Jević and Đurić in their conversations with members of the UN.

405. On this occasion, witness Koster concluded that they were superiors to the Serb soldiers with whom they had arrived as they were giving orders to these soldiers. From their behavior, this witness could even conclude that the more corpulent man („Mane“) was superior to „Miki“. Along this line, witness Koster testified that „*I think that the big*

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<sup>154</sup> T-56 Two video clips from the compiled video-recording by Zoran Petrović on Srebrenica that was already admitted as T-1.

*one was the person who held a position more important than the skinny one in a blue flak jacket, but they both issued orders to the Serb soldiers.*“

406. Defense witness Ljubisav Simić confirmed that a number of members of the Police were standing at one spot and „directed“ the buses. This confirms that all means of transportation at the time had to be rendered available for the needs of the population transportation from Potočari. The foregoing was also confirmed by the Defense witness Neđo Jovičić. This witness testified that *„the police were regulating the transportation of the population as there was a chaos, the busses had to be turned around and alike.*“

407. The same witness also testifies that the mass of people was controlled by passing between two rows of the military or civil police with whom the UN members also stood. *„They made a cordon in order to prevent an uncontrolled stampede of the people who wanted to come aboard.*“

408. Witness Mile Janjić, a member of the military police of the Bratunac Brigade, was also tasked by Momir Nikolić to secure that the men board the buses and that the buses turn around at the road widening. The witness clarifies that a red-and-white tape was put around to separate the population from the military police and members of the Bratunac Brigade.

409. The presence of the accused Duško Jević, Mendeljev Đurić and Goran Marković in a circle where the buses boarded with the population were turning around was confirmed by witness Jevto Doder, who testified as a Prosecution witness. Along this line, the witness testified that three of them were saying that a column of population which was moving in the Kladanj direction had to be escorted.

410. On this day, there were a lot of members of the army and the police in Potočari. Witness Jovičić remembers that he saw Duško Jević and Mendeljev Đurić there, more precisely, all the superiors, among whom he also remembers Milidragović and Marković.<sup>155</sup>

411. According to witness Tomislav Krstović, they all gathered in a house near the former „Akumulatorka“ factory at the entrance in Potočari, which he marked at the photo presented to him. The witness clarified that, most likely, concrete tasks were assigned to the superiors, who would thereafter communicate them to their subordinates in the field. Accordingly, the referenced structure was therefore called „Borovčanin's headquarters“.

412. However, the evidence adduced during the proceedings did not confirm that the accused went to get their tasks in the so-called „headquarters“ located at the entrance in Potočari. Along this line, the Panel accepted the statements of witness Velimir Gajić, driver of the accused Duško Jević, and witness Neđo Jovičić, driver of LJ. Borovčanin.

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<sup>155</sup> The witness mentioned these accused in his statement given during the investigation, which he confirmed in his testimony at the main trial in this part.

These witnesses confirmed that, at the time, members of the MUP units were receiving their tasks on the premises of the SJB Bratunac.

413. Therefore, according to the evidence adduced, in the area in front of the population boarding onto busses, there was a cordon of soldiers and members of the UN, and little further away from that line (marked by red-white tape) there were members of the military police of the Bratunac Brigade and the I Company of the Jahorina Training Center, who participated in the forcible separation of men from their families.

414. Witness Janjić testified that in addition to the soldiers from the Bratunac Brigade, members of the so called „Special unit“, that is, members of the Jahorina Training Center also participated in these activities. Along this line, the witness explained that „genuine“ members of this Center were honorable and honest persons. However, at the time, the so called „deserters“ were engaged in the field who were not such professionals, and even differed from the *genuine* members of the special units in as much as they had a kind of *flashier, cheaper camouflage uniforms*. None of the present soldiers respected them particularly, and they themselves were saying that they came from Jahorina organized in 2 companies with their commanders.

415. On that occasion, witness Janjić tried to greet the accused Mendeljev Đurić, whom he had known from before and recognized in the courtroom. At the time, the witness saw the accused in the area of the red-white tape that separated the population from the boarding spot. On that occasion, however, the accused Đurić told him he had no time and that he would see the witness subsequently. This witness further described that near the red&white tape, but much farther from the bus, there was a double line of the Serb soldiers, that is, „deserters“ (members of the „Special unit“), who were separating the men on their way toward the buses.

416. The concrete tasks of witness Mile Janjić, which Colonel Janković had assigned to him, implied the recording of the number of buses which participated in the transportation of the population. The witness added that the referenced buses were owned by the *Vihor* Company from Bratunac. However, according to the witness, this was becoming harder to follow up as the time passed and as the number of men to be transported increased, particularly bearing in mind that the separation of men and their taking away to a nearby house were carried out simultaneously.

417. One of the members of the I Company, witness S-117, confirmed that the activities of his unit included the transport of civilians, having added that there were no men at the place where he stood, probably because „a selection“ had been carried out somewhere else.

418. At the time, witness Miladin Mlađenović was engaged as a professional driver in the *Vihor* Company from Bratunac. Director Stević gave him an order to go to Potočari for the transportation of the population. The witness was told that upon arriving in Potočari, like his colleagues-drivers, he should park the truck near the „Akumulatorka“ factory, where a mass of people and soldiers were standing. The soldiers directed him to the place where he had to stop the truck so that the population can be loaded. The

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witness noticed that only women, children, children and military unfit men were loaded onto the truck. This witness also observed that younger men were separated and taken into a nearby house.<sup>156</sup>

419. Witness Eelco Christian Martin Koster<sup>157</sup> also watched the transportation of civilians from Potočari. On behalf of the DutchBat he was tasked with the refugee issues. On that day, he had a meeting with Mladić, whom the witness told that Mladić should contact Karemans regarding all refugee-related issues. In response to this, Mladić explicitly told him that he would not do so. Thereupon, the witness tried to stop him, claiming that he should inform the Battalion Commander about the treatment of refugees, but Mladić only passed him by.

420. In view of the foregoing, it is obvious that the role of the UNPROFOR forces those days in Srebrenica was marginal, as they were not armed, nor did they have any competence over the transportation that was *allegedly* carried out under their auspices. Witness Koster further clarifies that he was present when the trucks and buses for the transportation of civilians started arriving. Thereupon, the Dutch soldiers formed a line in front of the refugees, while shortly thereafter the Serb soldiers moved them away from that place, hitting and insulting them.

421. This witness was personally present at the separation of the men from the women and children and their taking to the so called White House, in front of which they were leaving their luggage. At the time (some time after the third meeting in the Fontana Hotel was held), the buses were parked and the people started boarding. Despite an agreement that each bus would be escorted by the DutchBat members, this was not complied with, that is, according to witness Eelco Koster, this agreement *„was complied with to a certain extent beyond which the UNPROFOR soldiers no longer escorted the convoy. I do not know why?“*

422. The witness did not personally escort the convoy, but he got this information through the means of communication. During cross-examination, the witness remembered that the DutchBat Deputy Commander, in signing a protocol confirming that the evacuation was properly carried out, added in handwriting *„wherever members of my units were present“*, because he could not guarantee for anything else.

423. During cross-examination, witness Kingori<sup>158</sup> also confirms that the members of the DutchBat were present but did not actively participate in the separation of men. The witness added: *„I do not know what caused the evacuation. I do not know what it consisted of ... a number of factors were involved. I know that the members of the Battalion were present, but they did not force the Muslims to leave the enclave, but rather the Serb side forced them to do so.“*

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<sup>156</sup> At the photography presented to the witness at the trial, the witness explained that it was a facility marked as „White House“.

<sup>157</sup> Witness Eelco Christian Martin Koster testified via video-link on 22 December 2011.

<sup>158</sup> Witness Joseph Kingori was cross-examined at the main trial on 31 October 2011.

424. Soldiers of the DutchBat tried to escort the buses. The escort of the first convoy on 12 July led by Kosorić, the Drina Corps Chief of Intelligence, was in fact a success.<sup>159</sup> Subsequent attempts of the DutchBat to escort the buses on 12 July failed because the jeeps of the DutchBat were seized by members of the Bosnian Serb forces. They seized their vehicles, their weapons, flak jackets, ammunition and the equipment which the DutchBat members had in their jeeps.<sup>160</sup>

425. The absence of the DutchBat members in securing or escorting the convoy resulted in the abuse and pillaging of the civilians during the convoy movement. Witness Abida Huremović describes that the bus she was in was stopped once after passing through Bratunac. On this occasion, a boy age 7 or 8 was *stoned*. When they were passing through Kravica on the road toward Konjević polje, they were stopped by persons in uniforms who drove a grey jeep and asked them if someone from Osmaci were with them, whereupon they asked for money and gold, cursing their Balijas' mothers.

426. The testimony of witness Abida Huremović speaks sufficiently of the manner in which the VRS soldiers treated the men of all age. This witness spent the night of 12/13 July in one of the factories in Potočari called „Cinkara“, where a lot of people were gathered. On this occasion, the witness saw how a father had tried to hide his son from the soldiers, and when the soldiers found him, the father told them „*take me, leave him!*“ to which they responded: „*No! We are taking him!*“ After a continued abuse of the father, the soldiers took away his son. This witness also heard a young boy shouting: „*Mother, do not let them take me*“. Shortly thereafter, the witness heard only a women moaning.

427. The transportation of civilians in Potočari on 12 and 13 July was monitored by many VRS and MUP RS units. According to the evidence adduced, the operation of the removal of civilians from Potočari was carried out within the Bratunac Brigade zone of responsibility. However, it is indisputably established that upon the orders and under the control of the accused Duško Jević and Mendeljev Đurić, members of the Jahorina Training Center also participated in the directing of buses, the separation and loading of the civilians into the buses and the trucks.

428. Based on the evidence adduced, the Panel concluded that the Accused were fully aware of the general situation of fear, uncertainty and terror exerted on the civilian population in Potočari, which will be forced to leave Potočari due to such circumstances. In addition, the Accused had a command over and controlled the members of the I Company who participated in the boarding of civilians on the buses and trucks, whereby they significantly contributed to the realization of the genocidal plan in one of its segments.

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<sup>159</sup> Martijn Anne Mulder, (24 and 25 October 1995.);

<sup>160</sup> Vincentius Egbers, (18 October 2006.);

429. That they acted willingly in these operations is apparent from the fact that the members of the I Company, under the control of the Accused, participated in the removal of civilians on the following day as well, following an already established pattern.

(b) Continued removal of the population – 13 July 1995

430. Based on the evidence adduced, the Panel concluded that the transportation of civilians on 12 July was completed by 17:00 or 18:00 hrs. Generally, by the end of 12 July, around 15,000 Bosnian Muslims left Potočari.<sup>161</sup>

431. In his statement given in the capacity of a suspect<sup>162</sup>, the accused Jević confirmed that the unit withdrew from Potočari on 12 July around 19:00 hrs, when, according to witness S-104, members of the „Jahorina Unit“ were getting ready to return to the „Bjelovac“ School where they spent the night.

432. „Mane“ told Van Duijn that they would stop the transportation over the night and continue it on the following day around 08:30 hrs.<sup>163</sup> Before leaving, the accused Jević carried out a roll call of the Jahorina conscripts.<sup>164</sup>

433. Witnesses S-117 and S-118 confirmed that members of the Center returned to Bjelovac in the evening hours, and on the following day again engaged in Potočari on the same tasks.

434. Witness Jevto Doder, Commander of the I Company Platoon, confirmed that the members of his unit were present on that location on the second day too when the transportation of population was continued.

435. According to the witnesses, the removal of civilians was carried out following the established pattern, but it continued over a somewhat shorter period on 13 July, in which a part of the Training Center Unit participated again.

436. The buses started arriving already around 06:00 hrs on 13 July 1995.<sup>165</sup> The soldiers of the DutchBat started the transportation of the Bosnian Muslims before the arrival of the Bosnian Serb forces in order to keep the men, Bosnian Muslims with their families and provide their boarding on the buses.<sup>166</sup> When the members of the Bosnian Serb forces returned some two hours later, the men, Bosnian Muslims, were again separated from their families.<sup>167</sup>

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<sup>161</sup> T-142 Regular combat report by the Drina Corps Command, strictly conf. No. 03/2-214 of 13 July 1995.

<sup>162</sup> The evidence that the accused Duško Jević gave to the ICTY investigators in the capacity of a suspect, accepted under the Decision of this Court of 12 December 2011.

<sup>163</sup> Leendert van Duijn, (27 September 2006).

<sup>164</sup> Witness PW-100, (5 September 2007); Leendert van Duijn (27 September 2006).

A roll call was carried out on the road between a house with a lawn and the White House (Bijela kuća), where the men were separated. The Trial Panel notes that the roll call of the Bosnian Serb forces mentioned by Van Duijn was a roll call of the Jahorina recruits.

<sup>165</sup> Leendert van Duijn, (27 September 2006); Paul Groenewegen, (10 July 2003).

<sup>166</sup> Leendert van Duijn, (27 September 2006).

<sup>167</sup> Leendert van Duijn, Paul Groenewegen, (10 July 2003).

437. It is important to note that, according to this witness, the removal on 13 July starts in the early morning hours, before the arrival of the „deserters“ unit from the school in Bjelovac. On this occasion, the protected witness A-1 succeeded to board on one of the buses. This witness testifies that "some" soldiers were present there, but they nevertheless allowed him to get on the bus.

438. The Panel observes that unlike the referenced situation, no able bodied men could avoid being separated while the members of Duško Jević's „Special unit“ actively participated in the separation of men. This only additionally supports the earlier presented conclusion of the Panel about the significant contribution which, by their actions, the accused Duško Jević and Mendeljev Đurić gave to the forcible removal of civilians.

439. In the morning of 13 July 1995, the DutchBat soldiers again had a task to escort the convoys to Kladanj.<sup>168</sup> However, under the threat of fire weapons, members of the Bosnian Serb forces again forced a dozen officers of the DutchBat to stop, seized their vehicles and equipment, including helmets and flak jackets, and made them sit along the road near Konjević polje.<sup>169</sup>

440. Thus, having completed the tasks of disarming the UN members and taking over the control over the civilian population, the Accused were certainly aware of the important role they had in the expulsion of the population, and that, by their actions, the Accused and their forces played a significant role in the removal of population from the UN protected zone.

#### **4. Events in Potočari**

441. Pursuant to the principle of membership in a III-category JCE, the Indictment charged the accused for a large number of individual events in Potočari.

442. The Panel has omitted from the operative part of the Verdict the events which were not proved beyond a reasonable doubt during the proceedings. The individual killings which the Panel finds proved will be explained below in the Verdict, even though the Accused could not be charged with these as they were not members of any JCE that existed at the time.

443. In evaluating the evidence adduced, the Panel concluded that there exist three groups of incidents in Potočari.

444. **The first group** is comprised of the killings committed by the members of the I Company of the Jahorina Training Center with which the Accused could not be charged because they neither ordered these killings nor was it proved that they were aware

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<sup>168</sup> Vincent Egbers, (19 October 2006); Martijn Anne Mulder, ( 24 and 25 October 1995).

<sup>169</sup> Vincent Egbers, (19 October 2006); Martijn Anne Mulder, (24 and 25 October 19).

thereof. Given that the Accused were not members of a JCE (III), they cannot be charged with these killings as a natural and predictable result of their actions.

445. **The second group** includes an event which, according to the evidence adduced, did occur but it was not proved to have been committed by the members of the Jahorina Training Center.

446. Finally, **the third group** of incidents includes those killings whose occurrence the Prosecution failed to prove beyond a reasonable doubt.

447. The Panel evaluated the killings that were proved but with which the Accused could not be charged within the context of evaluation of the overall situation in Potočari, where the civilian population lived in a humanitarian disaster conditions and were at the same time exposed to the violent and arbitrary conduct of individual members of the VRS and MUP RS.

(a) The first group of incidents

(i) N.M. (member of the I Company) separated 15-20 men detained in the White H. took them from the White House and killed them

448. Based on the evidence adduced, the Panel has concluded that the referenced event occurred in the way as described in the operative part of the Verdict.

449. Specifically, the protected witness S-100 eye-witnessed when on the second day of the presence in the Potočari, Platoon Commander Neđo Milidragović took away a group of 15-20 men to a creek and executed them. During the examination, the witness marked at a map the location he spoke about. While visiting the crime scene, the Panel was satisfied that it was a creek located some 100-200m behind the White House in which the separated men were held.

450. According to this witness, the men taken away by Neđo Milidragović were civilians. Having passed by the witness, Neđo Milidragović told the witness that he had to be a much more of a Serb soldier and called him to follow him. The witness followed him to a bridge located on the road to the referenced location. The witness stopped there, some 20-30m away from the spot where the persons were executed in a way that Neđo had firstly lined them up with their backs toward him. The witness did not watch the execution itself, but on his way back he heard shots from a pistol, probably the one seized from the members of the DutchBat that Neđo had on him on that occasion. The witness subsequently went to this location and assured himself that all the men taken away were dead with inverted pockets.

451. On the photography<sup>170</sup> presented to him, the witness drew a line of Milidragović's movement with the mentioned men. During their visit to the crime scene,<sup>171</sup> the Panel also visited the location where, according to this witness, the killings took place.

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<sup>170</sup> Prosecution documentary evidence No.: T- 99- 102.

452. This witness further explains that in those days, in the base in Bjelovac, the soldiers rumored that „*whoever had anyone killed in the war was retaliating.*” One „Brzi and one „Crnogorac“, also a member of the Center, were mentioned. These conversations were made in the base when all of them were usually present. When particularly asked if the superiors warned them not to do so, the witness gave a negative answer.

453. Witness Eelco Koster was examined with regard to this fact. On the day of the removal of population and the separation of men, that is, on 12 July 1995, some 500m away from the base and near the creek, this witness saw 9 executed bodies, of whom he and two other members of the Battalion (Rutten and van Schaik) made photos. They tried to identify them, but the personal documents they found were in the BCS language. The corpses' backs were turned with entry-exit wounds visible. A Serb soldier who shortly spoke over a hand-held radio (Motorola) noticed them on that occasion, whereupon a shooting started in the direction of the witness and his colleagues from the Battalion. They notified their superior command of everything they had seen. The witness subsequently found out that the film with the photos they made was exposed to light.

454. On the same location, witness Sabaheta Bećirević saw bodies of 12-15 men. Witness Abida Huremović saw 10-12 male bodies near the river in the village of Budak.

455. Based on the above presented, the Panel indisputably concluded that the witnesses factually described the same event. Therefore, the Panel finds proved only the killing of at least 9 persons who were summarily executed by Neđo Milidragović, as described above in subparagraph a).

456. As stated above, the Indictment charged the Accused with acting as members of the JCE (category III), and that all individual crimes listed in the Indictment were a natural and predictable result of their actions.

457. In the case at hand, it could be said that any crime against the civilians in Potočari falls within the scope of the intended JCE of forcible removal, namely it constitutes its natural and predictable consequence. This is so because all the circumstances in Potočari (inhumane accommodation of refugees, overpopulation, presence of numerous military and paramilitary formations, the manner of treatment of the civilians and the separated men) clearly show that in such a situation of general chaos and confusion a large number of members of the VRS and MUP could commit criminal offenses.

458. However, since the Panel does not find proved that the Accused were members of the JCE of forcible removal, they cannot be charged with the responsibility for the referenced killing.

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<sup>171</sup> S-1 Video-recording and a record of the crime-scene visit No.: S1 1 K 003417 10 Krl of 10 December 2010.

459. The accused Jević and Đurić also cannot be charged with the referenced criminal offense on any other legal ground since no evidence exists that they were ever notified of this crime.

460. Accordingly, the Panel took into account the mentioned conduct of the Commander of the I Company, Neđo Milidragović, in evaluating the overall circumstances in Potočari, which ultimately contributed to the forcible removal of civilians, because in addition to being kept in extremely inhumane conditions, the population obviously had a permanent fear for their lives.

(b) The second group of incidents

The Panel will further address the event that undoubtedly did occur but the Prosecution failed to prove that the members of the I Company of the Jahorina Training Center participated in the commission thereof.

(i) Rape of a women in the White House

461. Protected witness S-113 testified with regard to this circumstance. She was in Potočari between 11 July and 13 July 1995, in a factory of the Elektrodistribucija Company. On 12 July, the witness went toward the house in which she lived<sup>172</sup> (White House) to take some food. However, on this occasion, she found in the house two men in camouflage uniforms who did not let her leave, but rather started beating her. Thereupon, one of them raped her, punching her face with his fists and pulling her hair at the same time. The soldiers were around age 40, wore *camouflage* trousers, shirts and military boots. The witness did not notice whether they were speaking with a strange accent as they did not speak much. On her way out, she noticed several men (around ten or fifteen of them) standing at the other side of the house (the side facing the road), and next to them stood two or three armed soldiers in *camouflage* uniforms, the same ones as on the soldiers who had raped her.

462. Witness Halid Huremović, who was aged 9 at the time and lived in Srebrenica with his parents, is the only witness introduced to support the Prosecution evidence with regard to the foregoing fact. This witness described in his testimony the attack on Srebrenica, not knowing the precise date of the attack. However, based on the description of the events on this day, the Court concludes that he was referring to the events of 11 July 1995. The witness further describes that on the following day too (that is, on 12 July), while he was walking with his friend through Potočari, he had met several members of the Serb army who sent them to search the abandoned Muslim houses and bring them any weapon if they found it. The witness found in a house 5 bullets and earrings and handed them over to the soldier. The soldier kept the bullets and returned the earrings to the witness. At the time, he saw a couple of Serb soldiers undressing a

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<sup>172</sup> During her testimony on 10 June 2010, the witness explained that the house in which she had lived was a bigger house, had 4 apartments on the ground floor, and each apartment had two rooms and a bathroom. Larger apartments were on the floor. The witness subsequently heard in the media that this house was called „White House“.

woman while she was screaming „Don't, don't!“ Like the protected witness S-113, witness Huremović only testified that the soldiers wore camouflage uniforms.

463. The Panel observes that in his testimony witness Halid Huremović too does not identify the White House as the location of rape, but mentions a larger number of soldiers in comparison with the number stated by the witness S-113. Therefore, along this line, his testimony cannot be considered as a corroborating testimony, that is, it cannot be established beyond a reasonable doubt that these two witnesses are speaking about the same incident.

464. Without expressing their doubts that the incident described by the witness did indeed occur, the Panel could not conclude beyond a reasonable doubt, based on the evidence presented, that members of the Jahorina Training Center participated in the commission of the referenced incrimination. It is indisputable that, at the relevant time, a large number of members of different military and police formations were present there, but the Prosecution offered no evidence whatsoever to determine the formation whose members committed this offense.

465. Therefore, it was impossible to determine a cause-and-effect connection of the acts of these persons with the acts of the Accused during their presence in Potočari.

(c) The third group of incidents

466. In this part, the Indictment included a number of individual killings (*9 bodies in the woods in the Budak settlement near Potočari, near the UN base by the main road, where the search was carried out earlier and 9 bodies in the creek behind the White House, located around 700m away from the UN-base*). With regard to these circumstances, the Prosecution presented no special evidence. After a detailed evaluation of the witnesses' evidence, the Panel has indisputably concluded that the witnesses describe one and the same event in a slightly different way. Therefore, it is considered proved beyond a doubt only that on the critical occasion Neđo Milidragović killed at the referenced location at least 9 persons in a summary execution, as described in subparagraph a).

467. This group also includes the individual killings stated in the Indictment (e.g., *in the morning of 13 July, 6 bodies of Bosniak women and 5 bodies of Bosniak men were found in the creek near the UN-base*), but the Prosecution adduced no concrete evidence with regard to these circumstances.

468. The Panel notices that in the Indictment the Prosecution imprecisely and alternatively determines „members of the MUP RS or VRS“ as the perpetrators of these killings, that is, it does not identify at all members of the I Company of the Jahorina Training Center as perpetrators. Also, the Prosecution adduced no evidence whatsoever regarding the real perpetrators of the referenced killings.

469. At the same time, the witnesses have mentioned certain killings in Potočari which the Indictment did not factually include and which cannot be included in any of the above mentioned groups.



470. The protected witness S-101 testified that „Arkan“ and „Hercegovac“ bragged that they had deprived a man of his life, which is not sufficient in the concrete case to identify the event and conclude that a member of the Center committed a murder. Therefore, the Accused's responsibility was not examined along this line.

471. Furthermore, witness Kingori describes<sup>173</sup> that, in addition to being taken to the White House, men were at the same time taken to another location, which he marked on the map. After witness Kingori had gone to the described location, he was barred from passing through. The witness, however, clearly saw the men being taken in that direction, whereupon a shooting would be heard. The witness believes that the shooting was coming from that place.

472. Witness A also testified about many killings of the Srebrenica men committed by members of the VRS armed forces in Potočari itself. From a hidden spot, this witness watched the execution of a large number of men.

473. All unproved individual killings were omitted from the operative part of the Verdict. This is so because the Panel is of the view that the omitted parts of the Indictment under all counts represent authorized interventions of the Court if they are directed at a more precise qualification of the offense. In doing so, the Panel was cautious not to bring the Accused in a more difficult procedural situation that would require a more stringent qualification of the offense.

## VII. FORCIBLE SEPARATION OF ABLE BODIED MEN

### 1. General Factual Findings

474. As already described in the part of the Verdict addressing the forcible removal of civilians not far away from the red-and-white tape (where a cordon of soldiers and a few UN soldiers stood), there was a space in the immediate vicinity of the buses and trucks where individuals participated in the separation of able bodied men, often including boys even younger than age 18. These men were temporarily held in a nearby facility to which the witnesses referred as the White House. From this place, the men were in several rounds transported to temporary detention sites in Bratunac.

475. Protected witness A-2 identically described the cordon of soldiers who were „letting the civilians pass“ toward the buses. The soldiers stood side by side and hand-in-hand. When a group which was supposed to pass approached them, the soldiers would lift their hands, and after the group passed they would put the hands down. In this way, they prevented the men from passing further toward the buses.

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<sup>173</sup> T- 186 (Court Decision of 26 August 2010) Transcripts of witness Joseph Kingori's testimony in *Krstić*, 31 March 2000.

476. The same witness also describes that on boarding the buses, soldiers directed the population by separating the younger men and preventing them from boarding. „*One soldier who was separating us stood near us. He was pointing to men and boys and telling them: “Come on men, move on faster”!* This soldier pointed to this witness’s brother too. The witness observed that the soldiers separated even boys age 12 to 13.<sup>174</sup> They stood close to the trucks and buses, away from the tape that separated the moving crowd. Witness Abida Huremović also confirmed the foregoing.

477. Witness A-2 asked the soldier to take some things and a coat that her brother had left with her. The soldier responded that her brother would not need them and that he would not be cold. The witness noticed that the soldier who took away her brother spoke with a girl, and subsequently learned from this girl that the soldier's name was Nenad Đokić. At the time, witness Janjić knew Nenad Đokić, who was also a member of the Bratunac Brigade Military Police, just like the witness. Protected witness S-118 and witness Dragomir Vasić, the then Chief of the CSB Zvornik, also confirmed that Nenad Đokić participated in the separation of men.

478. After her brother was taken away, the witness went after him. In the end, the witness entered a house located at the turning toward the village of Pale.<sup>175</sup> According to the witness, the house was so crammed up „*that not even a match could be thrown inside.*“ The witness tried to find her brother, but one of her neighbors, Azem Pašalić, only waived to her telling her to go out. The witness noticed that the men in the house wore civilian clothing, that they were of different age, that some were age 80 and 90 and a few of them age 20-30. On her way out of the house, the witness noticed trucks. The men were entering the trucks while the soldiers were kicking and beating them with their rifle butts.

479. In front of the house, there was a pile of personal belongings. The separated men were detained inside the house. The witness saw the men being loaded onto the trucks while the Serb soldiers kicked some of them.

480. Witness Mile Janjić confirmed that the men from the White House were transported by buses and trucks on the same day when the removal of women and children was underway. This witness testifies that unlike the rest of the convoy, the men were transported in the Bratunac direction. Witness Sabaheta Bećirović testified that during the separation the soldiers made threats and insulted the men. One soldier tried to single out the witness's nephew who was only age 13. However, owing to the fact that one of the soldiers was her acquaintance, the witness succeeded to board the bus with her nephew. Abida Huremović, protected witness S-113 and Miladin Mlađenović, who was under the compulsory work obligation in July as a driver of the bus owned by the

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<sup>174</sup> This is also confirmed by the fact accepted No. 32 under the Decision of the Panel No.: X-KR-09/823-1 dated 1 July 2010. The fact stated that “the VRS and MUP, walking among the Bosnian Muslim refugees, were separating all Bosnian Muslim men aged 16 to approximately 60 to 70 from their families”.

<sup>175</sup> S-1- Video-recording of the crime scene visit. The witness describes the site which is identical to the site of White House where, according to all the evidence adduced, the separated men were held.

*Vihor* Company from Bratunac, also testified about the way in which the men were separated.

## **2. The Acts of the Accused in the Separation of Able Bodied Men**

481. Many examined witnesses, including Radomir Pantić, Commander of the 1<sup>st</sup> PJP Company, also confirmed that members of the Jahorina Training Center were present and participated in the separation of able bodied Muslim men. This witness testifies that young men in camouflage uniforms called „deserters“ came to the buses turning point in Potočari. The witness subsequently learned that their Commander was Duško Jević. At the time, the witness did not know if Ljubomir Borovčanin had any command over the deserters.

482. As a military police officer in the Bratunac Brigade, witness Mile Janjić was ordered to register the population that was boarding the buses. This witness testifies that it was exactly members of the so called „Special“ Unit or „deserters“ from Jahorina who participated in the separation of able bodied men. They stood in front of the buses and trucks being boarded by the population. There were around 30 deserters. Some of them made double rows. The others were in the buses, while some deserters only stood by the road. The men were being taken away and held in a nearby house. The witness marked the house in the photos presented to him.<sup>176</sup> Soldiers in black and dark-blue overalls and with bands on their foreheads were also present among the deserters and did the same like the deserters. However, the witness did not notice that Colonel Janković or some other officer from the Bratunac Brigade issued any orders to the deserters except for the superior officers from the Jahorina Training Center.

483. According to this witness, the buses transported the men from the White House to the School in Bratunac. Members of the Military Police and the so called Special (unit) escorted the buses. The witness counted the buses and remembers that around 8-10 buses went toward Bratunac on that day. During the cross-examination, the witness contested the arguments of the Report<sup>177</sup> sent by Vujadin Popović to the Main Staff and the Drina Corps Command. The Report stated that a smaller number of men were transported to Bratunac. The witness resolutely stated that he had personally counted the buses.

484. In addition to members of the Military Police of the Bratunac Brigade, members of the Training Center also abused a man by kicking and hitting him with rifle butts. Witness Eelco Koster also confirmed the foregoing. This witness testifies that the Serb soldiers abused members of the Dutch Bat too. The witness added that the men were separated in a very aggressive and inappropriate manner. The Dutch soldiers who had earlier formed a line were moved back by the Serb soldiers who were hitting and insulting them

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<sup>176</sup> Prosecution documentary evidence T-5

<sup>177</sup> Documentary evidence OII-1 of the Defense for the Second-Accused

at the same time. This witness „succeeded to pull off“ a young men whom the Serb soldiers had abused. The witness told the soldiers that he was from the DutchBat and had a rank. This witness emphasized in his testimony that the situation was such that he could not help the other men, the young men and boys in Potočari in the same way.

485. Witness S-119, a member of the Training Center, testified that *«No force was used while the men were separated, unless someone tried to resist. In this case, the men would be forcibly separated. The men were hit, I do not know with what, probably punched. There were situations where members of the unit seized the money and valuables from the women who were being boarded.»* This witness also confirmed that a member of his unit had singled out a man, took him behind a nearby house, and most likely killed him there. The witness concluded so because soon after their departure he heard a shot whereupon this member of the unit returned alone.

486. Witness S-101, another member of the Center, confirmed the foregoing too. This witness testifies that a member of his unit known under the nick name Arkan beat the referenced boy. Everyone considered Arkan a leader. Arkan was a member of Neđo Milidragović's Company. Witness S-101 subsequently heard that the accused Mendeljev Đurić rebuked this member of the unit. According to the witness, the Accused did so only because he did not want UNPROFOR witness how the men were treated.

487. The fact that the Accused rebuked one member of the unit is significant for this Panel too. This is so because the foregoing clearly shows that the instructors were very well aware of the humanitarian law concerning the treatment of captured persons, namely that they knew to recognize and punish any unlawful conduct. The evidence adduced suggests that the instructors made no efforts to prevent or punish the unlawful treatment of men, or prevent their subsequent executions. This clearly indicates their subjective attitude toward the offense. It is therefore justified to accept the testimony of this witness in the part stating that this was done only to prevent UN soldiers from witnessing this conduct, and possibly reporting to his superiors thereof.

488. It transpires from the foregoing that even before the Accused had arrived in the Srebrenica area, that is, during the training at Jahorina, the task of the Accused was, pursuant to their knowledge and professional experience, to train the persons brought to execute tasks in the terrain. Many witnesses testified that, as professionals, already during the training, the Accused should have been fully aware of the level of training and knowledge that the deserters had. Nevertheless, the Accused punished no disobedience, lack of discipline and unlawful conduct in Potočari in any way.

489. On the contrary, the Accused directly ordered the deserters to take many actions being fully aware of the unlawfulness thereof, wherefore they were ultimately found guilty.

490. Witness Stojčinović testified as follows: *„Duško Jević was in charge. He was a superior officer and issued orders to the Company Commanders, who further transferred the orders to the Platoon Commanders. I do not remember that anyone has ever*

*protested or objected to any order. I also remember that, on the way back to Jahorina, no actions were taken against the deserters who bragged“.*

491. Before entering the White House, the men had to leave all the belongings they had with them. The video-recording tendered as the Prosecution evidence demonstrates this well.

492. Witness Kingori<sup>178</sup> described the separation of men as follows:

„It was a period burdened with intensive emotions. I was worried because some of these men were the men who lived next to us. When the men were lined up along the road, they could cry, scream for help, asking us what we could do to help them. They could shout: *“You know that these men are going to kill us, and then and you are not doing anything about it... You know we could see it...you could see there was a lot of fear... the men did not know what would happen to them. They felt something bad would happen to them.*

As you can see, there was an enormous fear. The men were crying... you can imagine men crying in front of you and seeking assistance from you ... assistance which you cannot give. It had gone beyond my control. The men simply cried. It was a very emotional scene.“

493. Witness Kingori saw both the separation of men and their taking to the White House because he was accompanied by General Mladić at the time. The witness knows that the conditions in which they were held were very inadequate. Even though he noticed no physical violence, the witness adds: *„What I saw was sufficiently inhumane and humiliating.“*

494. As already reasoned, it was proved beyond a reasonable doubt during the proceedings that the accused Duško Jević and Mendeljev Đurić were present in Potočari at the time and near the place where the men were separated and held in the White House.

495. The Defense witness Neđo Jovičić<sup>179</sup> heard that, at the time, the accused Jević led a group of deserters from Belgrade. The witness saw the accused Jević and Mendeljev Đurić in Potočari. The witness also saw that the separated men were taken to a nearby White House. The rumors at the time had it that the men were taken there to be interrogated about the committed crimes.

496. On 13 July, the White House was crammed with Bosnian Muslim men, including some who sat in front of the House.<sup>180</sup> The left-side front balcony was also crowded.<sup>181</sup> Members of the Dutch Bat estimated that there were around 300-400 Bosnian Muslim

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<sup>178</sup> T- 186 (Decision of the Court of 26 August 2010) Transcripts of the evidence of Joseph Kingori in *Krstić* of 31 March 2000.

<sup>179</sup> Defense witness Neđo Jovičić testified at the main trial on 13 June 2011.

<sup>180</sup> Leendert van Duijn, (27 September 2006);

<sup>181</sup> T-1 Video-recording presented during the trial and admitted as the Prosecution evidence.

men<sup>182</sup> in the White House and on its balcony. In the afternoon, Borovčanin stood with van Duijn, Kingori and translator Miki in front of the White House where personal effects of the detained Bosnian Muslim men were piled up.<sup>183</sup>

497. During the separation of men on 12 July, witness van Duijn spoke with the accused Mendeljev Đurić. The accused Đurić explained to the witness that the men were separated in order to be screened for possible war criminals. At first, the explanation seemed clear and justified, that is, understandable to the witness. Witness Ljubodrag Gajić, namely the person whom witness Duijn identifies with a nick name „Miki“ was also present during the foregoing conversation.

498. However, even then, witness Duijn noticed that members of the VRS were separating boys and old men, that is, the persons who were too young or too old to participate in any crimes. The witness then objected directly to „Mane“ whereupon these persons were allowed to board the buses with the women and children.

499. At the same time, witness van Duijn resolutely submits that the UN members were never involved in the separation of men.

500. On the following day, the witness noticed that the personal effects of those men, including bags, packs and personal documents, were not transported with them, but rather piled up,<sup>184</sup> wherefore he addressed Mane again. The witness asked Mane how they intended to identify the separated men if their personal documents were not with them, that is, whether their names were on the list of war criminals. Mane just smiled at him and told him that these men would not need passports any more. At this point the witness realized that the men separated a day before were facing „a very dark future.“ Having realized this, the witness tried to board one of the buses that transported the men to find out what would happen with them. However, he had to leave the bus at gunpoint. Thereupon Mane addressed him again and told him not to do so since this would not happen. The witness further testifies: „*He was very clear and resolute that I should not do that and that he did not find it worthy.*“

501. Witness S-126 also confirmed the activities of the Accused and members of the Jahorina Training Center in the removal and separation of men. Having searched the terrain, the accused Mendeljev Đurić directly ordered this witness, a member of the Center, to check upon his arrival in Potočari if there were any men, weapons or other dangers threatening the unit. The witness was also ordered to escort the men to the bus if they found any. At that point, the witness did not know what would happen to the men from Srebrenica. The witness added that he thought the separation of men was questionable as it could be already seen that there would be no combat. Members of the unit commented among themselves on the reasons for their separation. „*The hearsay also had it that some executions could be carried out.*“

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<sup>182</sup> Paul Groenewegen, (25 October 2006).

<sup>183</sup> T-1 Video-recording presented during the trial, Leendert van Duijn, (27 September 2006).

<sup>184</sup> T-1 This is observable in the video-recording presented during the trial.

502. Witness S-104, a member of the II Platoon of the I Company, also saw that two members of his unit participated in the separation of men, who were during the day transported to Bratunac.

503. Witness S-101 clarifies that, in fact, he himself drew a conclusion about the destiny of men due to the way in which they were treated. „*The men planned for exchange would not be treated in the manner in which these men were treated.*“

504. The witness remembers that, after a while, the men from the White House were in two or three rounds transported by buses. The witness thinks that the driver was one Mišo a.k.a. Fizika, who was also heard as a Prosecution witness.<sup>185</sup> This witness confirmed that for several times during these two days he transported the men from the White House to the premises of the Elementary School in Bratunac.<sup>186</sup> According to his estimate, there were around 450 men (four hundred and fifty).<sup>187</sup> At the time, military police officers from the Bratunac Brigade escorted the buses, and the CJB Bratunac civilian police received them in the school.

505. Witness Miladin Mlađenović further testified that on 12 July he was hired to transport the population from Potočari in the Kladanj direction. The witness testified that no one stopped them on their way, nor did he notice that the men were abused. On the following day, he was engaged in the transportation of men held in a house in Potočari. At the time, there were rumors that these men would also be subsequently transported to Kladanj. The witness confirmed witness Mile Janjić's statement that the Bratunac Brigade Military Police secured the transportation of men along the entire way, and that civilian police officers received them in the Elementary School.

506. Witness S-101 further explained that the practice of separate transportation of men successively continued throughout 13 July too, when a considerably larger number of men were transported. Other members of the Brigade told the witness that these men would be left in the school in Bratunac and received by the police. Witness Dragan Bešić also confirmed that the men were transported separately from the women and children. This witness was present in Potočari as a member of the 1<sup>st</sup> Company.

(a) The Goal of Separation of the Able Bodied Men

507. In conversations with his unit members, witness S-126 learned that the valuables were seized from the men. The witness could see this for himself. The witness heard that the men were taken away individually and thereupon liquidated. The witness also saw members of his unit taking several men to the White House, but did not see them

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<sup>185</sup> Witness Miladin Mlađenović was heard at the main trial on 31 May 2010.

<sup>186</sup> The foregoing was also confirmed by the accepted fact No. 40 under the Panel Decision No.: X-KR-09/823-1 of 1 July 2010. This fact confirms that most Bosnian Muslim men separated in Potočari were held in Bratunac for one to three days, and thereupon taken to the other detention and execution sites.

<sup>187</sup> Facts Nos. 35 and 39 accepted under the Panel Decision No. X-KR-09/823-1 of 1 July 2010 also confirm the foregoing. These facts state that around 1,000 men were transferred to Bratunac.

participating in the physical separation. The Panel, however, concluded so based on the other evidence as explained earlier.

508. Regardless of all the dilemmas and the then rumors about exchange, witness Eelco Koster observed at one moment that the men from the White House were transported, while their personal belongings remained in front of the house. Therefore, already at the time, it became quite clear that the real intentions of the VRS were not to question the captured persons to screen them for alleged war criminals. Even before seeing this, the witness suspected that something bad would happen to the separated men given the manner in which they were treated already in Potočari. Witness S-102 also heard that there were rumors about a list of war criminals, namely that there existed a list<sup>188</sup> of persons against whom criminal reports were filed. The witness added that he had no particular information about these crimes committed in Srebrenica.

509. For the same list, the Defense expert witness Radovan Radinović considered legitimate the act of separation of men. This is so because already at the meeting, Mladić had announced that all able bodied men who participated in combats against the VRS would be granted the status of military war prisoners. According to the Defense theory, the referenced list with 387 names represented, in fact, a list of men suspected that they participated in the crimes.

510. During the proceedings, the Defense tried to decriminalize the referenced conduct of members of the VRS and the MUP RS. The Defense argued that, in fact, this was a triage, the goal of which was to screen for war criminals whom Mladić had mentioned at the meeting in the *Fontana* Hotel. Even the Prosecution witness, the then Chief of the CJB Zvornik, Dragomir Vasić, testified that he had also understood the Order to separate men as an attempt to separate the civilians from possibly armed members of the Army BiH and that „Ljubiša's group“ (implying Ljubiša Borovčanin) was tasked with this action.

511. However, the evidence adduced clearly indicates that the separated men neither had any weapons with them nor wore uniforms, while many of them were not even able bodied or adults.

512. Many of the examined witnesses noticed a certain lack of logic during the separation of men even though there were no open conversations at the time about the real intentions toward the separated men.

513. Most men were aware that at the meeting in the *Fontana* Hotel, General Mladić said that the men would be detained and screened for suspected war criminals. Certain members of the Training Center, like Jevto Doder, however, did not understand within this context why the personal effects, including their identification documents, were seized from the men.

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<sup>188</sup> OI-24 During the proceedings, the Defense admitted into documentary evidence the referenced list of 12 July 1995, verified by the ICTY and used in the *Popović* et al.



514. The Defense witness Mladenko Borovčanin similarly thought that it was impossible to classify someone as a war criminal without his personal documents. With regard to a lack of logic in the way in which the prisoners were treated, the witness stated as follows: „It is completely unclear to me why the personal documents were seized from the men ... *I do not know why they seized them*“.

515. „*A need to identify war criminals*“ cannot be accepted as an explanation for the separation of men because this does not justify the described treatment of the men who were separated, plundered and detained in the White House, particularly after their personal documents were seized from them and subsequently burned. All these actions made it objectively impossible to identify the men, or generally determine if their names were on the list at issue.

516. In his report, the Security Council President expressed his concerns about the abduction of several thousand men and boys, and therefore requested the Serbs to release all the men. The same Report states that those who participated in these activities for the purpose of ethnic cleansing would be prosecuted for these crimes.<sup>189</sup>

517. As to this part, the Panel found the Accused responsible for their participation in the separation of men. The Accused were certainly aware of the separations already since the moment when the men were transported in the Bratunac direction without their personal belongings and documents. Prior to this, the Accused could have at least assumed based on the way in which these men were treated, pillaged, beaten, abused, and based on the seizure of their personal belongings, that the final goal of separation was not to find war criminals but rather to liquidate these men.

518. Having issued orders to the unit members to separate the men, who were subsequently pillaged, abused, and held in inhumane conditions in various detention sites, the Accused significantly contributed to the implementation of a genocidal plan. This is so because the separation of men marked the beginning of implementation of the plan to kill all able bodied Bosniak men from Srebrenica.

519. The referenced conclusion is additionally supported by the fact that on 13 and 14 July, the Accused controlled and ordered members of the 1<sup>st</sup> Company to participate in the killings of the Srebrenica men in a warehouse of the Kravica Farming Cooperative. The Verdict will address this issue further below.

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<sup>189</sup> Prosecution documentary Exhibit No.: T-234.

## VIII. DEPLOYMENT OF MEMBERS OF THE SPECIAL BRIGADE ALONG THE ROAD DURING 12 AND 13 JULY

### 1. General Findings

520. The Panel concluded, on the grounds of the evidence adduced, that on 12 and 13 July, members of the Special Police Brigade were under Ljubomir Borovčanin's control deployed along the road in the Srebrenica area to secure the passage of the convoy with the women and children, but also to participate in the capturing of men from the column. Certain buses were stopped and searched for the purpose of capturing the men.

### 2. Acts of the Accused Duško Jević and Mendeljev Đurić in the Deployment of Members of the Unit along the Road on 12 July

521. The Accused participated in the forcible removal of civilians with the intent to give a significant contribution to the implementation of genocidal plan in one of the segments thereof. Along this line, commencing in the late afternoon hours of 12 July, the Accused deployed subordinated members of the 1<sup>st</sup> Company along the Bratunac-Konjević Polje road with the view to capturing the Bosniak men who walked in the column.

522. The Accused knew that these captured persons would be liquidated, like the men separated in Potočari.

523. The statements of members of the Center who testified as Prosecution witnesses support the Defense theory about the legitimate deployment of members of the 1<sup>st</sup> Company along the road. These witnesses testified that the goal of deployment was merely to secure the transportation of civilians (the women, children and elderly) from Potočari toward Kladanj and protect the Serb villages. The same witnesses, however, do not contest that, at the time, they received information about a column of armed Muslims that was moving around the area, and that it was possible that a large number of men from the column would surrender in this area.

524. Witness Radomir Pantić, a Commander of the 1<sup>st</sup> PJP Company, deployed the men in the Sandići area. This witness testifies that at the beginning, that is, on 12 July, members of the 2<sup>nd</sup> Detachment of the Šekovići Police were first deployed in the Kravica area, next to a house in Sandići. This was one of the corridors where Muslims surrendered most. Witnesses Petar Mitrović and Milenko Pepić, members of the 2<sup>nd</sup> Detachment of the Šekovići Police, confirmed the foregoing.

525. That members of both Companies of the Jahorina Training Center were deployed along the road ensues from a Report<sup>190</sup> of the Chief of CJB Zvornik, Dragomir Vasić. The

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<sup>190</sup> T-145.

Report stated that these forces secured the Kravica-Konjević Polje-Kasaba road. The foregoing also ensues from the Dispatch Note<sup>191</sup> sent by Dragomir Vasić to his superiors.

526. Members of the Center, including witness S-105, were told that around 8,000 armed Muslims moved around the surrounding hills, that they could attack certain neighboring Serb villages, wherefore it was necessary to secure the road. However, Radovan Sladoje, a Commander of the 2<sup>nd</sup> Company, was not at all aware of such a fact. This witness testified that: „*Neđo insisted on securing the passable road but I did not know what was a subtext thereof*“.

527. During the proceedings, and through the examination of witnesses, the Defense tried to impute that the purpose of deployment of members of the Center along the road was to protect the Serb villages. The other witnesses, however, did not confirm this. Like witness Radovan Sladoje, these witnesses rather testify that it was necessary to secure an unobstructed passage of the buses and trucks transporting the civilians from Potočari. Tomislav Krstović has similarly described the referenced task. This witness testified that it was exactly the accused Duško Jević who ordered the securing of the population and the road.

528. Momir Nikolić also confirmed the foregoing in his evidence before the ICTY. Momir Nikolić testified that already on 12 July, in the meeting with the accused Duško Jević in Potočari, he told Accused Jević that the tasks of the previous day would continue, and that he should order his units deployed along the road to gather the captured Muslims who would be thereupon transported to Bratunac. The then Chief of the CJB Zvornik, Dragomir Vasić, confirmed that it was „Ljubiša's task“ to secure that this part of the road was passable as there existed information that a large number of armed Muslims were moving along this part of the road.

(a) Deployment of Members of the Special Police Brigade during 13 July

529. Protected witness S-110, a member of the 2<sup>nd</sup> Šekovići Detachment, explained within this context that on 13 July the officers, among whom he remembered Rade Čuturić, Miloš Stupar and Ljubomir Borovčanin, deployed members of the Jahorina Training Center in the area spreading from the Kravica Farming Cooperative to Sandići on the left side of the road.

530. More specifically, members of the 1<sup>st</sup> Company of the Jahorina Training Center were deployed on the part of the road from the house in Sandići (from which they called the men to surrender) toward the hangar in Kravica. Members of the *Zvornik blue police* were deployed on the right side (of the house) toward Konjević Polje. Witness Radomir Pantić explained that members of the PJP Zvornik were also present there. Witness

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<sup>191</sup> Dispatch Note No.: 12-6/08-508/95 dated 14 July 1995 sent by Dragomir Vasić to the Command Staff in Pale/the Minister's office and MUP RS, Police Forces Command Staff in Bijeljina.

Miladin Stevanović also confirmed the described deployment of members of different units.

During the cross-examination, the witness S-110 testified:

„I stood near the house in the Sandići meadow from which Zoran Lukić called Muslims via megaphone to surrender. Looking toward the woods, toward a creek, there was a road behind. The right wing is toward Konjević Polje, where the house from which the calls were made is located. We were searching the area around the house, and escorting the men to the other side of the road in relation to the meadow. To the left from us, next to the Kravica hangar, there were the 1<sup>st</sup> and 2<sup>nd</sup> Platoon of the Šekovići Company. The Zvornik blue police was deployed in the wing to the left from us, that is, from the house from which the calls were made.”

“The Šekovići Platoon participated in the search. Prior to us, the Šekovići Platoon secured the detainees in the meadow. We were deployed along the road, two by two. The Commander ordered us to move and escort these men to the Kravica FC. The Commander told us that all of them would be executed and killed.”

531. During the afternoon of 12 July, or in the evening hours at the latest, the Bosnian Serb forces started capturing a large number of men from the rear of the column.<sup>192</sup>

532. It ensues from the Regular Combat Report of 13 July 1995 sent by General-Major Radislav Krstić to the Drina Corps Command that the task of the MUP members was to participate in the blocking, disarming and capturing of Muslims who were moving from Srebrenica in a column. The Report mentioned the Decision stating as follows:

„The main forces of the Corps will further persistently defend the captured lines with a continued 24-hour reconnaissance and surveillance of the enemy in order to avoid any possible surprises. The rest of the forces, in cooperation with the MUP forces, will control the territory in depth, and discover, block, capture and disarm the dispersed Muslim forces ... control and lay ambushes in the directions of the Muslim groups withdrawal. The Bratunac-Konjević Polje-Milići-Vlasenica road and the Zvornik-Šekovići-Vlasenica road must be fully secured and continually passable for 24 hours, secured with patrols and ambushes at sites suitable for these combat actions.“

533. On 13 July 1995, after the foregoing activities were completed, Ljubiša Borovčanin sent a report<sup>193</sup> to the Police Staff in Pale, Vogošća and Janja on the activities taken. The report confirmed the described events and the participation of the MUP units therein. The Report stated as follows:

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<sup>192</sup> Established fact No. 37 (Panel Decision No.: X-KR-09/823-1 of 1 July 2010).

<sup>193</sup> T-15 and T-143 (Report sent by Ljubomir Borovčanin to the Staff in Pale, Vogošća and Janja No.: 284/95 of 13 July 1995)

„During 12 July 1995, the MUP combat forces were deployed in the offensive activities from the Yellow bridge (Žuti most) toward Potočari. Around 05:30 hrs, a check point on the Yellow bridge was blocked. Thereupon, we set off toward the Potočari road. The Muslims did not offer a strong resistance, so we captured Potočari by 13:00 hrs, and our west wing took over Budak and Milačevići. In Potočari, we blocked the UN compound where the mass of around 25,000- 30,000 civilians were gathered, including around 5% able bodied men.

A portion of the MUP forces was included in the organization of evacuation of civilians from Srebrenica to Kladanj.

Given that we had information that all able bodied Muslim men from Srebrenica started a breakthrough toward Konjević Polje and further toward Tuzla, I have urgently sent our forces, with hardware support, to block the Kravica-Konjević Polje road, where they spent a night.”

534. Witness Dragomir Vasić, Chief of the CJB Zvornik, was at the time tasked to form a SJB Srebrenica. On 13 July, the witness went there with this goal. In the evening hours, he learned that a large number of men were captured on the Bratunac-Konjević Polje road. According to the Dispatch Notes<sup>194</sup> tendered in the case record, this witness informed his superiors that it was possible that a large number of armed soldiers would breakthrough in the Glodi-Maričići direction and Liplje-Jošanica-Velja Glava direction (both groups with around 2.500 soldiers).

535. Further in his testimony, witness Dragomir Vasić stated that during these days, Bratunac had an actual problem of large number of prisoners. The witness knows that, at the time, there was a quarrel between Deronjić and Beara. Beara came there with the intention to liquidate the prisoners, having told them it was Mladić's order to do so. The witness met Tomislav Kovač, Deputy Minister of Interior, in order to clarify the referenced events and the role of the MUP members in the killings of prisoners. Kovač allegedly told the witness on this occasion that he was personally present in the Bratunac Brigade Command when Mladić received information that a soldier had been killed in front of the Kravica warehouse and started „*shouting hysterically that everyone had to be killed!*“.

536. By doing so, the witness has obviously tried to present that General Mladić, that is, the military leadership of the VRS Main Staff ordered the execution of all Srebrenica men, and that the MUP RS had nothing to do with this order whatsoever.

537. As already explained, the evidence adduced in the case at hand does not show that at the time, the lower-ranking members of the MUP RS developed the execution plan in concert with the VRS highest-ranking officers. More specifically, there is no evidence that members of the MUP, in the rank of the accused Jević and Đurić, were members of a JCE, the goal of which was to commit a genocide. With their actions,

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<sup>194</sup> T-9 Dispatch Note No.: 01-16-02/1-205/95 of 15 July 1995 and T-8 Dispatch Note No.: 12-6/08-534/95 of 19 July 1995.

however, these Accused gave a significant contribution to the commission of this criminal offense. Therefore, they were found guilty of aiding and abetting genocide.

### **3. Composition and Structure of the Column of Muslims Moving toward Tuzla**

538. During the proceedings, the Panel has indisputably concluded that as early as the afternoon hours of 11 July, the VRS commanders knew that a column was formed. Witness Mićo Gavrić<sup>195</sup>, the then Chief of Artillery in the Bratunac Brigade stated: „*At around 15:00 hrs, the third observation post reported to me that a large number of enemy forces were moving toward Jaglići and Kravica, that is, at the exit from Potočari. As of that moment, the civilians were no longer interesting to me.*“

539. By daybreak on 12 July 1992, the direction of the column movement became known, which ensues from Butler Report<sup>196</sup> too, that is, the intercepted phone communications. By daybreak on 12 July 1995, information began arriving at various headquarters that a large column of Muslims had assembled and were attempting to exfiltrate the former enclave from the area of Jaglići.

540. Military telephone conversations intercepted at 06:08 and 06:56 hours on the same day indicate that the VRS commanders had begun tracking the movement of this column. The communications intercepted at 14:40 hrs and 16:40 hrs demonstrated that the Drina Corps Command and the Zvornik Brigade had detailed knowledge of the direction in which the column was moving.

541. During the proceedings, the Defense contested the time when the information about the armed column of Muslims became known. The Defense argued that this information was received subsequently, even though the documentation tendered as evidence clearly showed that the referenced data were clear and detailed already on 12 July 1992, and that the Information<sup>197</sup> which the Chief of the CJB Zvornik, Dragomir Vasić, sent to the HQ of the Police Forces in Bijeljina, the Cabinet of the Minister' and the public security sector contained it. The Information stated that most of the able bodied men (around 8,000, including 1,500 armed men), led by Ejub Golić and Ibrahim Mandžić, were already present in the Konjević Polje and Sandići area.

542. Given the Defense theory that the column of Muslims was a justified military target since a certain number of armed members of the 28<sup>th</sup> Division of the Army BiH constituted a portion thereof, the Court heard the evidence of survived eyewitnesses who were in the column escaping from Srebrenica.

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<sup>195</sup> Witness Mićo Gavrić testified at the main trial on 24 January 2011.

<sup>196</sup> T-81 (Statement on the military events in Srebrenica (revised) – „Krivaja 95“ Operation of 1 November 2002 by Richard Butler) („Butler's Report“), para 4.9.

<sup>197</sup> T-220 Notice No.: 281/95 of 12 July 1995 by which Dragomir Vasić, Chief of the Center, informs his superiors about the movement of the column of men from Srebrenica.

543. Witness S-111 explained that at the time he was a member of the Brigade that was under Zulfo Tursunović's command. On 11 July, the witness joined the column of men which set off through the woods toward Tuzla. The witness had a hunter's rifle as he had been a hunter since 1968. The witness confirms that uniformed and armed persons were in the column.

544. Protected witness A1 who came to Potočari learned from his sons that the able bodied men had gathered in front of the Commander Zulfo Tursunović in the area of Jaglići and Šušnjari villages. It was agreed that the column would go to the Kladanj and Tuzla territory. The witness noticed that not all the men in the column had weapons. He personally had none since he had earlier handed his hunter's rifle and a carbine over to the UNPROFOR soldiers.

545. Witness Haso Hasanović also remembers that the column of men started moving from Šušnjari toward Tuzla, through Buljim to Kamenica, where they were lined up. At this point, the witness noticed that there were around 1,000 men in the column, that certain individuals among them were generally poorly armed, namely that the individuals had hunter's rifles, while only a few men had automatic weapons. They were told not to separate from the column because the area was under mines.

546. The head of the column was comprised of units of the 26<sup>th</sup> Division, then came civilians mixed with soldiers, and the last section of the column was the Independent Battalion of the 28<sup>th</sup> Division.<sup>198</sup> Having not contested that the column was in a „breakthrough,“ as an offensive military action, witness Hasanović explained the real situation in detail. The witness testified that the armed members were at the head of the column, while quite a few men had hunter's rifles at the rear of the column. The witness testifies that the Army BiH ordered the column to make a breakthrough toward Jaglići and Šušnjari.

547. In addition to the foregoing and the fact that the men were organized in such a formation, witness Hasanović further describes that at each sign of shooting, the column of 1000 men would scatter around and „everyone went his separate way.“ The witness lost sight of his father in this chaos.

548. During the proceedings, the Defense did not contest that a split and mutual conflicts broke out among the men in the column because certain men wanted to continue the breakthrough while the others wanted to surrender to members of the VRS.

549. During the cross-examination, expert witness Butler confirmed the foregoing Defense theory. This witness confirmed that, generally speaking, at the beginning, the column was organized in a combat formation, that is, as a military campaign. The expert witness further explains that military actions were carried out mostly throughout 12 July when the head of the column attempted a breakout. Thereupon, the intensity of military

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<sup>198</sup> Established fact No. 22 (Panel Decision of 1 July 2010).

actions decreased as the days passed by because most of the armed men succeeded to breakthrough to the Zvornik Brigade, which was not the case with a large number of civilians who escorted the column.

550. The Defense expert witness Radovan Radinović himself drew the best conclusion about the genuine strength of the column. The expert witness states that a „breakthrough“ is a combat action that is being carried out after an unsuccessful defense, which is per se very dangerous and demanding. However, the expert witness adds that: „*The Division had no chances for a success in this operation as they had no reconnaissance or heavy weapons.*“

551. When asked by the Defense Counsel what was the capacity of the column to offer armed resistance,<sup>199</sup> the Defense witness Huso Salihović responded: «*Do not tell me it could have defended because this would not be true. However, it could have been defended for a longer spell of time, an appeal could have been made to the military leadership in Sarajevo and the international community to do something, but we could not defend ourselves.*»

552. Witness S-111 further testified about many attacks on the moving column. The witness testifies that at around 12:40 hrs on 12 July, he set off with the column from Jagličići to Buljim. Before reaching this place, the column was ambushed, as a result of which the column „scattered“ and many men were wounded and killed. A part of the column with the witness escaped across a nearby creek. One man among them said that they were near Kamenica. The witness further testified:

“Then a tank or Praga started firing (shells) one after another. We went back and I lied down over a depression. I stood up and called out the names of persons who were with me in the group, but no one responded. I proceeded in the direction of shooting and shouted: “*Do not shoot, they are our men!*” A person responded his name was Suda. During this period, one could hear bursts of fire and instructions that the wounded should be carried up the hill. In the morning, I saw two persons from my village who lined up and said we were above Kamenica.”

„On 13 July, a gunfire started above us. We were fleeing up the hill when the cross-fire was opened from the asphalt. Our people shouted: “Do not shoot. We will surrender!” The men had tied towels on sticks, but they (soldiers) kept shooting. When we went down, they told us to bring wounded persons along if there were any. I went back to pick up Nusret. He was wounded through his right shoulder. When we crossed the river, we put down the wounded men. Two soldiers stood to the right from us. They searched our pockets and belts looking for weapons. We were ordered to put away bags or backpacks. Then we crossed the river upstream and went to a meadow.”

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<sup>199</sup> OII-12 The Defense for the Second-accused called this witness in a rejoinder to examine him with regard to certain citations from the book «Srebrenica-Why Did We Experience Genocide» by Huso Salihović, reviewed by Ibran Mustafić, p. 256., 264. and 265.



553. The witness S-111 did confirm that the column moved in a certain formation, namely that a breakthrough toward Tuzla was planned.

554. Witness Abida Huremović confirmed that her husband went through the woods toward Tuzla together with the other men of Srebrenica. The witness stated that her husband was in civilian clothing and was not armed at the time.

555. That the column was mixed clearly ensues from a Report sent to the RS Deputy Minister of Interior on 14 July 1995. The Report stated that a larger group of around 5,000 Muslim men, including around 500 armed men, was present in the wider area of Pobuđe, the Municipality of Bratunac.

556. In July 1995, Enver Husić had just turned age 17. He lived with his family as a refugee in the Srebrenica enclave. He eye-witnessed the events commencing from 9 July, when they had to go to a bus station due to heavy firing. They spent a night in a house of some cousins of theirs. Thereupon, the situation slightly calmed down. However, on 11 July, a continued shelling started and his family decided to leave. The witness's mother and sister went toward Potočari, while the witness, his brother and the father decided to join the column that set off toward Kazani. His mother and sister decided to go with the majority of civilians to the UNPROFOR compound in Potočari as they thought they would be granted protection there. The men feared that the Serbs would kill them so they decided to join the column moving through the woods.<sup>200</sup>

557. Enver Husić described that the column was organized but not in a strict order. Most men in the column were civilians and the witness saw no weapons. Once they reached Buljim, he saw a few armed men who had walked at the rear of the column. The column was lined up in Jagličići. Since he was too exhausted, the witness fell asleep. He woke up on the following day of 12 July and noticed that his father and the brother had gone without him. On this 12 July, the column was continually shelled<sup>201</sup> while making its way through the woods. Having reached Buljim, the witness noticed his wounded father on a slope. The detonation threw him against a tree so he could not walk. The witness testified that at this moment:

„We joined the men on the other side. We were sitting there and all of a sudden, it was as if some air came from the direction of hill. Then the shooting started. The men scattered all around the place. I went with my father down the creek. While I was running, I saw that some people were shot in their heads and fell down. I was just scratched. I had a graze. We ran to the creek, and climbed up an elevation. The night was falling. People were moaning and begging to be killed. I was horrified with what I heard.“

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<sup>200</sup> Enver Husić, trial testimony of 7 October 2010.

<sup>201</sup> The foregoing is also confirmed by the accepted fact No. 36 (Panel Decision number: X-KR-09/823-1 of 1 July 2010). The referenced fact corroborates the witnesses' assertions that on 12 July, the forces of Bosnian Serbs launched an artillery attack on the column.

558. When the witness woke up on 13 July, he saw many bodies and blood all over the slope. He heard the Serbs who were calling them to surrender, and telling them they were surrounded, that no one would harm them, that the UNPROFOR would help them and take them to Tuzla. Down on the road, they saw soldiers in the UN armored personnel carriers wearing blue helmets. The Serbs told us that we had to surrender by 14:00 hrs, or otherwise „*we would all be killed*“. The people from the column thought that members of the UNPROFOR were in the UN personnel carriers and that they would be protected.

559. The witness understood that the column cannot reach Tuzla as it would be exposed to shelling. He was glad to see the UNPROFOR personnel carriers and blue helmets. The witness went down to the road with a group of men. On their way down, the witness saw armed soldiers standing on both sides of the path. The witness crossed a bridge over a creek and ran into a Serb police officer who told them to hand over all their valuables and the money they had with them. These police officers wore UNPROFOR flak jackets and had red insignia. Enver Husić knew that they were Serb police officers. They singled out his neighbor and told him to enter a nearby house. The captured men were taken to a meadow and ordered to sit down. A tank was parked some 10 meters away from them. Meanwhile, some prisoners were singled out and searched for valuables.<sup>202</sup>

560. Petrović video-recording also clearly demonstrates that the Serb military and the police used the UNPROFOR stolen vehicles and wore blue helmets in the presence of the captured men who surrendered.<sup>203</sup> It is therefore justified to conclude that this was a planned trick to deceive the captives to think that they surrendered in the UN presence, and that therefore they would be safe. At the same time, having watched the entire situation, witness Husić concluded: „*When I saw that a man in a camouflage T-shirt was singled out and not allowed to walk with the rest of the column any further, this meant that we would be executed, and that we were just living our last moments.*“

561. Witness S-111 also testified about the movement of the Srebrenica column. This witness explains that the first ambush was in Buljine, and the other above Kamenica. Many men were killed and injured in both ambushes. The witness describes in detail the movement of column, the capturing and gathering of the men in the Sandići meadow, having explained that he did not know this area quite well. The witness stated that they were searched there, and that their belongings and money were seized from them. The Serb forces looked for young volunteers age 20-30 among the men held in this meadow. These men were thereupon transported by a truck. Fadil Huseinović, the witness's neighbor, had been among these men, and was exhumed and buried two years ago. There was also one tank on the left side and the other one on the right side. At this place, the soldiers greeted a former police officer Amir Gabeljić and his two brothers wherefore the witness hoped that they would all be exchanged. However, when they

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<sup>202</sup> Enver Husić, trial testimony of 7 October 2010.

<sup>203</sup> Exhibit T-1

were soon thereafter taken above the house from where they did not return, the neighbor, who was sitting next to the witness, cried and said: „*They will kill us all.*“ Amir was subsequently exhumed in Budakovo, while the whereabouts of his brothers are still unknown.

562. Thereupon Mladić came along introducing himself as a General. He told us: „*Naser has left you and went to Tuzla. It is not good to make war with the Serbs. We have removed your families to Tuzla and we will exchange you. You will join your families. No one shall harm you. No one shall beat or abuse you. It is hot here for you, we will transfer you to a cooler place.*“ The witness stated that this had given him a hope that they would be saved.

563. Witness Nenad Milovanović was also deployed on the road at the time. This witness confirmed that there was a tank nearby firing in the direction of woods where the column of Muslims had been present.

564. Witness S-112<sup>204</sup>, the other survivor of the massacre, was a member of the ABiH who had surrendered to the VRS in the Srebrenica enclave on 13 July 1995. He was in the column of Bosnian Muslims who walked through the woods in an attempt to break through the VRS lines and reach Tuzla. The VRS soldiers searched the captured men and seized all their valuables. The prisoners were taken to the Sandići meadow and secured during the day. The witness did not notice that any of the surrendered men in this place wore camouflage uniforms. They mostly wore civilian clothing.

565. In the opinion of the Prosecution military expert witness, Richard Butler, around 12-15 thousand men were in the column, and around one third of them were armed. According to this witness, the head of the column constituted a significant military threat to the VRS while they moved toward Tuzla. The witness testified that the column was a legitimate military target regardless of the fact that it was a mixed military-civilian composition. This witness thinks that the column constituted a realistic military threat to Zvornik.<sup>205</sup> Richard Butler, however, did not explain the basis for his opinion nor did he address the issue of proportionality or what would be a proportionate response to such a threat.

566. The Court therefore does not rely on Butler's evaluation of whether the column constituted a *significant* military threat. This is so because the Court finds that even if it were so, the issue to be determined is not whether any threat existed, or to which extent, but rather the treatment given to the Bosnian Muslims who were in the column and surrendered to the forces of the VRS and the Special Police Brigade. In any case, with regard the genuine strength of the column during 13 July, the Court points to the statements of the witnesses who said that, after the shelling, members of the column were in a deranged mental state. The Court also points to the information from the daily

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<sup>204</sup> T – 192 (Decision of the Court of 26 August 2010) Transcript of the witness S-112 evidence in *Krstić* 10 April 2000.

<sup>205</sup> Richard Butler, 29 September 2009.

combat report<sup>206</sup> stating that: „*The enemy from the former Srebrenica enclave is in a total chaos and surrenders to the VRS on a mass scale.*“

567. On the grounds of the evidence adduced, the Panel concluded that the non-selective artillery attack launched against Srebrenica was also one of the factors that contributed to the forcible removal of the Bosnian Muslims. The attack forced the population to flee to Potočari, while the men were forced to go to villages. On 11 July, these men gathered in the villages of Jaglići and Šušnjari, wherefrom they set off through the woods to the territory controlled by the BiH Army. These men and other members of their families were expelled from their houses.

568. The column was mostly comprised of able bodied men. It was a mixed column, partially military and partially civilian. Based on the evidence adduced, the Panel concluded that, unlike the civilian component, the military component of the column had a possibility to choose whether to fight or surrender. The decision to withdraw was a strategic decision and their own choice.

569. The civilian component of the column, that constituted majority, was comprised of the men who had also fled from their homes in the same fear and panic that forced the rest of the population to flee. Given the situation that developed, the question is whether the fleeing of these men was their own choice or were they forced to flee. From the existing perspective, the flight of these men was a matter of life or death.

570. On 11 July, after General Mladić had taken a tour around Srebrenica with the other VRS officers, and after the VRS soldiers had forced the remaining population out of the town at the time when the parts of the BiH Army left the area, the population had no other choice but to leave the area around Srebrenica.

**B. SURRENDER OF MUSLIMS FROM THE COLUMN AND THEIR DETENTION IN A MEADOW IN SANDIĆI**

571. On 13 July 1995, many Bosnian Muslims from the column surrendered to members of the MUP and VRS along the Konjević Polje – Bratunac road. The evidence shows that hundreds of prisoners were taken to the Sandići meadow by the road. Prior to this, they had been searched for money, other valuables and weapons.

572. The 3<sup>rd</sup> Skelani Platoon of the II Šekovići Detachment was in Sandići near the place where the surrender took place. The men first surrendered in small groups, and thereupon in larger groups. They were coming out of the woods while members of the 3<sup>rd</sup> Platoon were stopping them and seizing their belongings. Witness Tomislav Krstović testifies that when the men surrendered the deserters were in the Sandići meadow too. The witness S-110 confirmed this.

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<sup>206</sup> T-230 Regular combat report sent to the Drina Corps Command, strictly conf. No. 03/2-214 of 13 July 1995.

573. In the photo<sup>207</sup> presented to him, witness Krstović showed a house located by the Bratunac-Konjević Polje road. The witness remembers so because while he moved toward Zvornik he saw a house across from which there was a lowland, a meadow, a tank and some prisoners. Witness Krstović marked the house with No.1, the place where he saw the prisoners with No. 2, and the place where the tank stood with No. 3. The witness estimated that there could be around 30-40 prisoners. He saw members of the Šekovići Detachment, but does not remember if any members of his unit were there. He saw two buses crammed with men heading toward Konjević Polje. Krstović did not know if they were civilians (women, children and the elderly) from Potočari. The witness testifies that while he was on this road, he did not notice that some other men surrendered in addition to those mentioned above.

574. Witness S-110 described the surrender of prisoners. This witness testifies that the prisoners came from the woods on the left side of the road. „*They looked like they had no weapons. Most of them were civilians, while a few were in camouflage uniforms*“. The witness also describes that the referenced persons were searched near a house located by the road. This house had no roof and from there, Zoran Lukić called the Muslims via megaphone to surrender.

575. Witness S-117 also confirmed that the combat vehicle from which the people were called to surrender moved around. This witness was deployed in the referenced location. The witness explains that members of the 1<sup>st</sup> Company of the Training Center were tasked to search the surrendered men for weapons. Members of the 1<sup>st</sup> Company had to escort the prisoners to a nearby meadow.

„The Muslims surrendered there. I do not know if they were soldiers or civilians...they were coming from the woods. They had to be searched for weapons ... perhaps one could even find money and gold with them...I do not know the names of those who searched them. Most of the surrendered men had no weapons. They looked exhausted...they were in civilian clothing. Only some of them had parts of uniforms.”

576. Petrović's recording clearly shows the Serb soldiers calling the Muslims to surrender. This confirms the statements mentioning the calls to surrender.<sup>208</sup>

577. The captured men were searched on the Sandići meadow. Members of the military and the police secured the prisoners, while the members of the I and II Šekovići Platoon and a couple of members of the Skelani Platoon searched them.

578. No witness confirmed that members of the 2<sup>nd</sup> Company were in the Sandići area at the time when the Muslims surrendered. Witness Stanislav Vukajlović, a member of the 2<sup>nd</sup> Company of the Training Center, that is, of the Platoon that was under Siniša Renovica's command, testifies that certain members of his unit were on the Sandići ridge

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<sup>207</sup> T- 48 A photo presented to the witness during his examination at the main trial.

<sup>208</sup> Exhibit T-1.

when the Muslims surrendered, but that they were only passing by and did not stop there. The witness's father was a member of the Šekovići Detachment, which was another reason for which he (the witness) avoided being seen and recognized by the people. The witness was ashamed of the fact that he had been brought from Serbia as a deserter.

### **1. General Ratko Mladić Addressed the Prisoners in Sandići**

579. It was established based on the evidence that at around mid-day of 13 July 1995, General Ratko Mladić came with his escort, several high-ranking officers and Ljubiša Borovčanin while the prisoners were being escorted to the Sandići meadow. A certain number of eye-witnesses testified about this.

580. On 13 July, the Defense witness Neđo Jovičić had an opportunity to be in Potočari with Piroćanac, a cameraman. At around noon, the witness set off toward Konjević Polje. A large group of prisoners (100-150 men) were video-recorded in Sandići that day, while a certain number of them were surrendering to the soldiers while leaving the woods. After being brought to the meadow, those persons were searched. Thereupon, General Mladić came and told the present men that they too would be transported to the Tuzla territory where their women and children had already gone. From this place, the witness escorted Lj. Borovčanin toward Konjević Polje. The witness heard on the car radio that a police officer was killed and that everyone had to go back.

581. Having received this information, the witness immediately turned the vehicle the other way and went toward Bratunac. Before reaching the Kravica FC, they met a police officer who told them that there had been an incident and that one police officer was killed and the Commander of the II Šekovići Detachment wounded. Having passed by Kravica, they saw „a pile of corpses“. The information that they had received from the police officer was confirmed upon their arrival at the Bratunac Health Center. They learned there that a police officer from Skelani, who was a member of the Šekovići Detachment, had been killed.

582. Protected witness S-110 and witness Radomir Pantić confirmed that General Mladić and Ljubomir Borovčanin were in the Sandići meadow while the prisoners were being gathered, and that thereupon the prisoners' escort to the Kravica hangar started.

583. This evidence is important because it proves a high level of coordination between the MUP and the VRS. This evidence also shows that the interest of the VRS leaders to screen war criminals from the list was fictitious. The fact that General Mladić was visiting the surrendered prisoners and convincing them that they would be exchanged, and that meanwhile the VRS intelligence officers were already looking for new execution sites, additionally corroborates the foregoing conclusion.

584. Momir Nikolić knew that the MUP forces were directly under Duško Jević's and Ljubiša Borovčanin's<sup>209</sup> command. In the morning of 13 July, Nikolić learned about Mladić's plan to visit this area. Before General Mladić's arrival in Sandići, Momir Nikolić gave instructions to members of the MUP deployed in Konjević Polje: *"I told members of the MUP that the men who surrender or who will be taken prisoners in Konjević Polje had to be detained in a facility easy to secure, that their transportation would be provided during the day and that these captured Muslims would be transported to Bratunac during the day."*

585. Nikolić thought about the destiny of these prisoners in the following way: *"What was planned and ordered to happen to the prisoners in Potočari will also happen to these prisoners. In my opinion, all the men captured during that same period had the same status regardless of whether they were on the road or in Potočari itself ... These prisoners had to be transported to Bratunac, temporarily held on the premises or facilities selected for temporary detention, and thereafter killed like all those who had been separated on 12 and 13 July in Potočari."*<sup>210</sup>

586. Around 1,000 men, if not more, were gathered on the meadow.<sup>211</sup> Witness S-110 saw General Mladić coming to the Sandići meadow and addressing the prisoners. The witness remembers that Borovčanin was also there on this occasion, and that after Mladić left, Borovčanin stayed with Čuturić.<sup>212</sup>

587. The testimony of witness S-110 about Borovčanin's visit is in compliance with the testimony of Momir Nikolić, who knew Borovčanin and who also confirmed that Borovčanin was at the crime-scene. The video-recording depicting Borovčanin during his conversation with members of the MUP by the road during the afternoon hours of 13 July 1995 also corroborates the foregoing.<sup>213</sup>

588. In compliance with the testimony of Momir Nikolić, witness S-110 testifies that Mladić arrived before noon, and that he came to the meadow together with Borovčanin and the other high-ranking officers.<sup>214</sup>

589. The witnesses also testified consistently about what Mladić had told the prisoners. Witness S-110 heard that Mladić addressed the prisoners and offered them safety and protection. Mladić told the prisoners *"that they would all be escorted, exchanged and transported to the territory controlled by the Army BiH"*. However, witness S-110

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<sup>209</sup> Exhibit T- 183 Momir Nikolić, *Blagojević*, 22 September 2003, p. 1712. In July 1995, Dragan Jokić was a Chief of Artillery in the Zvornik Brigade.

<sup>210</sup> Exhibit T-183 Momir Nikolić, *Blagojević*, 22 September 2003, p. 1716-1717.

<sup>211</sup> Enver Husić, trial testimony of 7 October 2010, <sup>211</sup> The foregoing is confirmed by the accepted fact No. 44 under the Panel Decision No.: X-KR-09/823-1 of 1 July 2010. The fact states that between 1,000 and 1,500 men from the column were kept at the Sandići meadow wherefrom they were transported to the Kravica warehouse by buses or on foot.

<sup>212</sup> Witness S-110 testified at the man trial on 11 November and 29 November 2010.

<sup>213</sup> Documentary evidence T-1 presented during the testimony of witness S-110.

<sup>214</sup> Witness S-110, 11 February 2009.

*“personally thought this was not true”.*<sup>215</sup> Along this line, this witness testifies that „General Mladić said that they (the prisoners) would all be exchanged. I did not believe this because we were ordered one thing, while the rumors had it differently.“

590. Momir Nikolić told the prisoners that they should not worry, that their transportation would be organized and that they would be transported to the free territory.<sup>216</sup> Thereafter, Momir Nikolić spoke with Mladić:

“In the middle of the road where I reported to him, I asked: *“Mr. General, what will happen to these people?”* He just waived his hand. He said nothing. In response to my question, he waived back and showed me what would happen. I realized that these men would be killed. In fact, I understood so as a confirmation of what was already underway.”<sup>217</sup> In the Court, Nikolić made a move with his hand across his chest with the palm turned down – as a symbol for killing.

591. Witness S-112 also described that General Mladić addressed the prisoners and told them that they would all be exchanged for Serbs. After Mladić was gone, one of the VRS commanders singled out fit able-bodied prisoners and told them they would be exchanged. The selected men, including witness S-112, boarded the busses that were waiting, whereupon they were transported to the Kravica warehouse. As soon as they boarded the crammed buses that drove toward Bratunac, the witness realized that they would not be exchanged. This became even clearer when they reached the warehouse.<sup>218</sup>

592. The Court is satisfied that Mladić and Borovčanin came to the meadow in the way as described, that Mladić addressed the prisoners and promised them they would be exchanged. The Court also notes that this was a deliberate untruth given that the captured Bosnian Muslims had been already executed the night before in Bratunac. The Court, however, did not find beyond a reasonable doubt that each member of the MUP who guarded the prisoners knew that Mladić's promises were false, that the men would be executed, and that the liquidation of Bosnian Muslim men was already underway pursuant to the genocidal plan.

593. Witness S-111 described the column moving from the Sandići meadow toward the Kravica warehouse. The witness stated that a man who stood there in civilian clothing and held a machine-gun ordered that a column be formed. There was a soldier standing with a rifle at each 6m-distance. The witness describes that after they came in front of the hangar, he saw that the hangar was *„so crammed that not even a match could be thrown inside“*.

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<sup>215</sup> Testimony of witness S-110 at the main trial of 11 November 2010.

<sup>216</sup> T-183 Momir Nikolić, *Blagojević*, 22 September 2003, p.1718.

<sup>217</sup> T-183 Momir Nikolić, *Blagojević*, 22 September 2003, p. 1718.

<sup>218</sup> T-192 (Decision of the Court of 26 August 2010) Transcript of the witness S-112 evidence in *Krstić* of 10 April 2000.



594. The group of prisoners gathered in the Sandići meadow stayed there just for a while after Mladić's departure. They were ordered to form a column of four prisoners in a row. On the right and left side of the column, there stood a police officer at each 10-12m distance. More specifically, witness S-110 testifies that the Commander ordered that the column be escorted to the hangar and that all the prisoners be killed there. When Rade Čuturić came along at the moment when the column was escorted and when the execution started, the witness noticed that Ljubomir Borovčanin was there too.

595. At the critical time, witness Radomir Pantić was a Commander of the PJP 1<sup>st</sup> Company that was also deployed at the Bratunac-Konjević Polje road. The witness testifies that members of the Jahorina Detachment apprehended the Muslims from the woods who surrendered. The witness knew that they came from the direction or area where they were deployed and that they wore different, recognizable uniforms.<sup>219</sup> The witness recalls that while the column moved, one uniformed and armed person walked in front of the column, a couple of men on one and the other side of the column, while the surrendered men were in the middle. The witness remembers that there were around 30 men in this group.

596. According to the evidence of the examined witnesses, the captured Muslims were brought to the Kravica warehouse in several rounds. In certain cases, members of the Jahorina Training Center participated in their apprehension.

597. During the cross-examination, witness S-110<sup>220</sup> insisted that he was aware of the tasks already in Srednje where Milenko Trifunović told them that the women and children would be transported, and the able bodied men killed. This is completely contrary to the theory advocated by the Defense during the proceedings. The Defense argued that the killings in Kravica represented a precipitated, unplanned incident. The witness responded to the Defense arguments contesting the credibility of his statement in relation to his earlier statement. The witness explained that at the time when he gave his statement in the *Kravica* case to which the Defense Counsel refers, he intentionally avoided to give sincere responses. However, it cannot be disregarded that at the time the witness himself was charged with the offenses about which he had direct, and thereby very relevant information.

598. Among all the witnesses heard, however, only this witness testifies that there existed a detailed plan of killings, namely that all members of the unit were aware of the plan already at the time when the unit was in Srednje. The Panel could find no basis for the foregoing argument either in any piece of evidence adduced in these proceedings, or in any final ICTY judgment. Therefore, the Panel gave no credence to this witness as to this part. This is so particularly if it is taken into account that the witness testified that the

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<sup>219</sup> As the other witnesses also described, the „deserters“ from Jahorina wore camouflage „newer and flashier“ uniforms.

<sup>220</sup> OI-1 Contesting the witness credibility as to this part, the Defense tendered into evidence the Transcript of this witness's evidence in *Mitrović Petar*, No. X-KR-05/24-1 of 29 May and 11 June 2008.

referenced plan was disclosed already on 6 July, and that the evidence adduced showed that an offensive against the protected Srebrenica enclave had just started at the time.

599. The Defense witness, Nedeljko Sekula, testified about the same fact. As a member of the II Detachment of the Šekovići Police, this witness was deployed in the field, in Srednje. However, the witness resolutely stated that no member of the unit was aware of the „Krivaja 95“ plan, nor were any military plans discussed regarding Srebrenica at the time.

600. In this context, the Panel was also mindful of the objection by the Defense Counsel to the testimony of witness S-110 in the *Kravica* case. When asked by the judge if he was aware of the destiny of the column of captured men, witness S-110 responded that he could assume that there were no concrete indicia at the time suggesting such a conclusion.

601. Therefore, on the grounds of testimony of only this witness, the Panel could not conclude beyond a reasonable doubt that before 11 July there existed a clear plan to execute the captured Muslim men.

602. Regardless of this fact, the Panel concluded, and the Defense did not contest it, that members of the II Šekovići Detachment were sent from Srednje to Bratunac in the night of 11/12 July. Based on the evidence heard and the earlier findings regarding the general context of the events in Srebrenica, it is obvious that the II Detachment was sent to this area after the takeover of Srebrenica in order to be deployed in coordinated operations of the Republika Srpska Army and the MUP that followed up. The II Detachment was in a military service, deployed in the Srebrenica area to support the VRS Main Staff operation in Srebrenica.

603. The ICTY has found in the *Popović et al.* that Ljubomir Borovčanin, the then direct superior to the witness's unit in the Srebrenica area, also had no such information. This was one of the more frequent Defense objections.

604. The Panel, however, does not find that the responsibility of the Accused had to be generally assessed following the example of this ICTY case and the responsibility of LJ. Borovčanin. Even though Borovčanin was the Accused's superior, he took no active part in the actions of which they were found guilty. No evidence whatsoever was offered in support of such a conclusion nor was this issue a subject of review in these proceedings. The reasons due to which the ICTY Panel did not find Ljubomir Borovčanin responsible for aiding and abetting genocide do not prevent this Panel from concluding beyond a doubt on the grounds of the evidence adduced that the accused Jević and Đurić are responsible for aiding and abetting genocide.

605. In the part of the testimony to which the Court gave credence and which is consistent with the other witnesses' statements, witness S-110 testifies that, before the escort of prisoners, the Šekovići Platoon which secured the prisoners in the meadow, also took part in searching the prisoners. The witness also testifies that even while the column was moving, their Commander said that they would be all „executed and killed“.

According to the Defense, the witness did not mention the foregoing in his earlier statements. However, the other examined witnesses also confirmed that members of the Šekovići Detachment pillaged, searched and seized the personal belongings and valuables from the prisoners and that it was they who started the executions in the warehouse.

606. The Court finds proved beyond a reasonable doubt that members of the MUP (specifically parts of the Special Police Brigade) called the Bosnian Muslims from the column to surrender, promising them that they would be exchanged and safely transported to the territory controlled by the ABiH. The evidence confirms that the prisoners were searched, the valuables seized from them and that the prisoners were taken to the Sandići meadow where members of the MUP secured them. The earlier presented evidence shows that during all this time the accused Jević and Đurić, deployed with their units in this area, were aware of the ultimate intention and the plan of treatment of the captured Muslims gathered in Sandići, or that, pursuant to the circumstances, they could not have remained unaware of this plan.

607. Within the context of incident/killing of Krsto Savić in front of the Kravica hangar, the Defense asked witness S-110 whether the killings were unplanned. The witness responded: *„If incidents occurred at all places where the Muslims were detained, than this is an incident too.“* The witness added that many of his colleagues know what had really happened, but due to the reasons known to them, they do not want to testify. While he was detained with certain persons charged with the commission of crimes in the Kravica hangar against whom the proceedings before this Court were completed with a final verdict, the witness had an opportunity to ascertain this.

608. The testimony of the Defense witness Nedeljko Sekula also supports the conclusion that the killings in the hangar were not a result of unplanned killing of a police officer of the II Detachment of the Šekovići Special Police. This witness testifies that he was on the Sandići ridge when he heard about the referenced killing. Along this line, the witness testified: *„We were on the Sandići ridge until the evening hours when this happened to a member of my unit. There were four or five of us, but it caused no particular reaction among us. We only heard that the hands of Commander Čuturić were burnt and that is all.“*

## **IX. THE KRAVICA WAREHOUSE/ HANGAR**

### **General Factual Findings**

609. According to the evidence adduced and the statements of the witnesses heard, the warehouse in Kravica is a farming cooperative located at the Bratunac – Konjević Polje road. From the Bratunac direction, heading west toward Nova Kasaba, the Kravica warehouse is located between the Yellow Bridge in the east and the Sandići meadow in the west.

610. The warehouse is 61.2 m long, 10.2 m wide and 4.1 m high.<sup>221</sup> It is comprised of two divided parts with special entrances on the side facing the road. There are windows at the back side of parts of the warehouse.<sup>222</sup> The side turned to the east and located on the left side looking from the road is 30.77m wide, and the west side is 24.26 m wide.<sup>223</sup>

611. The Director of the Elementary School, Jovan Nikolić, the then Director of the Kravica Farming Cooperative, described the warehouse as an independent farming cooperative which employed five or six men, and whose activity was mainly fruit storage and transportation.

612. An ICTY investigation report describes this structure as follows: “The building is a large warehouse, a tilt-up construction that was used as a warehouse for agriculture products. The external walls are made of concrete, while the internal walls are isolated with styrofoam panels. The warehouse is a complex comprised of several buildings ...”<sup>224</sup>

613. Bearing in mind that several hundred civilians were gathered in Sandići, and that the prisoners were brought in smaller and large groups, among which the largest group had 150 men, even during the executions, and on the following day, that is, on 14 July, the Panel concludes that the total number of the killed men was around 1,000. This is corroborated with the other evidence adduced and determined in the other proceedings completed before the ICTY and the Court of BiH with final verdicts.

614. Along this line, the Panel also took into account the fact that the prisoners were brought to the Kravica warehouse in several groups. A group of up to 100-150 men was brought on 14 July. According to Ljubomir Borovčanin’s Report<sup>225</sup> of 13 July 1995, around 1,500 Muslim men in total were captured at the time.

#### **A. MASS EXECUTIONS**

615. Three judgments of the ICTY Trial Chamber and two judgments of the ICTY Appeal Chamber have found that members of the II Šekovići Detachment were responsible for the mass-killings of several hundred of prisoners on 13 July in Kravica. Petar Mitrović testified about this too. Also, the Verdicts of this Court rendered upon the Plea Agreements found that certain members of the 1<sup>st</sup> Company of the Jahorina Training Center participated in the mass killings of prisoners held in this warehouse.

616. Witness S-110, a member of the Skelani Platoon, described the incident that had just preceded the killing of prisoners. Having arrived in front of the hangar, the witness saw a number of armed men who, as far as he knew, did not escort the column and were

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<sup>221</sup> Final Verdict No.: X-KR-07/386 of 16 October 2009 in *Milorad Trbić*.

<sup>222</sup> S-1 Video-recording of the crime-scene visit.

<sup>223</sup> Final Verdict No.: X-KR-07/386 of 16 October 2009 in *Milorad Trbić*.

<sup>224</sup> Exhibit T-75 “Review of the Forensic Medicine Documentary Evidence – Execution Sites and Mass Graves”, p. 6.

<sup>225</sup> T-143.

not members of the II Šekovići Detachment or the Special Police Brigade. These men were in olive-gray uniforms or camouflage uniforms. At that moment, the situation was still calm, and the witness spoke with one of the apprehended Muslims. Thereupon, Rade Čturić stepped over the Praga (self-propelled anti-aircraft gun) and the shooting was heard. The prisoners exclaimed „*Allahu ekber!*“ and set off toward the exit of the hangar. At this moment, Mirko Milanović opened fire with an M-84 machine-gun and shot at the prisoners who were trying to get out.

617. Witness Stevanović confirmed the foregoing too. This witness was present when the shouting and screaming of men was heard from the hangar of the Kravica FC. The witness saw a machine-gun mounted on a table and turned toward the hangar entrance. Witness S-126 observed the same.

618. Witness S-110 described in detail that, upon entering the hangar, the men were divided in two groups. Given that there were back windows on the facility, four men from the Skelani Platoon went there to prevent any possible escape through the window. Thereupon, soldiers from the Skelani Platoon and several soldiers from the 1<sup>st</sup> and 2<sup>nd</sup> Šekovići Detachment formed a semi-circle in front of the hangar. An older man holding a *Papovka* rifle arrived and said that his two sons had been killed in Kravica on 1992 Christmas Eve.

619. According to the witness, everything began when Krsto Dragičević went among the crowd. Thereupon, Jusuf, the witness's school friend, seized the rifle from him and fired a bullet through the door. The witness managed to pull him out, however Krsto Dragičević died shortly thereafter. After this, it was Miljko Milanović who started shooting first, and then the others followed. They were shooting from automatic rifles in a way that they would empty an ammunition clip, then a cross-fire with rifles and machine guns would follow. Even hand grenades were subsequently thrown. According to the witnesses, members of the I and II Šekovići Platoon threw hand grenades.

620. Witness Haso Hasanović was among these captured men. The witness described the details of his capturing.<sup>226</sup> *“They caught me and escorted to the hangar together with the other persons. There were three red structures and a fenced building. When we arrived, it was crammed with the captured men.”*<sup>227</sup>

621. The witness was presented with a photo in which he recognized the hangar where they were brought.

“When we were taken to the hangar, they immediately executed 10 prisoners. I was at the place which I will mark with No. 1. The execution was carried out in the warehouse. I will mark the place where the executed men were located with No. 2. They were taken

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<sup>226</sup> The foregoing is corroborated by the accepted fact No. 37 under the Panel Decision No.: X-KR-09/823-1 of 1 July 2010. The referenced fact confirms that on 12 July, during the afternoon or in the evening hours at the latest, the Bosnian Serb forces started capturing a large number of men from the rear of the column.

<sup>227</sup> T- 42b Presented photo in which the witness recognized the hangar.

out from the warehouse, leaned against the wall and executed. The persons who were taking the men out were younger men. They were in military, olive-grey uniforms (camouflage). Some of them were in black uniforms. *They told us that the same was in store for us when our turn came and that they would kill the whole hangar!*

“They brought us to the place marked as No. 1 because we could not see the execution from the place where we had earlier stood (a bit more elevated place). We were some 10 or 20m far away. I recognized my companion Nermin Nukić who was wounded in that group. He was my school-mate. In a burst of fire, he was wounded in his knees. They shot him in his legs and he fell down. They told him he should receive medical help and took him behind the building. The witness marked the place with No.3. His friend Nukić has never appeared again. They (the soldiers) continued taking the men out and executing them. I do not know how long we were there. A soldier would simply come in, take out 10 to 15 men, lean them against the hangar wall and execute them. The soldiers were up to age 30 or 35, not older.”

622. This witness managed to flee from the hangar when a soldier gave him a container to go and get some water. The witness explains that, having reached the water, he saw a small girl with her throat slit. She was still shaking. At that moment, he thought: *“I have nothing to do here any more.”* The witness escaped toward the woods. Having visited the crime scene,<sup>228</sup> the Panel was satisfied with the witness's statement that there existed a tap behind the warehouse, and that nearby, there were also a creek, a bridge and the woods where the witness made his escape.

623. The witness found some more men and soldiers in the woods behind the hangar. They told the witness that they did not dare cross the road. Thus the witness went further with them in the Burnice direction. They found the village full of people, soldiers and civilians who had neither weapons nor food. They did not know which way to go. The witness stayed there until they were captured again.

624. In contesting this witness's statement, the Defense tendered into evidence the statement<sup>229</sup> that the witness had given on 5 June 1997 in the Agency for Investigation and Documentation of BiH, Sector Tuzla. During the cross-examination, the Defense Counsel submitted that when the ICTY investigators examined the witness, he did not recognize the Kravica warehouse. The witness thought it was Glogova. However, in his earlier statements,<sup>230</sup> the witness did not know the names of the killed man and the wounded young boy. The witness stated that one Nermin Nukić, a young boy from the group who was around age 17 at the time, watched the referenced incident and subsequently recounted it to him (the witness). Having reviewed the documentary

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<sup>228</sup> S-1 Video-recording of the crime-scene visit (the Kravica FC hangar).

<sup>229</sup> OII-3 Record on taking a statement from Haso Hasanović by the Agency for Investigation and Documentation of BiH, Sector Tuzla No.: S-8/02-932/97 of 5 June 1997.

<sup>230</sup> OII-4 Statement of witness Haso Hasanović given to the ICTY investigators on 18 August 1996.

evidence, the Panel found that the name of Nermin (son of Rasim) Nukić (1978) was on the list of identified and buried victims.<sup>231</sup>

625. At the main trial, the witness tried to explain the referenced discrepancies. The witness stood by his argument that he knew the young man from his school days. The witness knew that he was wounded on this occasion. The Panel observes that the witness's statements were consistent in the parts in which he spoke about the other events (his escape and the little girl with a slit throat).

626. The witness is also consistent with regard to the search carried out by the Serb soldiers while he was in the village of Burnice. The part of the Verdict addressing the events of 17 and 18 July describes the foregoing. Given the fact that during the proceedings a large body of evidence was adduced addressing the way in which the men were executed in the Kravica warehouse, the details presented by this witness certainly constitute a cumulative piece of evidence. Therefore, the discrepancies referred to by the Defense Counsel for the accused Mendeljev Đurić do not compromise the witness's testimony in its entirety.

627. According to witness S-110, the killing of prisoners lasted for 2-3 hours. Thereupon, Borovčanin arrived by a jeep accompanied by an officer. Shortly thereafter, they turned around and drove in the Konjević Polje direction. The shooting was ongoing while Borovčanin was sitting in the vehicle. The witness did not notice that Borovčanin tried to stop the shooting. Hand grenades thrown from the front side of the hangar finished everything. At that moment, the witness thought that no one survived. It was therefore strange to him when, after all this, he heard the moaning and curses coming from inside the hangar. However, the witness did not enter the hangar.

628. Many witnesses testified about the killings in front of the Kravica warehouse. Certain participants in these killings were sentenced under the final verdicts rendered in the cases of this Court.<sup>232</sup>

629. Witness Ilija Nikolić, the then member of the I Battalion, remembers that on 13 July he saw that a column of men was brought and interned in the hangar of the Kravica FC. The witness was in the administrative building together with witness Zoran Erić when one of the prisoners from the warehouse seized a rifle from one of the present soldiers and killed a guard. The other guard grabbed the rifle barrel and burnt himself. Thereafter, the soldiers formed a semi-circle and fired at the referenced prisoner who had seized the rifle. Thereupon, *„the shooting and screaming started and one could hear that hand grenades were thrown too“*.

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<sup>231</sup> T 231 The ICMP List – Identified and Buried Victims of 31 May 2011 (on CD due to its volume).

<sup>232</sup> *Miloš Stupar et al.* No: X.KR/05/24.

630. Witness Zoran Erić described the above incident as follows: „*The shooting lasted throughout the night. Detonations could also be heard. The shooting was continuous. It was not just one rifle ... the sound was coming from the lower part of the hangar too*“.

631. Witness Ilija Nikolić further described that two groups of police officers were deployed at the left and the right entrance in the warehouse and that he saw a Muslim killing a police officer at the entrance door.<sup>233</sup> Witness S-110 testified that Mirko Milanović started shooting randomly, and was the first one to open fire at the other part of the hangar.<sup>234</sup> Most of the other men started shooting from automatic rifles toward the inside of the hangar. They were shooting at the prisoners until they emptied their magazines wherefore they had to recharge them. During the shooting, witness S-110 stood several meters away from the entrance and heard no shooting from the rear of the hangar. The witness further testifies that around 15-20 Muslims tried to flee after Krsto had been killed. They succeeded to reach the semi-circle, but were forced to return to the hangar. The soldiers shot from a close distance of around 2 m from the door “*changing each other after their magazines went empty*“.

632. The Skelani Platoon, of which witness S-110 was a member, stayed at this place until the evening hours. After the body of Krsto Dragičević was taken over, they were told that the task was completed and that they should go to Skelani. The witness explained that before they started, certain men came in front of the hangar. He did not know them from before. These men were in camouflage green uniforms and had „some yellow leather belts“. A superior officer was with them whom the witness also did not know from before. From this place, witness S-110's Platoon went to Bratunac for a short period of time, thereupon to Skelani. The witness remembers that members of the 1<sup>st</sup> and 2<sup>nd</sup> Šekovići Company stayed in front of the hangar for some additional period of time.

633. Witness S-110 testifies that certain soldiers in black uniforms, whom he subsequently learned to be “Milan Lukić's men” (five, six, perhaps seven of them), also took part in the killings.

634. The Defense witness Neđo Jovičić described the events in front of the hangar in the same way. Witness Jovičić testified about the events he saw in front of the hangar at the hearing closed for the public. This witness describes that a bus was parked on the left side, while the soldiers were shooting at the hangar entrance from the right side. The witness saw a video-recording made by Petrović depicting the bus parked in front of the warehouse after the massacre had been committed.

635. Witness S-105, a member of the Training Center, also confirmed the presence of persons in black uniforms who had actively participated in the killings of prisoners. On the critical day, this witness passed by the Kravica hangar in a bus driving from the Bratunac direction. The witness saw 30 detained Muslims, lined up in two or three rows,

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<sup>233</sup> Witness Ilija Nikolić testified on 23 September 2010.

<sup>234</sup> Protected witness S-110 was heard at the main trial on 11 November and 29 November 2010.



one next to each other. Soldiers in black uniforms stood opposite to them. At one moment, they started shooting whereupon all prisoners fell down.

636. Witness S-111 was in the hangar. The witness describes that the prisoner brought there last could not sit down wherefore a soldier cursed him, kicked him and ordered him to sit down. The prisoner told the soldier that there was no place to sit on after which the soldier fired at him the whole burst of fire. Then the firing in bursts started and lasted through the evening hours.

“The screaming started. The men shouted: “Don’t shoot!” While they were shooting, a cloud of dust rose all over the place, one could not see more than 6m away in the warehouse. Looking from the asphalt road, two doors were opened but I did not know what was happening outside. I only knew what was going at the place where I stood. This was probably happening at around 16:00 or 17:00 hrs. It was a summer day and it was still warm. The shooting was heard all through the evening. Thereupon, I could hear them (soldiers) talking and laughing in front of the warehouse. I do not know how many soldiers were there.”

637. Witness S-112, who had survived the shooting at prisoners in the warehouse, described the event as follows:

“While I was in the warehouse, they fired at us from all possible weapons. They were first shooting from infantry weapons, automatic rifles. Then they stopped. They would shoot for a half of an hour, and thereupon they would take rest for a while. Then a new round of shooting would start. They were throwing hand grenades through the window which were falling two or three meters away from me. I could only feel explosions, detonations. As a result thereof, I was wounded by a shrapnel.

The men started screaming...it was horrible. It is hard for me to describe this. I saw nothing like this in any of the horror films I had watched. It lasted all night long, but with short breaks.”

638. In addition to the witnesses' statements, the Security Events Bulletin<sup>235</sup> also confirmed that on 13 July, members of the Šekovići Detachment and the Skelani Detachment were in front of the Kravica warehouse. The Bulletin states that most able bodied men from the column of around 8,000 men got out to the Konjević Polje and Sandići area. The Bulletin further clearly states that „Members of the SPB, Šekovići Detachment and the PJP Zvornik were deployed in the action to destroy these forces.”

639. An almost identical formulation was used in the Report<sup>236</sup> sent by Dragomir Vasić on 12 July 1995 to the Bijeljina Police Forces Staff, Office of the Minister and the State Security Sector. The Report stated that the Šekovići Special Unit Detachment, the PJP

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<sup>235</sup> T-139 (Security Events Bulletin of the Ministry of Interior of Republika Srpska No. 200 of 12 July 1995).

<sup>236</sup> T-220 Notice No.: 281/95 of 12 July 1995 by which Dragomir Vasić, Chief of the Center, notified his superiors about the movement of the column of men from Srebrenica.

Zvornik I Company, and the CJB 5<sup>th</sup> Company blocked this area (Konjević Polje and Sandići area) with the view to destroying the Muslim forces.

640. Through the testimony of the witnesses heard, the Defense tried to diminish the importance of the quoted sentence. The Defense explained that the term „destruction“ only implies the capturing and disarming the arrested civilians. However, if the foregoing is viewed within the context of the events of 12 July, many orders of the military command to prevent the Muslim forces from breaking through, the context of mass-killings that followed in Kravica and subsequently at the other sites, it is clear that the term *destruction* was in this Bulletin stated in the full meaning thereof and that it undoubtedly links members of the Šekovići Detachment with the commencement of mass executions in Kravica. The evidence adduced in this case indisputably indicates the foregoing.

641. The Panel will explain the facts proved during the referenced proceedings first in relation to the executions that continued in the evening of 13 July and thereupon with reference to the executions carried out on the following day (14 July).

**B. ARRIVAL OF THE ACCUSED DUŠKO JEVIĆ AND MENDELJEV ĐURIĆ WITH A PART OF I COMPANY IN FRONT OF THE HANGAR OF THE KRAVICA FC IN THE EVENING HOURS OF 13 JULY**

642. During the proceedings, the Panel has indisputably found that under the command and control of the accused Duško Jević and Mendeljev Đurić, members of the I Company of the Jahorina Training Center participated in the executions of men in the warehouse of the Kravica FC, starting from the evening hours of 13 July.

643. According to the evidence adduced, a part of the I Company of the Jahorina Training Center, led by the accused Duško Jević and Mendeljev Đurić, came in the evening hours in front of the hangar of the Kravica FC and replaced members of the II Detachment of the Šekovići Police. Another part of the I Company was deployed along the road, a bit further away from the hangar. Witnesses S-126 and S-104 confirmed the foregoing. These witnesses were, together with members of their Platoon, brought by bus in the evening hours and were left some 200m away from the warehouse in front of which they saw the killed men.

644. Witness S-104 further describes that a number of members of the I Company went out of the bus in front of the hangar, while he and witness S-126 proceeded further. Witness S-126, who was examined with regard to these circumstances as a former member of the Center, confirmed the foregoing too. This witness confirmed that Mendeljev Đurić decided who would stay in front of the hangar. With ten other members of the unit the witness was deployed around 1km further down the road. Witness S-118 confirmed that members of the unit were deployed in the same way. On this occasion, this witness was among the men who got off the bus in front of the hangar.

645. In the photo<sup>237</sup> presented to him, Tomislav Krstović, Commander of the 1<sup>st</sup> Company Platoon, clearly marked the area close to the Kravica hangar where members of the I Company of the Training Center came to replace members of the Šekovići Detachment. Even though this witness did not clearly indicate the units whose members they saw at the scene upon their arrival, the Panel concluded on the grounds of the other, earlier mentioned evidence, that these were exactly the members of the Šekovići Detachment, and that the replacement was carried out in the evening hours.

646. This witness testified that before they left, their superiors gave them no specific orders. The superiors only told the soldiers that they would replace the men who had already been there so that they could take some rest. The witness further explains that upon their arrival in front of the hangar, he heard the detained men moaning, shouting and cursing. The witness concluded that these men experienced some kind of violence before their arrival.

647. Witness S-118 describes that after the arrival of the Šekovići II Detachment, members of the I Company of the Center deployed in front of the hangar continued shooting towards the hangar. Sporadic shooting from automatic weapons lasted while the witness was there. Subsequently, the witness even heard one or two explosions of hand grenades.

648. From the place where they stood, witnesses S-118, S-126 and other members of the unit deployed a little bit further away from the hangar could hear both moaning coming from the hangar direction and sporadic shots. According to this witness, they thought that some attacks would be launched from the woods. The Defense witness, Nenad Andrić,<sup>238</sup> who was a member of the PJP I Company Zvornik in July 1995, was deployed along the road further away from the Kravica hangar. This witness resolutely testified that he neither received any unlawful order at the time, nor was a liquidation of any Muslim from the group ordered if they surrendered on the road. It was peaceful until the evening of 13 July. Thereupon the witness heard a strong explosion, as a result of which one colleague of his was killed and the witness injured in his upper leg. In this respect, the witness explained that for him and the other members of his unit, the column of Muslims represented an objective danger since they were breaking through, while the witness and his colleagues were in a defensive position.

649. Within the context of credibility of the referenced witness and his perception of presentation of the events around Srebrenica, it is important to point to the fact that in July 1997, the witness was suspended from work for 10 months as he was suspected of having committed crimes around Srebrenica. According to his own statement, the suspect's other colleagues were suspended even for a two-year period.

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<sup>237</sup> T-47 A photo of the Kravica hangar in which the witness made the marking.

<sup>238</sup> Defense witness Nenad Andrić testified at the main trial on 21 April 2011.

650. The foregoing is very important given the fact that during the proceedings, the Defense advocated the theory that the securing of road was in fact a regular police task and that there were no incriminating elements therein. On the other hand, the Defense argues that these witnesses' statements corroborate the Defense argument that members of the Jahorina Training Center were not aware that any genocidal plan existed. The Defense also argued that they did not know all details of the tasks they carried out since they were informed accordingly only after their arrival on the site. Accordingly, the view of the Defense is that it cannot be concluded that the Accused, or any other member of the Center acted with the genocidal intent during the events in Srebrenica.

651. The Defense witness, Nedeljko Sekula<sup>239</sup> was examined in support of the foregoing arguments. During July 1995, this witness was a member of the II Detachment of the Šekovići Police as mortar target analyst. The witness explained that until 11 July, his detachment was deployed in the area of Srednje, whereupon the unit was replaced. For this witness and his colleagues, the replacement meant that they would take a leave of absence. The witness resolutely stated that he and members of his unit did not know what was happening in the Srebrenica area, and that they were not kept informed about the military plans and the *Krivaja 95* operation. The Panel has already explained the foregoing in the evaluation of the testimony of witness S-110.

652. On 13 July, as members of the II Detachment of the Šekovići Police, witnesses Petar Mitrović and Miladin Stevanović were deployed on the Sandići road in the Bratunac-Konjević Polje direction. These witnesses testified about the killing of a Serb soldier which had preceded the events in the Kravica FC. During the day, Stevanović saw some men in green camouflage uniforms near the Cooperative. In the evening hours, Mitrović had an opportunity to speak with one of these men in uniforms who told Mitrović that he had been a deserter but did not mention his unit.

653. Both witnesses confirmed that during the time they spent securing the road, they could hear a constant shooting from the infantry weapons and occasional detonations. The witnesses, however, thought that the shooting was coming from the woods where a combat between the VRS and members of the Army BiH was underway. Generally, Miladin Stevanović thought that they were securing the road to protect the Serb civilians who lived there. Witness Mitrović thought they were protecting the road against the breakthrough of the Army BiH. Both witnesses also testified that they did not know in advance what their military tasks would be and that they received tasks upon coming to a particular site.

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<sup>239</sup> The Defense witness testified at the main trial on 21 April 2011.

(a) Executions of Prisoners in the Kravica Warehouse on 13 July and the Presence of the Accused Duško Jević and Mendeljev Đurić

654. Witness S-118 describes in detail that a sort of celebration was organized in the Bjelovac School on 13 July. In the evening, the accused Duško Jević addressed the gathered group and ordered them to complete a task. This witness further described as follows:

„We carried our weapons and live ammunition that we were given already on Jahorina. There were two buses. My bus stopped on the road near the Kravica hangar. After leaving the bus, we saw that one unit was already there. I subsequently learned it was the Šekovići Special Unit. I learned that Muslim civilians were detained inside the hangar. I do not know why they fired at these men. No one offered any resistance. At that moment, nothing could be heard from the hangar. The officers ordered them to secure the hangar and that no one should leave it.“

655. Witness S-119 was also in the bus which started off from the School in Bjelovac. This witness confirmed that before they started the accused Duško Jević told them all to take weapons as they would participate in a police task. The witness recalls that certain members of the unit took hand grenades too. Having arrived in front of the hangar, the accused Jević and Đurić ordered them to secure the hangar and not release anybody from it.

“I subsequently heard the people moaning and crying. At first, I did not know what had happened. We found there men from the other unit. They were there for a short period of time and thereafter left. I did not sleep that night. I and a colleague of mine were told to go behind the hangar to stand guard because there were windows on the back side of the hangar so someone could flee. After a while, I saw a prisoner’s body in a field even though I heard no shot. During this period of time, I heard the shooting in intervals from the front side. When the shooting stopped, moaning could be heard. Shortly thereafter, we went to a nearby house where we spent a night. A colleague of mine told me that when I go there, it would be better for me to stay behind, because they were killing the men in front.”

656. Witness Tomislav Krstović was a member of the Jahorina Training Center. He was also in the group which was in the evening of 13 July called to come in front of the hangar and replace members of the Skelani Platoon and Šekovići I and II Detachment. Immediately upon his arrival, the witness heard the moaning and shouting from inside the hangar. Shortly thereafter, the witness realized that killings were carried out there. The witness heard the shooting too. The witness thinks that members of the Šekovići Detachment were shooting. Despite poor visibility, the witness observed no member of his unit shooting towards the hangar where the prisoners were interned.

657. The witness remembers that Mane Đurić (accused Mendeljev Đurić) was among the Company Commanders. He stood on the road. Subsequently, Goran Sarić’s driver (the witness was not sure if Sarić was in the vehicle) arrived and brought some cigarettes. During the executions, Minister Tomislav Kovač passed near the warehouse.

The Minister greeted them and proceeded further on without stopping by. During the cross-examination, the witness testified that he was not sure if the accused Goran Marković came in front of the hangar or stayed in the Bjelovac school. However, the witness further added: „*Yes, he was there. He must have been there. The instructors were there ... He had to be there... He was there.*“ According to the witness, the shooting lasted for around 3-4 hours. He heard a continuous small arms fire. There were explosions too. The witness is resolute that the shooting lasted throughout the night but that it was members of the Šekovići Detachment who fired.

658. The Panel could not give full credence to the witness's testimony in this part. This is so because the evidence adduced shows that members of the Šekovići Platoon indeed started the killings in the Kravica hangar, but that members of the Company of the Jahorina Training Center continued the executions. More specifically, the witness himself testifies that, in the evening hours, members of his Platoon replaced the Šekovići Detachment in front of the hangar so that they „*could take a rest.*“ The witness's further assertions, that it was exactly the Šekovići Detachment which stayed in this place throughout the night and continued shooting the prisoners and that members of the I Company only watched that all, are contradictory and absurd from the aspect of military-police affairs too.

659. The Panel finds it clear that the witness symptomatically and persistently claims that members of his Platoon did not shoot. By doing so, the witness, in fact, protects himself from being self-incriminated. The fact that further in his testimony, the witness states that it is nevertheless possible that someone from his unit did shoot albeit he did not notice so, confirms the foregoing. The witness added that the subsequent hearsay had it that members of his unit did shoot after all.

660. Witness Ljubodrag Gajić, a member of Goran Marković's Platoon, was brought by bus in front of the Kravica hangar on the same evening. However, with the rest of his Platoon, he was deployed along the road around a half of a kilometer away from the hangar. Their task was to transport all the surrendered men back to the warehouse. «*I and this Saša captured three men, that is, they surrendered and we only loaded them onto a truck and transported them down there. When one of these men surrendered to me, I did not even identify him. He was a civilian and had no weapons. I only waited for the truck and I loaded him onto it.*»

661. Witness S-102 also confirmed that platoon and company commanders were present near the hangar at the time when the prisoners were executed. This witness was transported by bus to the referenced site. Witness S-102 testifies that: „*Certain instructors and high-ranking officers were present there with us all the time. Therefore I suppose that Jević was there, Mane was there too, while Marković circulated somewhere around.*<sup>240</sup>“ In the photo<sup>241</sup> presented to him, witness S-102 marked the place where the

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<sup>240</sup> Given that the witness was brought in front of the hangar during the evening hours of 13 July, he explained that he saw the accused Goran Marković on the following day, that is, on 14 July.

bus, by which members of the Training Center were brought, stopped some time between 22:00 and 23:00 hrs. When the witness got off the bus, he heard a sporadic shooting around the hangar. At the time, he did not still know who was inside the hangar. The witness remembers that he and members of his unit were ordered to deploy along the road in groups of two-three men.

662. In the presented photo, the witness marked the place where he had stood on the critical occasion. The witness, however, cannot remember with certainty who was the superior officer who deployed them, nor which member of the unit stood with him in the group. At the time, one could still hear sporadic shooting and explosions of one or two hand grenades in the structure from where moaning and screaming was coming. At first moment, the witness thought that the take-over of the structure was underway and that members of the Army BiH were inside. The witness thereupon learned that „the men from Šekovići“ would be withdrawn but he did not know which units would stay in front of the hangar, that is, he was not sure if any other unit in addition to his unit was present. The witness could not with certainty link any member of his unit with the shooting.

663. Further in his testimony, witness S-102 explained that he could not state with certainty whether anyone from his unit was shooting. The witness was, however, certain that no order was issued along this line. The Panel, on the other hand, concludes that the witness's testimony is arbitrary in the part in which he tries to decriminalize the presence of members of his unit and thereby protect himself against self-incrimination. Witness S-102 nevertheless further testified that an order to shoot everyone who exits the hangar indeed existed. The witness added that this was necessary as they did not know if the men in the hangar were armed or not. The witness further describes that the shooting was stronger at the beginning and thereupon decreased, but recalled no explosions whatsoever.

664. Witness S-126 and witness S-104, who were during 13 July deployed on the road also observed a column of Muslims passing toward the Kravica hangar. Soon after they had passed, they heard a sporadic shooting. In the evening hours of the same day, members of the Training Center, that is, witnesses S-104 and S-126, went to see what was happening. These witnesses found members of their unit standing on the road. A pile of corpses was in front of the entrance in the hangar. Zoran Ilić shot at this pile too.

665. While they were in front of the hangar, Goran Nešković, Commander of their platoon detachment, noticed witnesses S-104 and S-126 and ordered them to execute two civilians who were there. The witnesses did it on the road a bit farther away from the hangar.

666. Witness S-126 testifies that having arrived in front of the hangar he saw several members of his unit. Among them, the witness remembered Nešković and a bald, tall man who was a football player. In addition, the witness also remembers two or three

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<sup>241</sup> T-96 The photo presented to witness S-102 during his testimony at the main trial on 28 February 2011.

more men who were there. When the witness asked them what was going on, they responded: „*You see what is happening. They are bringing the men to us, and you see what we are doing*“.

667. The Panel notes that the statements of witness S-104 and witness S-126 are consistent in all relevant parts except with regard to the order that Nešković gave them on the referenced occasion concerning the killings of the present prisoners. This is understandable given the fact that in this way, witness S-126 was protecting himself against being self-incriminated and was entitled not to respond to the questions in this respect.

668. Furthermore, witnesses S-126 and S-104 testified consistently that they went back to the road where they were deployed, adding that during the rest of the night they again heard the shooting and explosions. Therefore they went in front of the hangar on the following morning too.

669.

(b) Two Members of the I Company of the Jahorina Training Center Threw Hand Grenades into the Hangar

670. The Indictment states that the persons nicknamed Arkan and Hercegovac threw hand grenades at the prisoners detained in the warehouse.

671. Witness S-101 confirmed the foregoing in his statement given during the investigation. This witness identified Arkan and Hercegovac as the persons who threw hand grenades. However, in his testimony at the main trial, the witness changed his statement in this part, stating that it was Investigator Bajro Kulovac who suggested him to do so and told him that „Ljubomir Borovčanin's specials“ threw hand grenades. On this basis, the witness concluded that these men could be the two men whom he identified because generally, they were the ones „with the freest“ behavior in the unit.

672. Witness S-105 himself had an opportunity to hear when a group of men, including one Arkan, spoke about the killings in the Kravica warehouse by throwing in it hand grenades, among other things.

673. Based on the evidence adduced, the Panel could not determine beyond a reasonable doubt that the persons nicknamed Arkan and Hercegovac were the ones throwing hand grenades. This fact was not decisive for the assessment of responsibility of the Accused since it has been indisputably determined that certain members of the I Company of the Training Center were throwing hand grenades, while the accused Duško Jević and Mendeljev Đurić were in front of the hangar.

674. It is also a fact that the forensic evidence confirms beyond a reasonable doubt that hand grenades were thrown into the warehouse where the prisoners were interned. On the grounds of the other evidence adduced, the Panel has indisputably concluded



that both members of the Šekovići Detachment and members of the I Company of the Jahorina Training Center were throwing hand grenades.

675. Protected witnesses S-126 and S-104, members of the Center who were deployed along the road at a short distance from the warehouse, confirm that during the night detonations of hand grenades were heard from the direction of warehouse were at the time members of the I Company of the Training Center were deployed with their Platoon instructors and the accused Duško Jević and Mendeljev Đurić.

676. During the proceedings, many witnesses, members of the I Company of the Jahorina Training Center, described the uniforms they wore at the time. The photo-documentation adduced as evidence also clearly shows that the uniforms were olive-gray, camouflage, with light-brown belts and light-blue flak jackets. In addition to this sign of recognition, the presence of members of the I Company at the time and on the site where the prisoners were executed was also confirmed by those who had personally taken active part in the acts of apprehension and the killing of men.

677. During the proceedings, the accused Duško Jević contested that he was in front of the hangar on 13 July. The accused Jević stated that during the night hours of the referenced day, he went with his driver towards Zvornik, and thereafter to Bijeljina. Therefore, the Defense witness Velomir Gajić was heard in relation to the accused Jević's alibi.

678. The Panel, however, first observes that, in his statements, witness Velomir Gajić could not precisely state the time. In one of his statements,<sup>242</sup> the witness describes that they went to Zvornik on the same day when Mladić came to Potočari and addressed a group of civilians behind the UN wire fence. Mladić shouted at Jević as he was interested in what the police were doing there. On the grounds of the other evidence adduced, the Panel concluded that in describing the further events on that day, the arrival of buses and the transportation of civilians, the witness was describing the events of 12 July 1995, when Mladić entered Potočari with his soldiers and when the evacuation of civilians commenced. According to the witness, in the evening hours of this particular day, he went with the Accused to Divič, en route to Zvornik. The witness remembers that the Accused proceeded further on. The witness does not know where the Accused spent the night but he came to the witness's house on the following morning for a coffee.

679. In his next statement<sup>243</sup> of 15 October 2009, the same witness testifies that one day (he could not specify the date) he walked along the road with the accused Duško Jević and saw around thirty soldiers just standing in front of the hangar. They were making stops along the road so that the Accused could speak with the Instructors or Platoon Commanders. Among them, the witness remembers Goran Marković, Neđo

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<sup>242</sup> T-28 Witness Examination Record for Velomir Gajić given to SIPA, No.: 17-04/2-04-2-129/08 of 7 February 2008.

<sup>243</sup> T-29 Witness Examination Record for Velomir Gajić given to SIPA, No: 17-04/2-6-04-2-789/09 of 15 October 2009.

Milidragović and Neđo Ikonić. Duško Kusmuk was near the School in Konjević Polje, not far from them. The witness subsequently contested that he saw Commander Duško Kusmuk, who, according to the evidence adduced, was not in the Srebrenica area at all.

680. In this statement, the witness states that on the same day he went further to Divič, while the accused Jević went to Bijeljina, where he lived. Given the fact that the witness testified that on the following day he saw the loading of corpses in front of the hangar, the Court concludes that the witness tries to state that Jević was absent on the day before the corpses were transported from the Kravica hangar, that is, on 13 July.

681. The Panel, however, notes that the protected witness S-102 identifies the accused Jević in front of the Kravica hangar from 22:00 hrs or 23:00 hrs on 13 July through the early morning of 14 July, as already described. Witness S-119 identified the Accused in the early morning hours in front of the hangar. It was exactly the accused Duško Jević who woke up witness S-119 who was sleeping on the stairs behind the hangar.

682. Also symptomatic was the reason why at the time of giving his statement<sup>244</sup> to the ICTY investigators, the accused Jević not even once mentioned his visit to Bijeljina in the evening hours of 13 July. In fact, the Accused stated that on 13 July, he was resting all night long in the School in Bjelovac. The Accused, however, admitted that on the following morning he did visit the men on the road, but allegedly did not at all go to the Kravica hangar. According to Jević: „*There was an incident which I did not want to see*“.

683. The Accused did not mention at all that he went to Bijeljina with a driver at the time. Bearing in mind the foregoing, including many referenced inconsistencies in the testimony of witness Velimir Gajić, it is clear that both statements are on different grounds exclusively directed at avoiding the Accused's criminal responsibility for the events that took place in the Kravica warehouse starting from 18:00 hrs on 13 July, when members of the I Company of the Training Center, upon the Accused Duško Jević's order, replaced members of the unit of the II Detachment of the Šekovići Police, who had already started the executions.

684. Given that the Accused gave the statement in the capacity of a suspect, he was entitled not to respond to the questions that incriminated him. The Accused was also entitled to present an alibi, which he failed to do. On the other hand, witness Velimir Gajić was the Accused's driver during the entire period that he spent in the Srebrenica terrain. Therefore, his support in creating the alibi can be a result of loyalty or friendly relations, but also an attempt to provide an alibi for himself regarding all the events that are subject of charges.

685. With regard to the alibi, the Defense for the accused Mendeljev Đurić examined witness Smilja Vidović. In July 1995, the witness's husband owned a car-wash in Bijeljina that was visited by soldiers and police officers. The witness remembers that on one day

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<sup>244</sup> T- 221 Transcript of the conversation of Jean Gangon with Duško Jević of 18 October 2000.

after 13 July, on St. Peter's feast, the accused Mendeljev came to her store. The Accused told the witness: „*My Indians and I got a task to secure UNPROFOR*“. The Accused also spoke about the resettlement of civilians, women and children. The witness remembers that at the time, the Accused was „*sweaty, untidy and unshaved*“. The Accused told the witness that he had only come to have a bath and change his clothes and that he would go back.

686. Given the fact that the witness could not precisely state whether this encounter took place on 14, 15 or 16 July, that the evidence adduced clearly indicates that the accused Đurić was in front of the hangar on 13 and 14 July and during the search of terrain on 17 and 18 July, the Panel finds that by such a testimony of hers, the witness offered no adequate alibi for the Accused for any of the relevant dates.

687. Therefore, the Prosecution has proved beyond a reasonable doubt during the proceedings that, starting from the evening hours of 13 July, members of the I Company continued the executions in the Kravica warehouse upon the order and under control of the accused Duško Jević and Mendeljev Đurić.

### **C. LIQUIDATION OF SEVERAL DOZEN OF PRISONERS DURING 14 JULY**

688. As already stated, the evidence adduced during the proceedings indicates that at around 18:00 hrs, in the evening hours of 13 July, members of the Training Center came in the front of the Kravica warehouse where they continued the execution of prisoners that members of the Šekovići Detachment had started.

689. The killing of smaller and larger<sup>245</sup> groups of prisoners lasted through the morning hours of 14 July when witness Jovan Nikolić, accompanied by Dragan Mirković and Ljubko Ilić, came in front of the warehouse and witnessed the killings of a number of civilians brought from the Sandići direction. According to this witness, the „soldiers dressed in camouflage military fatigues“ carried out the execution. The witness heard the moaning and wailing from inside the hangar.

690. Witness S-102, who was in front of the hangar in the morning of 14 July, testifies that the men were called to come out of the hangar and gather on the plateau in front of it. The witness estimated that there were around 100 men and that some were wounded. Members of the unit were calling them out, telling them that they would do no harm to them. When the men got out, members of the unit gave them some water. Thereupon, the men were ordered to form four lines. At the same time, a group of 30 members of the

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<sup>245</sup> Witness S-105 was deployed on the road too. The Platoon Commander, Neđo Milidragović, deployed the witness with several other members on a sharp curve whereupon a group of Muslim men came in a long column (according to his estimate, there were around 100 men).

unit, including the witness, were deployed along the road looking toward the hangar entrance. The accused Duško Jević passed a couple of times in front of the formed line.

691. Further in his testimony, witness S-102 tried not to incriminate either himself or the Accused by stating that he was in fear and that he did not remember who ordered the line-up. The witness maintained by his claims that Jević had stood nearby and that certain instructors had to be in charge of the line-up. This is so because the discipline in the unit was such that this type of task could not have been carried out without the knowledge of the superior officers.

“I did not know why we were lined-up until the act itself. The men who were coming out of the hangar were unarmed, but there were so many of them that they could have disarmed us if they started. I became aware that the execution would follow-up. From the mere moment when I had crossed the Drina river, my decision was to leave as soon as possible ... which means not to participate...if you are asking me about that moment ...not to participate in the killings. I came up with nothing. I simply did not shoot. I held my rifle pointed at the structure. Everybody stood like this. They (the men) were turned toward the road, squatting and facing the ground.”

“Božidar Kuvelja and Dragan Nešković stood next to me in the line. They know that I did not shoot. All who stood with us know this. I think that a young man called Crnogorac was in the line with us too.”

“A volunteer from Krajina subsequently went among the corpses to verify if there were any survivors. He fired two or three bullets in the men whom he thought were still alive.”

692. The witness testifies that he did not notice who was the instructor who formed the firing squad and also that none of the present ones gave the order to shoot. The witness testifies that just at one moment he heard shooting all around him. This is contrary to the contents of the statement he gave during the investigation. In the referenced statement, the witness stated that after being lined-up on the road, a clear order „*Load the weapons!*“ was heard. Therefore, the Panel finds it logical that such an order was followed up by an order to open fire at the prisoners lined up in front of the firing squad.

693. The Panel could not give credence to this part of the witness's testimony at the main trial as it is obvious that the witness remembers quite well all the other details but vaguely responds to a very important question. By doing so, the witness consciously omits his direct superiors from the event that is a subject of the Indictment, more specifically, the accused Duško Jević and the then Platoon Commander, Neđo Milidragović, as the persons who ordered the executions. This is contrary to the other evidence adduced, which undoubtedly shows that on 14 July these Accused actively participated in the executions too in the way to be explained below.

694. After a while, the corpses were loaded onto trucks and transported away. The witness is not certain if one or two trucks and one excavator were used to take the corpses away. Later during that day, a group of three men was brought from behind the

hangar. Members of other formations that were present at this site executed these men. Thereafter, they slept in a nearby house. Crnogorac and Kuvelja were there together with the witness almost all the time.

695. Witness S-101, who was present when the prisoners were executed in front of the Kravica hangar, also confirms that on this occasion an Instructor whom they knew as „Neđo of Zvornik“ was there. The Instructor told the prisoners that they would be exchanged.

696. Witness S-101 describes in detail that “Neđo of Zvornik” called the men to get out of the hangar, but did not see what happened thereafter as he was in a nearby house. The witness subsequently added that he also frequently visited his father these days. The witness always asked for Arkan's approval (who was their superior in this task). During these two days, Hercegovac, one Siniša from Tuzla, Simo from Alipašino, one young man from Sokolac and Mrčo from Montenegro were there together with the witness.

697. On the grounds of the evidence adduced, the Panel determined that the person whom members of the unit called among themselves „Neđo of Zvornik“ was, in fact, Platoon Commander Neđo Milidragović. This primarily ensues from the testimony of witness Tomislav Krstović, who, like Milidragović, frequently went to Zvornik to visit his family that lived there. The witness testifies that he went there by his vehicle, while Neđo used a personnel carrier. Certain members of the I Company of the Training Center, including witness S-101, noticed this too. This witness explained that this nickname was given to one of the instructors because he frequently went to Zvornik by a personnel carrier.

698. Before the executions on 14 July, witness S-101 was in the house with the mentioned persons. Arkan and Hercegovac came at around 4 or 5 hrs A.M. to pick them up. They came in front of the hangar where they saw the corpses. Some men loaded the corpses manually, but a loader was engaged too. The witness saw that the corpses were transported in the Bratunac direction but he did not know to which location exactly.

699. Subsequently, while they were again sitting in the house, one of the men who was loading the corpses called for help, saying that one of the prisoners had survived, crossed the river and escaped into a corn field behind the hangar.<sup>246</sup> Witness S-101 does not know what happened thereafter but knows that Hercegovac and Simo left the house whereupon he heard gunshots. The witness does not know if it was them who shot at the time and if they killed the fleeing prisoners.

700. The survived prisoner who hid in a corn field was witness S-112. This witness describes that after the mass execution of prisoners, he succeeded to flee through the hangar window and hide in the corn field. Behind the hangar, the witness saw the bodies

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<sup>246</sup> Video-recording of the crime-cene visit tendered as the Court's Exhibit No. S-1.

of two men who had, like him, tried to flee but failed. The Serb soldiers observed the witness and fired at him whereupon he pretended he was dead. He had an entry-exit wound but was alive and escaped. Witness S-119, who stood guard to prevent fleeing from the hangar through the back windows, also noticed witness S-112 in the field behind the hangar. It was strange to him that a killed person was lying there even though he did not see anyone fleeing prior to this nor did he hear any shot.

701. After the killings were committed, witness S-101 could see that some locals came in front of the hangar, among whom he recognized Jole and saw the accused Neđo Ikonić too. They quarreled with Arkan and Neđo of Zvornik over the manner in which the killings were committed. There were questions like: „*Why is this happening in Kravica?*“. The quarrel was very fierce, they exchanged curses and Neđo Milidragović „*even drew a knife*“. However, according to the witness, „*nothing could be changed.*“

702. On the grounds of the referenced witness's evidence, the Panel could not conclude beyond a reasonable doubt that this incident did indeed occur.

703. During the proceedings, it was indisputably established that after the executions on 14 July, the accused Neđo Ikonić passed by the Kravica hangar with his driver while the corpses were loaded. The Accused went out of the vehicle and spoke with one of the Platoon Commanders who was there. However, neither witness Siniša Renovica, who was with the accused Ikonić at the time, nor any other witness confirmed that any incident or quarrel occurred between the Instructors in the way as described by witness S-101. In addition, the Panel observes that by that time the killing of prisoners was already completed. Therefore, it is not logical that the accused Neđo Ikonić would express his disagreement with the killings of prisoners that had been already completed, or that he would get involved in conflict with his colleagues who were in front of the hangar, all the more because the referenced site was not within the zone of responsibility of the II Company.

704. Witness Zoran Erić, who was in front of the hangar in the morning hours of 14 July, described an incident when two soldiers intended to beat up witness Jovan Nikolić, the then director of the Kravica FC, wherefore he hid behind a tree in fear. In his testimony, witness Jovan Nikolić avoided to mention the foregoing. Bearing in mind that the other examined witnesses mentioned no incident or quarrel among members of the unit in front of the hangar, the averments of witness S-101 to this end are fully ungrounded.

705. Further in his testimony, when he was presented with the statement given during the investigation, witness S-102 remembered that in fact, the Platoon Commander, Neđo Milidragović, called the wounded men to come out of the hangar. Thereupon, it was only the accused Duško Jević who could order that some water be brought to these men.

Thereupon, he and Neđo Milidragović<sup>247</sup> lined up the unit which will carry out the executions. Witness S-102 added that some other people who were in the vicinity also joined the line with them. However, according to this witness, they were not members of the unit, that is, they were not under the accused Jević's command. Shortly before the described event, the accused Goran Marković<sup>248</sup> was there but the witness believes that he was not there during the executions, neither was the accused Mendeljev Đurić (to whom the witness refers as „Mane“).

706. The other evidence adduced confirms that at the time of killings the accused Mendeljev Đurić was in front of the Kravica warehouse in the evening hours of 13 July. Witness S-102 confirmed this during the direct examination. Accordingly, the Panel concludes that, being uncertain in the accused Đurić's presence, the witness refers to the executions that were carried out on 14 July. Thus, the witness does not remember if the accused Mane was present during the executions on that day too. The witness does not challenge the Panel's already explained conclusion that upon Mendeljev Đurić's and Duško Jević's order, members of the Center were brought by buses to the Kravica site in the evening hours of 13 July.

707. Witness S-102 testifies that the prisoners were executed a couple of days before he was wounded. According to the tendered medical documentation, the witness was wounded on 15 July. However, given the fact that the witness himself could not specify the exact dates<sup>249</sup>, and that the event which he factually describes on the grounds of the other evidence adduced took place on 14 July, the Panel finds that the witness's wrong determination of time does not affect the authenticity and credibility of the testimony in the whole.

708. Describing the event in its entirety and stating the names of the men with whom he was lined up, witness S-102 only confirmed the conclusion drawn by the Panel on the grounds of the statements of the other heard witnesses from the I Company. It is certain that Neđo Milidragović's Platoon participated in the referenced execution and that witness S-102, Božidar Kuvelja, Dragan Nešković and a person called Crnogorac<sup>250</sup> were there among the others. Witness S-119, who had eye-witnessed Kuvelja's shooting, confirmed this too. This witness thinks that the accused Duško Jević was also there at the time.

709. Witness S-118 described in detail that during the night of 13 July, they were resting in a house near the hangar. At dawn, Platoon Commander Neđo came there,

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<sup>247</sup> In the photos presented to the witness in the examination during the investigation, witness S-102 marked this instructor as „Instructor A.“

<sup>248</sup> In the photos presented to the witness in the examination during the investigation, witness S-102 marked this instructor as „Instructor B“.

<sup>249</sup> The witness explained in his testimony: „I cannot recount it all chronologically, or by dates, because of the condition I was in.“

<sup>250</sup> The Court of BiH issued a final verdict against the referenced person having found that he committed the criminal offense as a member of the 2<sup>nd</sup> Platoon of the I Company, which was under Neđo Milidragović's command.

called him and the other present members to come out and line up on the road. Thereupon, he called the wounded men to come out of the hangar.

“He told them that what had happened was a mistake and that it should not have happened. Thereupon, the prisoners started coming out. Some of them came out helped by the others. I guess they were wounded. They were coming out to the open space in front of the hangar.<sup>251</sup> This lasted for a certain period of time, but longer than a half of an hour in any case. Somebody brought a machine gun and Neđo asked if anyone knew how to use it. During that time, we were standing on the road. I was not ready to shoot and I did not shoot.

The prisoners asked for some water and one member of the unit brought it to them. I saw the beginning of execution. I turned away as I could not watch it any further. Around 25-30 prisoners were executed.”

710. Witness S-118 testifies that the removal of corpses followed up. The witness did not notice any of the Accused. He also adds that he does not remember seeing the accused Duško Jević near the hangar on that day, neither during the execution nor thereafter.

711. Witness S-119 confirmed that this group of prisoners whom Neđo had called out from the hangar was executed. This witness was brought in front of the hangar by bus in the evening of 13 July. He was present there on the following day too. The witness testifies:

“While we were behind the house, we heard shooting from fire weapons and the explosions of hand grenades. It was clear to me that they were killing these men. I remember that on this day men were being brought from the Konjević Polje direction. Members of our 2<sup>nd</sup> Company were there, but I am not sure if it was them who were bringing these men in. This was repeated for several times. There were around 50-100 men in each group. The last group was brought in the evening hours. A section of my Platoon was lined up along the road. When they started killing the men, I tried not to look. The only superior officer I saw on that morning was Neđo. I remember that I saw Mendeljev too at one moment, but I do not know precisely when ... I cannot link him with any concrete event ... but I remember he was there. I remember that Jević was there too.”

712. On 13 July, witness Jovan Nikolić eye-witnessed the killings in the Kravica FC. In the evening of the same day, upon his return to Bratunac, the witness informed Dragan Nikolić about everything he had seen. In the morning hours of 14 July, the witness went again to Kravica with Dragan Nikolić.

713. On this day, witness Jovan Nikolić again observed that a column of men in different clothing was coming from the Sandići direction (some of them were in civilian and some in military clothing). The witness was present when this group was subsequently executed. These men were ordered to lie down whereupon they were shot.

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<sup>251</sup> The witness marked the referenced site in the photo tendered as Exhibit T-219-4.



Witness Zoran Erić<sup>252</sup> himself confirmed all the foregoing. The witness was present when all the described events took place and also participated in the covering of corpses with hay.

714. Witness Zoran Erić testified that the prisoners were called via megaphone to come out, that the unit was also lined-up via megaphone, and that he could clearly hear when the order „Fire!“ was given. The person who spoke via megaphone was on the asphalted part of the road in front of the warehouse.

715. According to witness S-123, the accused Duško Jević also used a megaphone to address members of the Center after the search of terrain on 17 and 18 July. The Accused ordered them to tie together all the men captured during the search and gathered in a meadow near Pervani.

716. Witness Nikolić describes in detail that two soldiers participated in the execution of individuals, one of them by „*vaccinating*“ them and the other by „*finishing them off*“. At the time, the witness did not know which units these two soldiers were members of, but based on their actions he concluded they were members of paramilitary formations. Witness Zoran Erić also testifies that it was exactly these soldiers in balaclavas who subsequently participated in the coverage of corpses. The witness stated that he saw around 500-1500 corpses of the killed men at the time.

717. The referenced witnesses described very thoroughly the events in front of Kravica on 14 July. Therefore, the Panel concludes that it is obvious that, by stating certain details (like soldiers wearing „balaclavas“), the witnesses wanted to mislead the Panel given that no other evidence confirmed the witnesses' statements in this part. Contrary to this, the other evidence adduced corroborates the manner in which groups of prisoners were liquidated and the „finishing off“ of the already killed men, as described by the witness.

718. Witness S-111, a survivor of the execution on 13 July, testifies that in the early morning hours of the following day the wounded men called them from inside the hangar, while those outside called the wounded to come out and join their army. Some of the men indeed volunteered. Thereupon, the witness heard truck sounds and nothing else any more. The wounded men were killed, and the healthy ones transported by trucks. The witness knows this because Teufik Ćosić went out on this occasion and subsequently departed for Karakaj.

719. Witness S-101 confirmed the foregoing. This witness testifies that „Neđo of „Zvornik“<sup>253</sup> called the wounded to come out of the hangar telling them not to fear, that trucks would come soon and that they would be exchanged. The witness further testified: „*When he started calling them out, I went to get some water and coffee*“. This does not

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<sup>252</sup> Witness Zoran Erić testified at the trial on 14 October 2010.

<sup>253</sup> It was determined during the proceedings that this was a nickname of Neđo Milidragović, Platoon Commander of the I Company.

bring into question the conclusion that the referenced person indeed called the prisoners to come out of the hangar. Other witnesses heard also confirmed the foregoing. The Panel notes that, in this way, the witness tried to distance himself from the crime scene where the executions were carried out. In fact, the witness was thereby protecting himself against self-incrimination.

720. In addition to confirming that Platoon Commander, Neđo Milidragović, was present when the survivors from the hangar were called out, witness S-101 further testified:

“I was frequently absent during these two days, but I could hear shooting from the place where I stood. When I left, only members of our unit stayed there. I went to a nearby house. It took me around ten minutes to get there on foot. I stayed there around an hour and I returned carrying a container with water and some coffee in a bag. Having arrived there, I found bodies at the concrete plateau in front of the warehouse. I did not see them killing these men. I only said that Neđo called them out and told them to line-up.”

721. The survived witness S-111 further testified that some other wounded men called soldiers, whereupon they went inside the hangar, cursed them and fired a burst of fire in them. Later during the day, the witness heard the machines loading the corpses in front of the warehouse. The witness heard a person who ordered that the dead bodies be covered with hay and the asphalt washed. Nobody was in front of the hangar during the night. Even the corpses were removed. The witness and one Ramiz Muškić went on fleeing. They noticed a soldier on the road who ordered them to stop. However, this soldier did not shoot when they continued running. The witness remembers that a young man from Lolići stayed alive behind them in the hangar but after a while they heard shooting in the hangar. They concluded that he was killed as they saw him no more.

722. In the morning hours of 14 July, witness S-126 left the place where he stood. When he arrived in front of the hangar, he saw members of his unit and many corpses in front of the hangar door. *„It was horrible to see. It was a pile of corpses which were sticking out from the entrance in the building, while members of my unit stood along the road“*. Among them, the witness recognized Commander Nešković who was issuing orders to the present men, Crnogorac and some other men who only walked along the road. At that moment, he saw none of his superior officers, that is, the Accused.

723. The referenced witnesses confirm that the Platoon Commander, Neđo Milidragović, directed the liquidations of the groups of prisoners brought during 14 July, and that the liquidations were carried out by members of the I Company of the Jahorina Training Center whom the accused Duško Jević had ordered to come in front of the hangar and the surrounding area.

724. Based on the evidence adduced, the Panel also concluded that the accused Mendeljev Đurić and Duško Jević were undoubtedly present on the referenced site, namely that after their arrival in the evening hours of 13 July they did not leave the area of the Kravica warehouse at all, and that all the executions, starting from the evening

hours on the referenced day to the burial of corpses on 14 July, were carried out under their supervision and control.

**D. PARTICIPATION OF VOLUNTEERS IN LIQUIDATIONS IN THE KRAVICA FC WAREHOUSE ON  
13 JULY**

725. The Accused were also charged with calling for volunteers from the I Company to execute the men from the Kravica FC. The Panel, however, did not find the foregoing proved beyond a reasonable doubt as none of the heard witnesses corroborated the allegations of the Indictment along this line.

726. According to the evidence adduced, during 13 and 14 July, the Accused ordered and controlled the executions that members of the I Company carried out in front of the Kravica FC. Therefore, the Prosecution's submission that at the same time the Accused called volunteers for liquidations is not logical.

727. In other words, the Accused ordered the killings as superiors to members of the I Company of the Training Center, wherefore it was not necessary to call out any „volunteers” to execute this task.

728. In any case, the Accused were indeed in front of the hangar. Therefore, the arrival of members of the unit who were not initially deployed in front of the Kravica warehouse and who participated in the killings does not constitute a particular circumstance bearing a particular criminal weight. It rather concerns the issue of organization of the killings appropriate to the then situation. The Panel determined that two groups of such persons were in question. Members of the I Company who had come upon Neđo Miidragović's call constituted one group, while members of the I Company deployed farther away from the Kravica warehouse, who heard the shooting during the night and who were interested in what was under way in front of the hangar, constituted the other group.

729. The Accused controlled all members of the I Company who participated in the executions. Therefore, it is not at all important if the soldiers received the order directly, or agreed to participate in the killings, because all members of the I Company were under the Accused's direct control.

730. Certain witnesses testify that platoon commanders called out „the volunteers“ and that Neđo Milidragović was a Platoon Commander who took the most active part therein.

731. Witness S-105 described the foregoing in detail. While he was on the road, this witness could hear the explosions and shooting. During the night, above the road toward the Bjelovac base, the witness observed a group of around 5 men followed by Instructor Neđo Milidragović. Milidragović told Aco to take witness S-105 with him so that witness S-105 could also kill someone. After this, the witness withdrew until they were gone.

732. Among the persons who were in Milidragović's company at the time, witness S-105 recognized some members of the unit, including Aca Golijanin, and the persons nicknamed Arkan, Brzi and Aleksa. The witness thinks that it was around 24:00 hrs when they came along. These men discussed the way in which they had killed the men and threw hand grenades in the hangar. It was a sort of bragging, mostly between Aco and Arkan. These two men commented between themselves: „*Did you see when you throw a hand grenade? Did you see the one who was running out of the hangar?*“ The witness concluded from their conversation that the prisoners had been first killed by some other unit, and that members of the I Company threw hand grenades inside the hangar. Neđo Milidragović himself bragged with the killings of prisoners. He said: „*By God, when I fired from a TT- Pistol (tetejac), a half of his head was blown up*“.

733. The persons who participated in the killings of captured Muslims subsequently took most active part in these stories. The ones whom the witness saw on the critical night were among them. There were also rumors at the time that Crnogorac had killed the wounded men.

734. Based on this witness's testimony, the Panel finds it proved that certain men from the I Company went in front of the Kravica hangar upon being called by Platoon Commander, Neđo Milidragović, obviously participated in the killings of prisoners, and thereupon described these killings in their mutual conversations. The Panel finds it proved that at the time the accused Duško Jević and Mendeljev Đurić were present in front of the hangar, controlling the executions of prisoners, wherefore they could not have been unaware of the foregoing at all. The Panel has considered this fact within the context of the Accused's final contribution to the implementation of the genocidal plan.

735. There is no doubt that the men killed in the Kravica warehouse died a violent death as a result of the shooting of members of the II Šekovići Detachment from firearms, and subsequently of members of the I Company of the Jahorina Training Center, wherein the executors and those who ordered the executions acted with direct intent.

736. The Accused knew that their actions will result in the death of men from Srebrenica at whom members of the I Company shot from firearms. At no moment whatsoever did the Accused withdraw the issued order, thus there is no doubt that this was exactly what they wanted.

737. In this manner, the Accused gave the most significant contribution to the implementation of the genocidal plan, wherefore they have satisfied the elements of the criminal offense set forth in Article 172(1)(a) of the CC of BiH as aiders and abettors.

738. Certain prisoners from the hangar have survived and gave shocking evidence of their experience. Due to this fact, the Accused have inevitably also satisfied the elements of the criminal offense set forth in 172(1)(b) of the CC of BiH. This is so because these men certainly still suffer severe physical and mental injuries as a result of torture to which they were subjected during the separation from their families, the capturing, detention in inhumane conditions and brutal mass executions that they accidentally survived. On the

grounds of the foregoing, it is justified to conclude that the experienced traumas such as these ones have certainly prevented this men from living a normal and constructive life.

**E. “OPPORTUNISTIC” KILLINGS OF PRISONERS ALONG THE ROAD DURING 13 JULY**

739. In this part of the Indictment, the accused Duško Jević, Mendeljev Đurić and Neđo Ikonić were charged with opportunistic killings committed during 13 July along the road (*the killing of 5-7 prisoners committed by a member of the I Company Platoon, Dragan Crnogorac, the killing of 15-20 prisoners ordered by Aleksandar Aco Golijanin, and the killings committed by Platoon Commanders of the II Company, Siniša Renovica and a person known as „Brko“*).

740. The Panel concluded on the grounds of adduced evidence that sporadic killings of prisoners were taking place along the road during the liquidation of prisoners in the Kravica hangar in the night of 13 July. It is, however, necessary to make a difference between the killings in which members of the I Company participated and the killings in which members of the II Company participated.

**(a) The Killing of 5-7 prisoners by Dragan Crnogorac, Member of the I Company Platoon**

741. During the proceedings, the Prosecution failed to prove beyond a doubt that Dragan Crnogorac, member of the I Company, executed 5-7 prisoners along the road.

742. Only witness S-105 testified about this fact because he had heard men moaning throughout the night. Therefore, from the place where he stood, the witness decided to go to a curve on the road where he saw several wounded men lying on the ground while members of his unit stood above them. The witness recognized one Crnogorac among the men who stood above the men on the ground.

743. The men were bandaged up but the witness could see blood on their hands and legs. Anyway, the witness assumed that this was a group of Muslims from the column. It appeared to the witness that one of them was even uniformed. One of the prisoners shouted: *“Can anyone move my leg?”* The witness did so, whereupon Crnogorac reacted fiercely, and started shooting with swears, first at this prisoner and then at the other prisoners too. The witness ran away and heard behind him the cries of those at whom Crnogorac had still not fired. The witness thereafter returned to the post on the road where he had been deployed. He told Golijan, a member of his platoon, what he had seen. On the very same night, he heard the shooting and explosions from the hangar direction but did not go there. As far as the witness know, two platoons of his unit were in front of the hangar.

744. The witness clarified that he sought protective measures in this case exactly because of his fear to testify about the above referenced situation. The witness states that once in Banja Luka he met a person he knew under the nickname Crnogorac. At

that time, Crnogorac told him: „Don't any of you dare say to anybody that I killed those wounded (men), because I will admit, but I will say that it was all of you who did it with me!“. The witness explained during the cross-examination the reasons for which he did not mention in his earlier statements that he had eye-witnessed this event. The witness justified himself with the fear he felt at the time. This fear diminished after the witness learned that Crnogorac had been arrested.

745. Witness S-105 explained that the referenced incident took place at around the same time and under the same circumstances like the incident for which Dragan Crnogorac was convicted under the final verdict. Justifiably, such a coincidence raises a suspicion that these incidents were indeed two different events. Given the foregoing, the Panel could not conclude beyond a reasonable doubt that Dragan Crnogorac executed 5-7 more prisoners along the road. The Panel was also mindful of the fact that such severe incriminations could not be proved on the grounds of only one witness who did not mention the incident in his earlier statements. Therefore, the operative part of the Verdict addresses only the two killings of which Dragan Crnogorac was convicted under the final verdict.

(b) The Killing of Wounded Men Committed by „Crnogorac“ upon the Order of the Platoon Commander

746. As to this part, the Indictment referred to the final Verdict of the Court of BiH No.: S1 1 K 005805 11 Krl of 13 May 2011 brought on the grounds of the Plea Agreement under which Dragan Crnogorac was sentenced to imprisonment of 13 years for the killing of 10 prisoners (that is: 6 wounded men, of whom two were stretcher cases and 4 Bosniak men who helped carry the wounded). The operative part of the Verdict stated that Crnogorac did this together with 7 other members of the 3<sup>rd</sup> Platoon of the I Company of the Jahorina Training Center upon the order of Platoon Commander, Neđo Milidragović.

747. Therefore, it is not clear why in the Indictment the Prosecution did not follow the factual findings of the operative part of the referenced Verdict but rather argued that this was the killing of 12-15 persons ordered by quite a different person. Given the operative part of the final Verdict, this Panel accepted that 10 prisoners were killed.

748. The Platoon Commander, Neđo Milidragović, was identified as the person who ordered the killings. Considering that he was a member of the I Company of the Jahorina Training Center, the Indictment tried to incriminate the accused Duško Jević and Mendeljev Đurić with these killings on the grounds of their membership in a JCE for the killing of men. As earlier explained, the foregoing was not proved beyond a reasonable doubt.

749. The Accused, however, were aware of the sporadic killings of prisoners because they had themselves seen the bodies of the killed men along the road. Numerous examined witnesses have confirmed the foregoing.

750. Having not reacted to such acts of their subordinates, and having ordered and led the liquidations in front of the Kravica warehouse, the Accused clearly indicated that such acts were not punishable. This is consistent with the Panel's earlier presented conclusion that, starting from the separation of men in Potočari, the Accused acted willingly in their overall activities in the terrain, knowing that all the captured men would be liquidated. In this way, the Accused gave a significant contribution to the realization of the genocidal plan.

(c) The Killings Allegedly Committed by Siniša Renovica, Platoon Commander of the II Company

751. The Panel could not establish beyond a reasonable doubt on the grounds of the presented evidence that Siniša Renovica committed the killings in question as the Platoon Commander of the II Company, but rather an unidentified Platoon Commander of the Jahorina Training Center I Company.

752. Witness Siniša Renovica described an incident when two prisoners went out of the woods with their hands up. Having reached the road, one of the prisoners threw a hand grenade, whereupon members of the II Company opened fire and killed them. Nevertheless, the hand grenade exploded behind one soldier's back and a shrapnel hit him in the top of his head or the neck.

753. The foregoing was also confirmed by the Defense witness, Aleksandar Pržulj, member of the II Company, and Tomislav Krstović, Platoon Commander. They learned about the incident in which one of the prisoners had activated a hand grenade while surrendering as a result of which a member of his company was wounded. The witness, however, did not know which platoon of the Center the wounded man was a member of.

754. Witness S-123, also a member of the II Company, described the referenced incident as follows:

"The Muslim soldiers threw a hand grenade which exploded. I could see these soldiers subsequently when they surrendered. There was some shooting ... They surrendered upon our request. They were middle-aged ... perhaps age 25 to 30. One of them wore trousers and civilian T-shirt, while the other was in a shirt. One had a hunter's rifle, and the other had an automatic rifle, older type ... probably originating from the last war. They threw the weapons away and it remained by the asphalt.

After a while, one man came along and asked us why didn't we kill them. We went toward the house but I stayed behind. This man asked the prisoners whose rifle it was. One of them responded it was his rifle. Thereupon, this man took the rifle ... I think he folded the butt and shot the person in his chest, as a result of which the prisoner was blown back, and his legs stayed on the asphalt. The other prisoner was killed by a burst of fire from an automatic rifle. A whole burst of fire was shot. After a couple of seconds, this prisoner fell down too, facing the ground."

755. The witness further describes that the perpetrator of these killings was a man who *“would appear occasionally, and who would just come-and-go. He was a sort of freelancer. I think he was not in our company, but he hang about. I used to see him at Jahorina. He worked, and elbowed his way around the Commander.”* In his statement given during the investigation, the witness remembered that the name of this person could be Siniša. Protected witness S-124 heard similar about the incident. As a member of the II Company, this witness was frequently present at the same location.

756. In the case at hand, the Panel took into account that the originally confirmed Indictment did not include this incident. The Panel, however, does not find that the case concerns a new criminal quantity that would ultimately change the identity of charges. What is relevant in the case at hand, however, is the fact that the Amended Indictment failed to specify the way in which the Accused participated in the referenced killings or the form of their responsibility. In addition, the persons who committed the killings at issue remain unidentified.

757. On the grounds of such testimony of witness S-123, the Court could not indisputably determine that it was exactly Siniša Renovica, the Platoon Commander of the II Company, who committed the referenced killings, particularly because witness S-123 himself further testified that, during the examination, this name was several times suggested to him.

758. Also important is the explanation subsequently given by witness S-123 about the men who shot at the prisoners. The witness stated it was a person aged 26-27, blond, who *„simply appears, hangs around for a while and then just leaves“*. According to the other evidence, this can point only to Neđo Milidragović, Platoon Commander, who obviously frequently visited the road, and even before this incident had taken the prisoners<sup>254</sup> of his own will or liquidated them on the site. However, the Panel did not evaluate Milidragović’s responsibility along this line because he is not an accused in this case.

759. Witness S-124, member of the Platoon of the II Company, testified about the foregoing event. This witness was deployed near the crime-scene and knows that the referenced persons were killed. However, there existed two versions of the recount, that is, one referred to Siniša Renovica, and the other to a blond man.

760. Witness S-121, who had also heard the recount, asked Siniša Renovica about the referenced killings. Renovica responded that he did not know what the witness was talking about.

761. Therefore, the Panel could not conclude on the grounds of the adduced evidence just who participated in the execution of prisoners. However, the Panel finds proved that the killings were committed in the way as described by witnesses S-123 and S-124.

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<sup>254</sup> The case of the prisoner who was taken away exactly by Neđo Milidragović without Siniša Renovica's knowledge was already described.



Given that it has not been proved that the accused Neđo Ikonić was aware of the foregoing, he could not be charged with this offense.

762. Unlike Ikonić, the accused Duško Jević had an opportunity to see the corpses of killed men along the entire road, that is, on the sites where his subordinates were deployed. Witnesses S-123 and S-124 testify that, after being informed about the incident at issue, the accused Duško Jević only said: „*That is my problem*“.

763. The Indictment tried to charge the Accused with these two killings too on the grounds of participation in a III category JCE. However, as already stated above, it was not proved during the proceedings that the Accused were members of any joint criminal enterprise whatsoever.

764. It is a fact, however, that the accused Duško Jević was aware of the referenced killings. The accused Jević, however, neither took any repressive measure nor investigated potential perpetrators. This clearly suggests that by such a conduct, the Accused showed his subordinates that such acts carried no punishment, and that even more so, they were desirable. The foregoing is in compliance with the earlier presented conclusion of the Panel that the accused Jević acted with the direct intent in all the actions taken, thereby giving a significant contribution to the implementation of genocidal plan.

(d) The Killing of at Least One Prisoner Committed by the II Company Platoon Commander Known as „Brko“

765. Only witness S-125 testified about the incident described in the Indictment. While he was on the road during one night, this witness heard moaning coming down from a creek. Someone was calling out. This continued all through the morning whereupon the Platoon Commander, whom everybody knew as «Brko» took a round tour in the direction from which «the moaning and calling out» were heard. The witness heard a shot and the calling stopped. The witness assumes that «Brko» killed the referenced person but does not remember if anyone pulled out the killed men from the creek.

766. The Court could not determine beyond a doubt, only on the grounds of this witness's testimony, who committed the foregoing killing that the Indictment did not describe precisely in terms of the time and the facts. At the same time, the evidence adduced does not indicate which member of the Jahorina Training Center was known under this nickname. Also, it was not proved that any cause-and-effect connection with the accused Duško Jević and Mendeljev Đurić existed, or that the Accused were informed about the killing at issue.

767. In the Indictment, the Prosecution should have stated the precise name and last name of the perpetrator rather than to leave to the Panel to draw conclusions about the genuine identity of this person on the grounds of the evidence adduced. This is so particularly bearing in mind that it is not known if „Brko“ is a nickname or just a physical

characteristic of a person. In addition, this person is charged with the commission of at least one murder, while the acts of commission were not described in detail at all.

768. It is obvious from the evidence adduced that several witnesses confirmed that individual killings were indeed committed, but no perpetrators were identified. When this fact is correlated with the non-identification of person nicknamed „Brko“ and the charges against him for at least one killing with no description of individual acts, the Panel could not determine if the killing was committed at all and who committed it.

769. In all individual cases, the Panel omitted from the operative part of the Verdict the full identity of the persons who committed the individual killings except for the full name of Dragan Crnogorac. The final verdict sentenced Dragan Crnogorac for the killings of prisoners because these other persons were not a subject of charges in the referenced proceedings.

770. The Panel took into account „the opportunistic“ killings proved during the proceedings only in concluding that the Accused were aware of the genocidal intent of the main participants in the JCE, which implies the killing of all Bosniak men, regardless of whether they were captured in ambushes or surrendered voluntarily.

771. As already reasoned above, the Indictment tried to charge the Accused with all the killings factually described therein as participants in a III category JCE. The Panel, however, found no grounds for the foregoing in the evidence adduced. Therefore, the Panel omitted from the operative part of the Verdict the unproved killings and incidents given that they do not represent separate criminal offenses but rather the incriminations underlying the crime of genocide with which the Accused were charged.

(e) Organization of Volunteers in so called „Death Squads“

772. The Indictment charged the Accused with organizing the participation of volunteers, members of the II Company in the killings of prisoners in the Kravica warehouse. The Panel, however, finds that the foregoing too was not proved beyond a reasonable doubt.

773. Witness Nebojša Aleksić was as a member of the II Company under Radovan Sladoje's command deployed on the road. During the cross examination, this witness denied the statement he gave to the Prosecutor. The witness testified that he had never stated that the accused Duško Jević and Duško Kusmuk asked for volunteers to kill the prisoners, and that the investigators, who had taken the statements in a very incorrect way, led him in this direction. The Panel accepted the above explanation given that witness S-124 also testified he had only heard that the accused Jević calling out volunteers but just to transport the ammunition. As to the participation of Duško

Kusmuk,<sup>255</sup> the Panel recalls that the evidence indisputably proved that Kusmuk was not in the Srebrenica area at the time.<sup>256</sup>

774. It is a fact that volunteers were called to perform some tasks, for which individuals from the II Company volunteered, including a person nicknamed „Rom“. Witness S-125 also mentions this person and thinks that this task was probably very stressful because after their return, the men nicknamed «Rom» looked very bad: „*He had rings under his eyes, he urinated in the bed...he was a broken man.*“ The witness recalls that while the volunteers were called out, the Platoon Commander „Brko“ said that it was not good that they volunteered. Based on this, the witness concluded that the volunteers were needed for something bad. «*When Brko said that they should not have volunteered, it was said in such a context, and when you hear that tone, I remembered this detail, it is clear to you that something bad is in question.*»

775. The volunteers were absent for two days. They were seen passing along the road in old Deutz military trucks, carrying their weapons and sitting on front fenders. This was at the time when the convoys with the women and children passed by. Further in his testimony, the witness resolutely states that the Commanders from the II Company did not call for volunteers. In his statement given in the investigation,<sup>257</sup> the witness also testified that the referenced calling for volunteers cannot be connected with the killing of prisoners in the Konjević Polje warehouse either because „*This is something quite different. There was a check point with the military and the police, it is quite a different unit.*“

776. When the volunteers returned, they did not talk a lot about what they had been doing. They just stated that they had escorted the men to the hangar and mentioned no killings. However, when the Commander asked them where they had been, the volunteers told him that they had escorted the men for the execution and money seizure. At the time, the witness did not believe such stories, but today he believes that the volunteers were telling the truth.

777. Witness S-123 is another member of the II Company who testified that at the time of the killings in the Kravica warehouse the hearsay had it that „*the Command was looking for volunteers to execute the prisoners*“. In explaining the foregoing, the witness added „*The rumors started... you see...We heard that a police officer had been killed. I do not know if he got frightened ... and then the rumors about the execution of men started, and that volunteers were even looked for to do it.*“ At the main trial, the witness stood by his statement given during the investigation. The witness confirmed that a truck with Serb soldiers passed by the road in the Bratunac direction with soldiers who greeted them with three fingers. The witness, however, cannot confirm with certainty that members of the II Company were among them.

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<sup>255</sup> In his testimony at the main trial on 4 July 2011, the Defense witness, Duško Kusmuk, also contested that he was in the Srebrenica area.

<sup>256</sup> Defense witness, Milan Stojčinović, confirmed the foregoing.

<sup>257</sup> OIV-8 Examination Record for Witness S-125 No.: KT-RZ-101/07 of 10 December 2010.

778. Witness Siniša Renovica confirms that members of the II Company were among the volunteers. After his return to Jahorina, a member of Dejan's Platoon recounted to this witness that he had participated in the mass killings in the Kravica warehouse together with several members of the unit.

779. The Panel, however, could not conclude beyond a reasonable doubt, on the grounds of adduced evidence, who was the person who called for volunteers and for which purpose. Also, it was not possible to conclude that members of the II Company voluntarily participated in the executions. This is so because witness S-119, who also knew the person nicknamed «Cigo» or «Rom» does not remember seeing him at all in front of the hangar, and particularly does not remember him (Cigo) participating in the killings of prisoners.

780. In fact, witness S-124 was the only eye-witness who described in detail that the so called „Death Squad“ was formed at the time which was comprised of volunteers for liquidation, around 40-60 members of the unit. The Panel observes that no other adduced evidence corroborated the witness's averments. During the cross-examination, the witness himself confirmed that he had never seen members of the so called „Death Squad“ but rather only heard about the existence thereof.

781. During the proceedings, the Prosecution failed to prove beyond a reasonable doubt that members of the II Company participated in the executions in the Kravica FC warehouse, or that any Accused called any member of this Company to volunteer for the task of execution at any time. The referenced part is therefore omitted from the operative part of the Verdict.

#### **F. REMOVAL AND BURIAL OF THE KILLED MEN FROM THE KRAVICA WAREHOUSE**

782. As early as the evening hours of 13 July, Colonel Beara, together with Miroslav Deronjić and others, started organizing the burial of Bosniak men killed in the Kravica warehouse. It was decided that workers from the clearing-up unit of the *Rad* Utilities Company and the „compulsory work unit“ of the Bratunac Civilian Protection should report to Kravica for loading the corpses onto the trucks on the following morning.<sup>258</sup>

783. Witnesses Krsto Simić and Ostoja Stanojević confirmed that members of the I Company of the Training Center were in front of the hangar even after the executions. These witnesses participated in the transportation of corpses from Kravica to a grave in Glogova. Subsequently, witness Simić was also called to remove the bodies from the primary mass grave to the Zeleni Jadar<sup>259</sup> site. This witness testified that, having arrived

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<sup>258</sup> Established facts No. 59 and 60 under the Panel Decision No.: X-KR-09/823-1 of 1 July 2010.

<sup>259</sup> Established fact No. 81 under the Panel Decision No.: X-KR-09/823-1 of 1 July 2010. Among the bodies in the primary grave in Glogova, there were the bodies of victims of the massacre in the Kravica too. The bodies of these victims were subsequently removed to the mass graves in the Zeleni Jadar area.

in front of the Kravica hangar, he found a dozen of persons in camouflage military uniforms deployed in securing, in addition to several workers of the Civilian Protection.

## 1. General Factual Findings

784. The removal of bodies of the killed men and their burial in the earlier prepared mass-graves started on 14 July, on the morning following the massacre. A certain number of witnesses testified about this operation. The operation was coordinated by the VRS and the civilian authorities. On the same day, at around 09:00-09:30 hrs, in the presence of one colonel and one lieutenant, Colonel Beara asked the present Municipality representatives “*how many excavators they had*”.

785. Witness Simić further specified that, at the time, he drove a *MAN* truck, a six-wheeler dumper, 13.5 t capacity, with an additional axle. The trunk dimensions were 5x2.20m with the height of 0.80m. The witness describes that on 14 July they reported to Momir Nikolić in the Bratunac Brigade. Nikolić was a Military Police Commander of the Brigade. The witness and his several colleagues were ordered to drive 5 trucks to the Kravica warehouse. Having arrived there, they saw an excavator and a loader parked on the site.

786. Upon his arrival in front of the hangar, witness Simić observed:

„The corpses were in front of the first door on the right side. I saw the corpses inside too. A colleague of mine would park the excavator and push the excavator shovel. Thereupon the men from the Civilian Protection loaded the corpses one by one. Then I replaced my colleague and enlarged the door to make the loading easier. Prior to this, the excavator shovel could not get inside (the hangar). The shovel is around 1.5 m deep. The Civilian Protection workers were in the warehouse. I would lift the shovel up to the truck whereupon the workers would load the corpses onto the truck. We filled 5 trucks in this manner. A truck can be loaded up with around 25 bodies. When they say it is enough, you just finish. That's it.“

787. During the loading, the men who had secured the site just watched it all. Nikolić also came there with a couple of members of military police and supervised the loading but did not address the witness.

788. The witness believes that the loading of corpses lasted for around 3 or 4 hours. Thereupon, the trucks, escorted by the military police, drove to a site some 4km from Kravica, near Avdaga's field (around a hundred meters away from the road upon taking the right turn). In the photo with which he was presented, the witness marked the place of Glogova as the site where the bodies were buried.<sup>260</sup>

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<sup>260</sup> T-68 A photo at which witness Krsto Simić marked the place of Glogova as the site where the bodies were buried.

“When we came on the site, we saw that a grave was dug up, 2.5 m wide and over 50m long. The men from the Civilian Protection were again those who unloaded the trucks. All trucks were dump trucks and I personally used this mechanism to help the men unload the trucks easier. Escorted by the military police, Nikolić was with us there too. There were several other superior officers too.”

789. Witness Radomir Mirković participated in the burial of killed prisoners too. In July 1995, the witness was a Director of the Utilities Company and the Civilian Protection (CP). At around 19:30 hrs of 13 July, this witness had a dinner in the *Jasen* Hotel. Also present there were Ljubomir Borovčanin and Miroslav Deronjić, the Executive Board and Municipal Assembly Director. A police officer who got wounded on this day because he fought with a Muslim for a rifle, said that a police officer had been killed in Sandići on the same day. He was accompanied by two more men in camouflage uniforms. Shortly thereafter, Lj. Borovčanin received somebody's call so he left. On his way out, Borovčanin told the witness and the other present men that he was ordered to move because Zvornik was falling.

790. At around 21:00 hrs on the same night, witness Mirković met Colonel Beara on the SDS premises. Colonel Beara ordered him to transport all available mechanization to a bauxite mine. The witness responded that prior to this, they had to ask for Rajko Dukić's approval. At around 01:00 or 02:00 hrs in the night of the same day, the military police officers came to pick up the witness. They drove him to the sites where the corpses were to be buried on the following day.

791. Further in his testimony, the witness specified that this was a location on the left side of the Bratunac-Kravica road, in the place of Glogova. Having arrived at the referenced site, the witness told workers to dig up a hole but does not remember telling them the dimensions too. The witness explained that at that moment, he did not know the number of persons in question. He only knew there were more than one person. Therefore, one larger and two or three smaller graves were finally dug up.

792. After the executions were carried out, the witness went to the crime scene and saw that the inside of the hangar was crammed with men. A few killed men were on the right side of the structure. According to the witness's information, around 4 or 5 trucks returned with corpses for several times. The witness concluded that between 700-800 men were buried in Glogova.

793. The transportation of corpses to the Glogova mass-grave lasted both throughout 14 July and the following day. Thereafter, the witness went to Kravica again with the CP workers, water trucks and other equipment to clean-up the traces of the crime committed in the hangar.<sup>261</sup>

794. In the morning hours on Saturday, 14 July 1995, Jovan Nikolić phoned Drago Nikolić with regard to the killings in the warehouse and agreed to meet him. In the

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<sup>261</sup> Witness Mirković Radomir confirmed the foregoing in his testimony of 31 January 2011.

morning of 14 July, Jovan Nikolić went to Kravica between 9:30 and 10:00 hrs. Piles of dead bodies covered with straw were in front of the hangar. Having entered the hangar, the witness saw additional bodies that were piled-up and covered with straw.<sup>262</sup> Several soldiers secured the hangar.

795. Ostoja Stanojević was a member of the Engineering Company of the Zvornik Brigade tasked to drive trucks. On Friday, 13 July 1995, he reported to Major Dragan Jokić, Commander of the Engineering Company of the Zvornik Brigade in the Civilian Protection office in Zvornik. Witness Stojanović was told that he had to „*clean up the garbage in Srebrenica*”, since a lot of garbage remained after the buses which had transported the civilians left.<sup>263</sup> The witness stayed in a hotel in Bratunac. On the following day, that is, in the afternoon of 14 July, a man approached him and said: „*We need you to finish a job in Kravica, our truck broke down.*“

796. In the photo,<sup>264</sup> the witness recognized the Kravica warehouse where they went in a six-wheel, yellow, 8 ton-capacity dumper truck. Having arrived in front of the hangar, the witness observed four men loading the bodies in a loader shovel from where the corpses were removed onto the truck. The loading capacity of each shovel was one cubic meter. Each truck was loaded up with two shovels of bodies. After the truck was loaded for the first time, the witness drove it to an earlier dug up grave, the length of which was around 2 meters.

797. Some bodies were already in the grave. There were two men with shovels, wearing masks. Witness Ostoja Stanojević opened the rear side of the truck to unload the corpses. Thereupon, he returned to Kravica to pick up new bodies and transport them to the grave site too. The witness then returned to the Bratunac hotel. The witness testifies that the second time the loader shovel was not full and that there were less bodies. The witness also testifies that only two trucks were in front of the hangar to load and transport the corpses. This is contrary to the other evidence adduced, wherefore the Panel did not give credence to the witness in this part. The Panel held that the witness is consciously diminishing the number of men killed in the warehouse, most likely in order to minimize the referenced act in which he had personally and involuntarily participated. The witness testified: „*Had I been told that I was going to load the corpses, I would not have gone there!*“

798. Luka Marković<sup>265</sup> testified that on Saturday, 14 July, they started loading the corpses onto trucks, manually throwing the bodies on loaders. A portion of the wall was leveled down with a loader to make an opening and entrance so that the bodies could be

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<sup>262</sup> Witness S-119 confirmed that the same men, who had come to load the corpses, also covered the bodies with hay.

<sup>263</sup> Testimony of Ostoja Stanojević, 13 January 2011.

<sup>264</sup> Prosecution Exhibit T-70.

<sup>265</sup> Record on taking a statement from Luka Marković in the MUP RS CJB Bijeljina, No.: 12-02/4 of 20 June 2005. Record on Examination of this witness in the BiH Prosecutor's Office, No.: 14-04/2-290/05 of 20 September 2005, and the Transcript of the crime-scene investigation and reconstruction with witness Luka Marković, the evidence accepted by the Decision of this Court dated 26 August 2010.

loaded onto trucks. This fact will be important from the aspect of making links between primary and secondary graves. Witness Krstan Simić confirmed the foregoing in his testimony. This witness describes that the bodies were taken out of the hangar through a small opening, but that the loader could not enter the hangar. It was necessary to take down a part of the wall to enable the loader's shovel to approach the warehouse. The shovel and different tools were used to make this widening. Krstan Simić recognized the opening in the photos tendered in the evidentiary materials. The Civilian Protection workers were manually putting the bodies on the shovel by which they were thereupon loaded onto trucks. All bodies were male bodies.

799. During the loading, certain parts of the facade and the construction materials were separated from the structure and subsequently buried with the corpses. Based on this, a certain number of links were found between the primary and the secondary graves. The foregoing will be further explained in the part of the Verdict addressing the forensic evidence found in the Kravica warehouse.

800. The body-loading operation lasted for two days; the bodies which were loaded onto trucks were covered with hay; the workers came with hay-forks and covered the bodies with hay.

801. On 14 July, the 5<sup>th</sup> Engineering Battalion sent a Daily Combat Report<sup>266</sup> to the Drina Corps Command. The Report stated that 50 l of oil were required for the loaders which will be engaged in the burial of the killed enemy soldiers. The order further stated that there were no losses on the VRS side. This fact undoubtedly indicates that the *enemy soldiers* were not killed in combat, namely that these bodies were the bodies of the prisoners executed in the Kravica hangar.

802. Krstan Simić was a construction mechanization operator, mostly employed at a local mine. In July 1995, he was a member of the Bratunac Brigade within the Republika Srpska Army and performed his compulsory work obligation. As a truck driver, Krstan Simić and two other truck drivers met Momir Nikolić in front of the Bratunac Command. Nikolić ordered them to go to the Kravica Farming Cooperative with dumper trucks. Having refueled the trucks, the witness and a driver called Miodrag Obrenović went to Kravica in a convoy comprised of five trucks. Several military police officers escorted them to the warehouse. The witness knew nothing about his task until he came there. A loader and an excavator were parked on the site. The bodies were in the hangar and outside the hangar. Military police officers of the Bratunac Brigade were on the crime scene but did not help out the operation of the removal of bodies. Krstan Simić saw Momir Nikolić and around ten members of the civilian police forces in blue uniforms. Police officers were helping them to put the bodies on the loader shovel. Around 20 shovels with bodies were loaded onto his truck.

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<sup>266</sup> Regular Combat Report of the 5<sup>th</sup> Engineering Battalion, strictly conf. No. 38-56 of 14 July 1995.



803. When the bodies were loaded on all five trucks, a military police officer told the truck drivers to set off toward Glogova in a convoy. They escorted a vehicle with the military police officers. The Convoy moved along a non-asphalted road near Glogova until they reached a mass grave that was 50-60 m long and 2 m wide. The soldiers and the military police were on site. The rear truck door was opened to unload the bodies and several men climbed on the truck to throw the bodies into the grave. Krstan Simić's truck was the fourth truck in the line. Having unloaded the bodies, the trucks returned to Bratunac for cleaning.

804. The aerial images of Glogova made on 27 July 1995 depict "the earth dug-up in two places on both sides of the road" and a bulldozer parked nearby. The aerial images made on 17 July 1995 in Glogova depict the earth<sup>267</sup> dug-up on the site several kilometers away to the west from Bratunac.

## **2. Reburial of Bodies**

805. Several months after the 13 July massacre in the Kravica warehouse, the Republika Srpska authorities decided at the highest level that the bodies had to be recovered and reburied at different sites. In September 1995, the Drina Corps Commander for Security, Lieutenant Colonel Popović told Momir Nikolić that the "*Main Staff of the Republika Srpska Army ordered him to remove the bodies of Muslims buried in the village of Glogova to a number of new locations in the Municipality of Srebrenica*".

806. Nikolić's task was to coordinate this task which would include the 5<sup>th</sup> Engineering Corps of the Drina Corps, the Bratunac Brigade Police, and the MUP with the logistic support of the civilian authorities. Additional heavy equipment, trucks and fuel had to be supplied too. Having used the heavy equipment from the socially-owned companies and the state-owned companies (e.g. the Bratunac Brickworks, *Radnik* Construction Company), the mass-graves in Glogova were uncovered and the bodies removed to new locations in the Srebrenica Municipality. Nikolić coordinated the whole operation. The Intelligence Assistant Commander in the Bratunac Brigade, Dragiša Jovanović selected the sites for reburial.<sup>268</sup>

807. According to Nikolić, due to a large number of people and vehicles involved, including the vehicles, it was not possible to perform reburials by way of secret operation. The operation had to be secret "*because it was an illegal action of the removal of a large mass-grave to a different site.*"<sup>269</sup>

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<sup>267</sup> T – 172a and 172b Aerial images (two images) of Glogova of 5 July and 17 July 1995.

T – 174 Aerial images of 27 July 1995, Tatar-Bratunac,

<sup>268</sup> T-183 Momir Nikolić, *Blagojević*, 23 September 2003., p. 1767-1769 accepted under the Court's Decision of 26 August 2010.

<sup>269</sup> T-183 Momir Nikolić, *Blagojević*, 30 September 2003, p. 2294-2296 accepted under the Court's Decision of 26 August 2010.

808. Dragan Obrenović, Chief of the Zvornik Brigade Staff, testified that the reburials were carried out in September and October 1995<sup>270</sup> under the control of Beara and Popović, and with the participation of the military police, engineers and the civilian authorities. The Civilian Police secured the traffic along the road.<sup>271</sup>

809. Witness Krstan Simić was one of the participants in reburials too. In the Bratunac Command, Momir Nikolić directly ordered the witness to relocate the bodies. The witness was told that he had to „*clean up Srebrenica from the garbage and debris*”. With the same colleague, the witness drove his truck to the mass-grave near Glogova. They drove during the night and when they came there, they found some men excavating the gravesite again. Loaders mechanically loaded the bodies onto trucks and drove them to a site near Jadar where the bodies were unloaded in new graves. Another excavator waited and unloaded the bodies into the grave. A man from the Civilian Protection provided light to the workers. All five trucks were included in the reburial operation. During the night, Krstan Simić made another trip to the initial gravesite location.

810. The aerial images made on 30 October and 9 November 1995 show that the earth at the Glogova 1 and 2 mass gravesites was disturbed again.<sup>272</sup>

811. The maps and photo-charts show that this location was in an isolated terrain, several kilometers south of Srebrenica.<sup>273</sup> The aerial images made on 2 October and 23 October 1995 show the disturbed earth around the secondary gravesites in Zeleni Jadar.<sup>274</sup>

812. On transferring his duties to his successor, in the presence of a commission comprised of three senior officers who came to Bratunac, including the Drina Corps Security Commander, Major Pajić,<sup>275</sup> Nikolić burnt all the documents that he thought could “compromise” him and the Brigade. Nikolić also destroyed the reburial operation report.<sup>276</sup>

813. The Butler's Report recorded that “contrary to the normal military procedure of duties and responsibility, with which the VRS Drina Corps and its subordinate units complied in the commission of the criminal offenses, the process of concealing these crimes was occurring under an even larger veil of secrecy,” wherefore a small body of evidence exists.<sup>277</sup> The Report mentioned the reburial activities during the period

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<sup>270</sup> Established fact No. 86 under the Decision of the Panel No.: X-KR-09/823-1 of 1 July 2010.

<sup>271</sup> T-184 Dragan Obrenović, *Blagojević*, 2 October 2003 accepted under the Court's Decision of 26 August 2010.

<sup>272</sup> T-175a and 175b

<sup>273</sup> T- 176

<sup>274</sup> T- 177c and 177d

<sup>275</sup> T-183 Momir Nikolić, *Blagojević*, 23 September 2003, accepted under the Decision of the Court of 26 August 2010.

<sup>276</sup> T-183 Momir Nikolić, *Blagojević*, 1 October 2003 accepted under the Decision of the Court of 26 August 2010.

<sup>277</sup> Exhibit T-81 Butler Report, 11.0.

between 7 September and 2 October in Lažeta 2, Petkovac and Kozluk wherefrom the bodies were removed to Hodžići, Liplje and Čančari.<sup>278</sup>

### **3. Forensic Evidence in the Warehouse**

814. The forensic evidence indisputably demonstrates that a massacre took place in the Kravica warehouse and that automatic weapons and explosive devices were used in the warehouse itself.

815. In September 1996, the UN Naval Criminal Investigative Service team provided support to the ICTY investigators during the forensic examination of a section of the Kravica warehouse. This team collected biological evidentiary material, took samples of tissue, hair and blood from the mortal remains, the traces of explosives from the walls and the floor, the fired ammunition and the parts thereof from the walls and the building.<sup>279</sup>

816. The team examined the left part on the west side of the warehouse. The forensic report included the evidence consistent with the statements of eye-witnesses/ survivors. They testified that the prisoners were killed with explosives. The team discovered the „results of explosions” on the north-side-internal wall, right next to blood and human tissue stains spread all over the surface through the ceiling. On the west side of the internal side of the wall, there were traces of the „explosion, with much blood and tissue splashed all over the walls”, and two depressions in the wall indicating the consequences of the explosive detonations”. One explosion took place near the floor, and the splashed blood and tissue were near the explosion site that spread almost 4 meters away from the floor.

817. On the south side of the internal wall, explosion traces were found in six places. Explosions left numerous traces of damages. Large quantities of blood were splashed all over the explosion traces all through the ceiling. The armatures of concrete walls were broken up at explosion sites. A depression on the east side of the internal wall indicates an explosion site as there were numerous damages on the wall, traces of explosive and splashed blood and tissues.

818. There are hundreds of damages on the external south wall (the front wall), that are mostly concentrated around the door. Three pieces of metal were discovered that matched bullet casings. On the external wall, there is a hole, and a shallow grave-mound with 30 pieces of human bones below the hole. Numerous traces of explosions were found around a smaller door and on the internal wall. A bigger door (on the east side) is significantly damaged on the top and on the west side indicating that the force acted from inside.

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<sup>278</sup> Exhibit T-81 Butler Report, 11.1.

<sup>279</sup> Exhibit T-83

819. The investigative actions and the examination of mass-grave sites revealed additional forensic evidence related to the killings. ICTY judgments found that „In April 1996, (the ICTY investigators) commenced forensic examination of suspected execution points and exhumation of mass graves.<sup>280</sup> „Forensic evidence showed there were two types of mass graves, „primary graves” in which individuals were placed soon after their death, and „secondary graves” into which same individuals were reburied.”<sup>281</sup>

820. The foregoing forensic evidence was confirmed by the eyewitnesses’ evidence. The ICTY Report titled „Mass Graves Exhumed in 2000”, particularly linked the Glogova 1 mass gravesite with the killings in Kravica based on the items and the other evidence found therein.<sup>282</sup>

821. Glogova 1 is a primary, exhumed mass gravesite near the village of Glogova, located near a gravel road leading from Konjević Polje to Bratunac. A large body of evidence was found therein linking this gravesite with mass executions in the Kravica warehouse. The evidentiary materials also included parts of construction materials, door frames identical to those in the Kravica warehouse, and other items like the parts of vehicles and straw which, according to a survivor victim of the massacre, were in the warehouse.

822. Glogova 1 grave is a primary gravesite containing at least 6 smaller graves [C,E,F,H,K and L].... ...Some of these graves are particularly distinctive ... because of the bodies of victims that had been injured as a result of explosion blast in the form of grenades and shrapnel. Hand grenades’ safety levers, parts of hand grenades and shrapnel were found in certain graves. The referenced items were in the graves and the injuries observed on the bodies completely confirm the witnesses’ evidence on the way in which the men were executed and their bodies removed from the Kravica warehouse.

823. Direct physical links with the execution site in the Kravica warehouse were found in each Glogova 1 grave. Even though autopsy of all bodies from Glogova has not still been carried out, it is clear that the victims buried in this grave died a violent death. Bullets and shrapnel were found in the bodies, that is, the bones and decomposed tissues of the victims. Fractures were observed on many bodies as a result of strong force action suggesting that they were caused by explosives and hand grenades. ...The mortal remains belonged to persons of various age. The anthropologists have estimated that at least one person was between age 12 and 14.

824. During 2000, the ICTY investigators exhumed the mass graves in Glogova (Glogova 01 and 02). As to the Glogova 01 mass grave, Professor Emeritus Richard

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<sup>280</sup> Accepted fact No. 79 under the Decision of 1 July 2010.

<sup>281</sup> Accepted fact No. 80 under the Decision of 1 July 2010.

<sup>282</sup> T- 86 Report on the Examination and Evidentiary Materials Taking from the Kravica Warehouse, BiH September/October 2000.)

Wright concluded that the bodies were dug out and relocated from this grave.<sup>283</sup> The Report by the ICTY Investigator, Dean Manning, from February 2001, stated that „Many pieces of evidence were found in the Glogova 1 grave linking this gravesite with the mass execution site in the Kravica warehouse. The evidentiary materials included parts of construction material, door frames identical to those found in the Kravica warehouse and other items such as parts of vehicles and straw which, according to a survived victim of the massacre, were in the warehouse”.<sup>284</sup> A diagram made in the course of the ICTY investigation presents the execution sites, the primary and secondary gravesites. The gravesites are marked on the map.<sup>285</sup>

825. In 2000, the ICTY investigators took samples of construction material, tiles, insulation and color from the warehouse to compare them with similar materials found in the mass-graves. The investigators reported that the forensic samples taken from the Glogova 01 mass grave matched the samples taken from the warehouse. The report states that „As the entrance into the Kravica warehouse was widened, pieces of entrance and construction materials fell on and between the victims' bodies. The mechanization, that is, vehicles with shovels that were used to collect and remove the bodies from the structure picked up everything else that was near the bodies ... debris resulted from the destruction was transferred with the bodies and buried together with them. ”

826. Forensic expert, Vedo Tuco, testified in detail about the exhumations of secondary graves.<sup>286</sup> Additional Forensic Analysis of 15 February 2011<sup>287</sup> presented all the cases identified since 14 May 2012 given that the initial reports<sup>288</sup> included the cases identified prior to the referenced period.

827. In the oral presentation of his Findings and Opinion, the forensic witness explained that Ravnice 1 and 2, and Glogova 1 were primary graves.<sup>289</sup> The bodies from Glogova were relocated to the Bilječeva, Zeleni Jadar, Budak and Pusmulići secondary gravesites. According to the forensic expert, the foregoing shows that the bodies from

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<sup>283</sup> T-79 Richar Wright, retired Professor of Anthropology prepared for the ICTY the Report of 9 February 2001.

<sup>284</sup> Protected witness S-111

<sup>285</sup> T – 170 Map (scheme) of primary and secondary graves

T – 171 A photo of Konjević Polje dated 14 August 1995.

T – 172a and 172b Aerial images ( two photos) of Glogova dated 5 July and 17 July 1995.

T – 173 A photo of an ID issued in the name of Dahmo Kadrić, found in the mass grave in Glogova

T – 174 Aerial image dated 27 July 1995, Tatar -Bratunac,

T – 175a and 175b Photos of Glogova dated 30 October 1995 and 9 November 1995.

T – 176 Map – chart with the Zeleni Jadar graves marked from 1 through 6

T – 177a , 177b, 177c and 177d Aerial images (4 photos ) of Zeleni Jadar

T – 178 A photo of ligatures found in the Cerska grave

T – 179 Chart – map of the Kravica, Sandići, Konjević Polje terrain with marked mass-graves sites.

<sup>286</sup> Vedo Tuco, 21 March 2011, Additional Forensic Medical Analysis dated 16 April 2009 and 15 February 2011.

<sup>287</sup> T-107 Additional Medical Analysis dated 15 February 2011.

<sup>288</sup> T-107 Additional Forensic Medical Analysis by Dr. Vedo Tuco, M.D., M.S. in the Kravica case dated 16 April 2009 and 14 May 2010.

<sup>289</sup> Established fact No. 66 under the Panel Decision No.: X-KR-09/823-1 dated 1 July 2010.

one grave were relocated to secondary graves during a 10-year period wherefore several parts of the one and the same body were identified in different gravesites.<sup>290</sup>

828. As to the primary mass grave Glogova 1 – Kravica warehouse, the forensic expert explained that 200 (two hundred) DNA profiles were taken from the gravesite without which a whole body could not have been put together, because one body was usually dislocated in 3 or 4 gravesites.

829. The forensic witness further explained that Ravnice I and II were also primary mass-gravesites which, contrary to the Defense arguments, cannot be categorized as superficial mass graves, but rather as classic mass-graves, into which the bodies were buried in a different way exclusively due to a specific configuration of the terrain. The forensic witness added that the DNA profiles did not confirm that Ravnice are linked with Glogova, except for artifacts, plaster and façade pieces that were found in the grave, which according to the Tribunal experts' report, originated from the Kravica warehouse. The expert witness emphasized that after almost a ten-year period, there exist other ways to determine a link between primary and secondary graves, that is, not only on the basis of DNA profiles but also different artifacts and objects originating from the execution site, which were buried together with the killed men.

830. Finally, according to the forensic expert findings, the total of 1076 bodies were identified from the primary and secondary graves to date related to the Kravica case. Not all of them are directly linked with the Glogova mass-gravesite. The forensic expert testified that it was possible to draw such a conclusion based on the evidence.

831. Other evidence adduced indicates the number of killed in the Kravica warehouse. The Panel, therefore, accepted as established the fact that the largest groups of Bosnian Muslim men from the column were captured exactly on 13 July,<sup>291</sup> and that in the evening, around 1.000 Bosnian Muslim men were killed in the Kravica warehouse.<sup>292</sup>

832. After the Srebrenica take-over in July 1995, the Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number of the killed probably varies between 7,000 and 8,000 men.<sup>293</sup> Until now, 6.182 bodies have been identified and linked with the killings after the Srebrenica take-over.<sup>294</sup>

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<sup>290</sup> Established fact No 88. under the Panel Decision No.: X-KR-09/823-1 dated 1 July 2010, the evidence collected during the crime-scene investigation showed that there exist two types of mass graves, «primary graves» into which the persons were buried immediately after the death, and «secondary graves», into which their bodies were subsequently reburied.

<sup>291</sup> The foregoing also confirms the fact accepted under No. 43 in the Panel Decision No.: X-KR-09/823-1 dated 1 July 2010.

<sup>292</sup> Established fact accepted under No.57. in the Panel Decision No.: X-KR-09/823-1 dated 1 July 2010.

<sup>293</sup> Established fact accepted under No 55. in the Panel Decision No.: X-KR-09/823-1 dated 1 July 2010.

<sup>294</sup> T- 231 A List with the International Commission table updated as of May 2011.

833. The killed men mostly constitute one fifth of the entire Srebrenica population.<sup>295</sup>

834. In contesting the number of those killed in the Kravica warehouse, the Defense forensic expert, Ljubiša Simić,<sup>296</sup> employed with the Banja Luka Clinical Center, carried out an expert analysis. The forensic expert testified that during his studies, he was checking the primary and secondary mass-graves and that he started his cooperation with Dušan Dunjić, M.D., forensic medicine expert, who had appeared before the ICTY in the capacity of an expert witness. The Panel, however, observes that in the ICTY cases *Galić and Kunarac et al.*, the Trial and Appeal Chambers did not accept the Findings and Opinion of the referenced expert witness.

835. Forensic expert Ljubiša Simić further explains that he reviewed 35,000 pages of materials during the year following 2008, and made the analysis that was a subject of evidence of Dr. Dunjić before the ICTY. During the preparation of referenced analysis, expert witness Simić had access to all forensic materials collected by the ICTY (related to the 1995-2001 autopsy reports), including the documentation concerning the *Ravnice* mass gravesite.

836. In the case at hand, the forensic expert analyzed the *Ravnice* primary mass grave, the *Jadar 5* secondary grave, and the *Glogova 1-9* primary mass graves. The forensic expert referred to Dr. Vedo Tuco's expert analysis. This expert witness clarified that the *Ravnice* gravesite was specific as it was a so called „superficial grave“. More specifically, the human remains were found at the depth of 50-60cm wherefore the soft tissues were disintegrated very fast, having thereby diminished a possibility to discover the causes of death.

837. According to Dr. Vedo Tuco, 560 bodies were identified in the secondary graves which were all linked with Glogova. Expert witness Simić disagreed with the foregoing arguing that the DNA match existed for only 56 bodies. Expert witness Simić resolutely stated that links between primary and secondary graves could be established exclusively on the basis of DNA analysis.

838. The Panel did not accept the foregoing conclusion of expert witness Simić given that in his findings expert witness Dr. Vedo Tuco had explained all the ways and methods establishing the links between the graves. Contrary to the Defense expert witness view, it cannot be accepted that the DNA analysis is the only relevant analysis within the context of establishing links between mass-graves. This is so given the continued relocation of bodies and the elapsed period of time which have complicated to a large extent the recovery and identification of bodies and discovering the cause of death. It cannot be disregarded that artifacts and objects like ligatures, blindfolds, clothing, parts of walls/facades of the Kravica warehouse where the executions were carried out, were used to link the graves. Finally, the Panel was mindful of the fact that

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<sup>295</sup> Established fact accepted under No. 78. in the Panel Decision No.: X-KR-09/823-1 dated 1 July 2010.

<sup>296</sup> OII-10 Findings and opinion of forensic expert Ljubisav Simić orally explained at the main trial on 9 June 2011.

the referenced expert witness is not a forensic medicine specialist, which renders questionable the professional attitude of this expert witness toward a subject of analysis.

839. During the proceedings, the Defense contested the number of killed men in the Kravica warehouse, arguing that bodies of the persons killed in the column breakthrough toward Tuzla were also buried in the primary and secondary graves.

840. However, bearing in mind the forensic evidence obtained, the witnesses' statements, and the documentary evidence adduced, the Panel has established beyond a reasonable doubt that on the critical day around 1,000 Muslim men were liquidated in the Kravica warehouse<sup>297</sup> and thereupon buried in the Glogova mass grave.

841. The Court finds irrelevant the discussion about the number of men killed in the column given that the referenced number (even if it were precisely determined) makes no significant changes to the fact of the total number of men killed by the Serb forces after the Srebrenica takeover, nor can affect, to any extent, the qualification of the offense (as the Verdict has already explained).

842. Neither the column nor the legitimacy of the attack on the column were a subject of these proceedings based on the charges against the Accused but rather the fact of what happened with the captured men, regardless of whether they were members of the column who surrendered, or were taken prisoners in some other way, or were separated from their families in Potočari, since they were all taken to the detention sites, and thereafter to the mass execution sites, including the Kravica FC.

843. The killings of men while they were in the column (with no reference to the non/military character thereof), and the subsequent killings of all prisoners from the column undoubtedly constituted a part of the same killing operation that was underway in different sites. In other words, those who were not killed (or injured) in combat itself or in the column breakthrough, were subsequently killed in a number of mass executions with the goal to kill "every single" Bosnian Muslim men from the Srebrenica enclave, including a small number of individuals who survived the mass executions, or possibly succeeded to flee from the execution site to be recaptured and executed.

844. The bodies of killed men were immediately buried, either on the execution site or somewhere nearby.<sup>298</sup> The primary mass graves were subsequently dug up, the bodies of the killed men disturbed and reburied in other, unmarked mass gravesites. In certain cases, the decomposed bodies of victims were buried in even three or four different mass graves.

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<sup>297</sup> The foregoing was also established in the accepted facts under the Panel Decision dated 1 July 2010 stating that: "Around 1000 and 1500 Bosnian Muslim men from the column, who were retreating through the woods, and captured at a meadow near Sandići, in the afternoon of 13 July 1995, were taken by buses or on foot to the Kravica warehouse." (T-215)

<sup>298</sup> T-81 Butler Report, p. 87. para. 14 and 15, and p.88 para. 21.



845. The testimony of Dragan Obrenović<sup>299</sup> corroborates the foregoing. The witness assumed that a large number of Muslims were killed and wounded in combats with the column at Baljkovica, but that their bodies were probably withdrawn through a corridor during the night between 16 and 17 July, given that no large number of bodies were subsequently found in this area, and around 15 to 20 collected bodies were buried at the site near Motovska Kosa.

846. During the cross-examination, Dean Manning also testified: „*No evidence demonstrates that the individual bodies of the men killed in the column were collected and thrown in the graves, or that they were relocated and buried in Glogova. Most bodies of the killed members of the 28<sup>th</sup> Division were left lying on the ground, and were not collected and buried in mass graves. Their bodies were collected by some other organs, rather than by the ICTY. These bodies were collected by the Commission for Missing Persons and delivered to their families.*“

847. Therefore, on the grounds of the evidence adduced, the Court has indisputably found that the burial of bodies from the Kravica warehouse in the primary graves in Glogova started on 14 July 1995, and that after several months, the bodies were dug up and relocated to several secondary gravesites. The only possible conclusion the Panel could draw based on all the actions taken along this line is that this was a well organized and coordinated action to conceal the crimes committed on an extremely mass scale.

## **X. SEARCH OF THE TERRAIN ON 17/18 JULY 1995**

848. Based on the adduced evidence, the Panel is satisfied beyond doubt that members of the Training Center 1<sup>st</sup> and 2<sup>nd</sup> company were assigned a new task. According to Dragomir Vasić's Dispatch Note<sup>300</sup> of 17 July 1995, their assignment was linked to the search of the terrain in the area of Cerska and Udrč, which was scheduled for 18 July 1995.

(a) Search of the forest area between Bratunac and Konjević Polje – capture of Bosniaks (a number of Bosniaks including children were captured).

849. During the proceedings, the Panel indisputably established that the Accused Duško Jević directly commanded over the members of the 1<sup>st</sup> and 2<sup>nd</sup> Company during the search of the terrain, while the Accused Mendeljev Đurić also commanded over the members of the 1<sup>st</sup> Company.

850. After the order and supervision of the mass executions of the captured men in the Kravica Warehouse, the two Accused were fully aware that the ultimate goal of this search was to find the remaining groups of Srebrenica men, who were in the column, but

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<sup>299</sup> T-184 Transcripts of the testimony of Dragan Obrenović in *Blagojević* dated 2 October 2003 accepted under the Decision of this Panel dated 26 August 2010.

did not manage to break through to the territory under the control of the Army of BiH. In accordance with the usual routine, those men were to be imprisoned in the temporary detention facilities and then summarily executed.

851. The Order<sup>301</sup> issued by the Special Police Brigade Commander on 17 July 1995 was to:

“Urgently form a combat group in the strength of a battalion in the Kravica - Konjević Polje area, using parts of the Doboj Special Police Detachment, both companies from Jahorina and the two PJPs, and assign them to search the terrain in the area of Pobuđe in order to completely cleanse the right-hand side of the Milići - Drinjača road, and then group the forces for the search of Cerska. Duško Jević will be in command over the units to be incorporated in the combat group 2. Another combat group is to be formed to search the left-hand side of the road, the commander of which will be appointed by Ljubiša Borovčanin.”

852. According to Instructor Tomislav Krstović, all Company and Platoon Commanders participated in the execution of this task on the orders of the Command. He believes that they also used search dogs on this occasion, as was confirmed by witness S-125. This witness explains that they moved in a skirmish line during the search of the terrain, while a young man with a German Shepherd Dog went in front of them.

853. As opposed to the opinion of expert witness Radinović, the Order corroborates the earlier presented finding of the Panel, since it simply confirms that throughout the time spent in the field mission in Srebrenica, the vertical chain of command over the police units was maintained. In other words, those units were not absolutely resubordinated to the Bratunac/Zvornik Brigade Command in whose AOR they were deployed, as was argued by the Defense during the proceedings.

854. According to witness S-126, his unit participated precisely in the search of the terrain, specifically the forest on the left-hand side of the road. While they were moving through the forest, the witness saw a dead body by the creek. He did not know if any of his superiors saw that, nor did he know who of them was present, but that must have been either Mendeljev or Marković. Apart from that, there were no other combat activities. Soon afterwards, the witness saw soldiers escorting inhabitants from one village.

855. The witness could not tell to which unit those soldiers belonged, but he thought they included some members of his unit and confirmed it when he came to the road where people were forced into buses. He estimated there were around 40 Muslims, whose hands were tied behind their back, most probably by VRS members. Then, those people were bused away.

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<sup>300</sup> T-10 and T-12 Dispatch No. 01-16-0211-206/95 of 17 July 1995, drafted by Chief Dragomir Vasić and sent to the Office of the Minister at Pale, Public Security Sector, Police Force Headquarters on Jahorina, in Bijeljina and Vogošća.

<sup>301</sup> T-11 Order No. 61/95 of 17 July 1995 issued by Goran Sarić, Commander of the Special Police Brigade.

856. Witness Jevto Doder also participated in the search and he too saw several dead people by the road. After completing the search, they went down to a meadow by the Konjević Polje – Bratunac road, close to the school in which members of the 2<sup>nd</sup> Company were stationed. There the witness noticed 20-30 prisoners in civilian clothes, but he left open the possibility that some of them had camouflage shirts. They were lying down facing the ground, while their hands were tied behind their back by some wire or a rope. Members of the army, the police and Center unit were on the road by the prisoners and he thought that the commanders of all platoons were also nearby. With regard to the presence of members of the 1<sup>st</sup> Company, he could remember that the Accused Duško Jević was there, but he did not remember Mendeljev Đurić, he only assumed he was also in the vicinity.

857. As opposed to him, defence witness Slavko Bojanić, a member of the 1<sup>st</sup> Company platoon, was sure he had seen the Commander of his platoon, the Accused Goran Marković and Mendeljev Đurić on that occasion.

858. Witness S-124 claims the Accused Duško Jević was on the road when the prisoners were brought down there. He met the members of the unit on the road, telling them they were *such losers since only five people managed to frighten them*. According to witness S-121, the Accused said that most probably because there was some exchange of fire during the search, including machine-gun fire, someone also threw a hand grenade, so that they retreated and came down to the road.

859. Tomislav Krstović<sup>302</sup>, one of the platoon commanders, gives a similar account of the objective of the search by submitting that they were tasked with searching the terrain somewhere off the main road in the direction of the power transmission line. He assumes that the order came from the Command, he cannot give a specific name, but he thinks it was the Commander of the Center Jević. In his opinion, the purpose of the assignment was to *“search the road and see on the spot if anything stayed behind after the people had left, my understanding was we only had to pass through and see if it was clear.”*

860. This testimony was corroborated by witness Velomir Gajić, who was a driver in July 1995 and most frequently drove Duško Jević. On one occasion, they saw 20-30 prisoners on a meadow near K. Polje – Bratunac road and noticed the platoon commander Neđo Milidragović there talking to the Accused Duško Jević, who told him to load the prisoners onto the buses when they get there from the direction of Bratunac. In his investigation statement, the witness was firm in stating to have seen that the people on the meadow had their hands tied with belts and ropes and he confirmed the presence of the Accused Duško Jević. Witness S-123, who was deployed to the said location, supported this testimony.

861. Witness Haso Hasanović, who himself was among the captured people, confirmed the precise location where the prisoners were assembled. While the column was

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<sup>302</sup> Witness Tomislav Krstović testified on 6 December 2010.

breaking through, he explains, they spent some time in the houses in the village of Burice, but were surrounded one night around 6 p.m. The units which captured them wore camouflage uniforms and had red armbands, most probably as signs of recognition.

862. Witness Hasanović claims that the soldiers had search dogs with them so no one could hide. Witness Siniša Renovica confirms this and explains that members of the Canine Training Center at Crepoljsko also took part in the search and were deployed 1 km or 2 km from the members of the 2<sup>nd</sup> Company.

863. Witness Hasanović proceeds by explaining that members of the unit who found them told them on that occasion *“you mother f\*, the whole Serbia had to come here for 500 Balijas!”*, then they tied their hands behind their back with some wire, searched them and took away everything they had. When explaining the issue of recognition, the Defense argued that the witness, when mentioning the soldiers who yelled that the “whole Serbia” had to come for them, referred to the army members who had red armbands with Yugoslavia written on them. However, witness Hasanović could not confirm that.

864. According to witness Haso Hasanović, the captives were then lined up one by one and taken in the direction of the Bratunac-Konjević Polje road, to a meadow, where they were told to lie down facing the ground. The meadow they were brought to was closer to Sandići and Lolići, directly opposite of the *hair česma*<sup>303</sup> /*translator’s note: memorial fountain*/. Witness Stanislav Vukajlović confirmed the presence of 2<sup>nd</sup> Company members at that location and said that the platoon commander deployed him on the road close to Sandići and Lolići. He identified the location as the village of Pervani. Witness S-123, also a member of the 2<sup>nd</sup> Company, stated to have been deployed at the same location, some 250m from the fountain. Witness S-124, another member of this Company, described this location as well.

865. Witness Hasanović heard the soldiers saying *“Are we going to shoot and plow now, or shall we return the other day to bury them?”*, then the other soldier they addressed said *„I don’t know if we will execute them here, we will ask!”* There was a stand pipe nearby, and a soldier asked witness Hasanović to bring him some water. On the way there, the witness saw several dead bodies near the road, they were most probably randomly executed since they were not lined up. At that spot, a commander asked if there were any children there, the witness responded and said he was 14 years old, whilst the Serb soldiers were firing in the air, telling the prisoners to get up. They kicked and hit with rifles those who could not do that and “loaded them onto trucks”, since they were tied and could not get on, then they said *“take them in the direction of Bratunac!”*

866. As opposed to them, the witness and three children arrived in Bratunac on the bus, while the trucks carrying the men arrived later on. He heard some soldiers asking

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<sup>303</sup> Video record of the site visit admitted into evidence as court Exhibit No. S-1.

*“what are we going to do with them?” and others responding “you know the place of execution –Vuk Karadžić primary school!”*

867. During cross examination, the Defense refuted the statement of this witness, since he never mentioned that incident in his earlier statements. He testified only about the incidents in Kravica and claimed he had wandered through the woods for ten days before reaching the free territory. The witness responded by stating that he did wander through the woods until he was captured again and he did not mention the incident before because no one asked him about that.

868. The Panel upholds this objection as relevant, since all the Accused are charged with this incident in the amended Indictment as the direct participants in the search of the terrain in the area of Pervani. The Panel examined the reliability of this testimony in the context of the entire body of presented evidence. The Panel notes that the witness gave a very detailed account of the search of the terrain, whose content is consistent with the testimony of the majority of other witnesses. Therefore, the Panel concludes that the witness could not have fabricated such a detailed and consistent account of the incident had he not personally experienced the things he testified about at the main trial, where he also explained why he had not mentioned them in his earlier statements.

869. The Panel also notes that witness Hasanović could not identify the soldiers who raided the village on the relevant occasion. Witness Mićo Gavrić, who participated in the search of the terrain on behalf of the Bratunac Brigade, expressly stated that members of Duško Jević’s unit had not entered the village. He said: *“There were no Duško Jević’s units in Burnice where people surrendered, they were below or further in the north, they could not see that. His units were deployed between the road and the village of Kamenica, southwards from the Sandići hill and frontally in the direction of Konjević polje- Milići.”*

870. When the units returned after the search of the terrain, the prisoners were assembled on the meadow by the Ljoljići-Pervani road, and there was a stand pipe nearby.<sup>304</sup> When the prisoners’ hands were tied behind their back, Momir Nikolić was contacted, and he said to take the prisoners to Konjević Polje. The witness was firm in stating that those prisoners were civilians, since they were not in uniforms and had no weapons, as he stated in his report.

871. Therefore, the Panel gave credence to this portion of witness Gavrić’s testimony, since it was consistent with the testimony of witness “S-104”, who claimed that members of the unit had not been in the village of Burnice, but only on the road by the meadow to which the prisoners were brought. On the other hand, the Panel did not find credible the testimony of witness S-104 in the part in which he denied the participation of his unit members in the subsequent search of prisoners, their assembling and transport by buses, and the presence of the Accused Neđo Ikonić. The Panel concludes that the

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<sup>304</sup> During the site visit, the Panel made sure exactly which location was in question.

presented evidence indicates a different state of affairs and indisputably connects the members of the 1<sup>st</sup> and 2<sup>nd</sup> Company with the relevant actions.

872. Witness S-101 further implicates members of his 1<sup>st</sup> Company Platoon. According to him, while the prisoners were being assembled in Pervani, Neđo Milidragović said that „*Balijas killed each others.*“ Then, they stopped before reaching the school in Pobude, and the witness saw one group going there which included members of the 1<sup>st</sup> Company, and he recognized „Hercegovac“ among them. On the way back, they brought some 50-70 men and the witness saw them forcing those people to lie down and put their hands behind their back, then they tied them up. He heard those people were taken to Konjević Polje and locked up in a warehouse.

873. Other witnesses, including platoon commander Jevto Doder and witness S-119, a member of the Platoon whose commander was Neđo Milidragović, also confirmed the presence of Duško Jević and Mendeljev Đurić during the search of the terrain and on the meadow in Pervani, where the assembled men were searched and forced to lie down facing the ground with their hands tied and from where they were transported in the direction of Konjević Polje.

874. Witness Željko Šehovac personally participated in the tying of prisoners. He remembered seeing his platoon commander Radovan Sladoje on the meadow on that occasion.

875. At the main trial, witness S-123 provided a detailed account of the search of the terrain and gave the names of the participants:

„We started cautiously, taking our positions, 6,7-15m apart, moving in a line. We were particularly alert at the edges of the forest, when entering and leaving the forest. While entering the forest, a hand grenade was thrown, it exploded and gunfire could be heard. My position was in shielded area, so that I was not injured, nor was any of my colleagues. I think that the group was split in half when the hand grenade was thrown, I was the last one to leave the forest. I think that Duško Jević did not go to search the forest, I did not see him, he met us when we came down. We returned to more or less the same positions as before. Jević appeared shortly afterwards, in a couple of minutes, from the direction of Konjević Polje. He criticized us because we were stopped by only 5 people, then he repositioned us. He was informed that a group of people surrendered and he told us to escort them to the road. That meant they would pass along the road.

They stopped on a meadow, between the school and the meadow. The army and the police brought them to that field. We were standing on the road while they were passing by. They were coming from the direction of the forest, some 30 people in uniforms, but with no weapons, maybe some of them left it behind secretly, in any case, they did not have any. I saw some young boys among them, who were 16-17 years old. I told two of them to run towards the creek and they fled. They were beardless, that is why I said that, I feared for their safety, that they would be killed.

Groups were coming from different directions, mainly brought by the military police, they were assembled near the stand pipe, in the direction of the valley. There<sub>174</sub>

was a playground on the right-hand side and they were collected there, some 100-150, maybe even 200 people. I could see Duško Jević close to the prisoners, he ordered them to throw away their weapons, to lie down with their hands behind the back of their heads. I heard that the prisoners were tied and taken further away, but I did not see that. I think that the group of prisoners who received orders from Jević left in the direction of Konjević Polje ... I don't know whether the order came from Duško Jević or from the police. I saw Duško Jević during the departure to Konjević Polje, I think he left after them. Later on, we heard that some of them were executed and some sent for exchange.”

876. During the cross examination, the witness explained that three groups of prisoners were noticed. A group of 15 prisoners who surrendered to members of the witness' platoon, then a group of 30 men captured at the end of the search by the army and the police, and a group of 150-200 people passing along the road in the direction of Konjević Polje. He did not notice any members of his unit escorting those people. Witness S-125 confirms that several groups were captured during the search. He could remember a group of 7-8 captured people, which included one child, and the platoon commander telling him “what are you doing here.” Then one soldier took the child away, a shot was heard and the soldier returned without the child. The witness said the platoon commander was not “Brko”.<sup>305</sup> When cross examined, the witness stated he had not heard the platoon commander ordering the soldier to take the child away, nor did he see that the child was killed.

877. Witness S-124 testified about the group of men who passed along the road. The group was escorted by the civilian police. At one moment, a group of around 150 people was coming down from a hill, escorted by the civilian police and the army, whose members wore black caps and scarves. Witness S-121<sup>306</sup> was deployed at the location as a member of the 2<sup>nd</sup> Company and he confirmed the number of people in the column. He was certain that members of his unit escorted the column because they had distinguishable light blue flak jackets. Witness S-125<sup>307</sup> also saw the group of 100-200 men, but he was not sure if members of his unit were in the escort. He could remember that members of the 2<sup>nd</sup> Company did guard them at first, but then platoon commander “Brko“ called someone over the radio and some soldiers in camouflage uniforms arrived.

878. The Panel is satisfied that the Accused Duško Jević and Mendeljev Đurić commanded and supervised the members of the 1<sup>st</sup> Company, participated together with members of the 2<sup>nd</sup> Company and parts of the Bratunac Brigade in the search of the terrain above Konjević Polje, looking for people from the column who passed along that road on their way to Tuzla.

879. The Accused participated in the search of the terrain in order to capture the men who they knew would be executed, same as the men from the Kravica warehouse.

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<sup>305</sup> On the Record No. KT-RZ-101/07 of 10.12.2010 taken during the investigation, the witness marked the individual who reminds him of the instructor who had issued the order to kill the child.

<sup>306</sup> Witness S-121 testified at the main trial hearing on 24 November 2011.

<sup>307</sup> Witness S-125 testified at the main trial hearing on 28 November 2011.

## 2. Individual killings of prisoners during the search

880. The Panel finds it was proved that a number of wounded people were killed during the search by members of the 1<sup>st</sup> Company, who were then under the control of the Accused Duško Jević and Mendeljev Đurić. They were neither reprimanded nor were they disciplinarily sanctioned. This additionally corroborates the conclusion of the Panel that the ultimate goal of the search was to collect the remaining men from the column, who would be summarily executed, as were the men from the Kravica Farming Cooperative warehouse.

881. When the search was completed, Dragomir Vasić sent a Dispatch Note to the Office of the Minister and to the Police HQs in Bijeljina, Vogošća and Jahorina, informing them as follows:

„The forest terrain on the right-hand side of the Milići-Drinjača road was searched by RS MUP units and the PJP, together with the facilities deep in the area of Cerska and Udrč, in order to liquidate the remaining parts of groups inserted from Srebrenica. The mission is successfully completed.”

882. The term *liquidation* used in the orders and dispatch notes was explained by the Panel earlier. The Panel did not accept the Defense’s interpretation of this term as an exclusively military term used for “destruction”, whose meaning is only to disarm and capture. This conclusion is supported by individual killings of prisoners during the search operation.

### (a) N.M. killed two individuals

883. The Prosecution proved during the proceedings that individual killings had occurred during the search, but they did not prove beyond any reasonable doubt who among the members of the 1<sup>st</sup> and 2<sup>nd</sup> Company committed those murders.

884. According to the account of facts in the Indictment, N.M, commander of the 1<sup>st</sup> company platoon, killed two individuals during the search operation.

885. Platoon commander Tomislav Krstović described the incident. He participated in the search of the terrain as the platoon commander and he confirms that Neđo Milidragović also took part in the search with his platoon. There were rumours at that time that he stayed behind during the search with some wounded people they found and then shots were heard from the spot where he was. Soon afterwards, he joined the others and Jevto Doder, one of the 1<sup>st</sup> Company platoons commanders, asked “*Have you done with them.*” (*Translator’s note: The witness used a slang verb ‘zgurđumiti’, which can be interpreted in different ways.*)



886. In the opinion of the Panel, witness Krstović provided a very detailed account of this incident, however, other heard witnesses did not corroborate it in their testimony. Moreover, in his investigation statement,<sup>308</sup> witness Krstović had said he had not seen any prisoners or male survivors from Srebrenica, but he had seen dead bodies of prisoners.

887. When cross examined, the witness could not give a clear explanation of these inconsistencies in his statements. He argued it was impossible to describe events in an identical manner, in particular if he was under certain types of psychological pressure. He proceeded by stating that he mixed persons and time, he could not remember some details and concluded by saying that ultimately he could not comment on the inconsistencies in his statements.

888. The Panel takes into account that witness Tomislav Krstović did not identify some individuals as the perpetrators of those killings until the main trial. However, dead bodies were indisputably found during the search and there were instances when the prisoners were randomly killed.

(b) Zoran Ilić killed one prisoner in Jelah.

889. According to witness S-101, the search lasted for two days and he saw the murder the second day. A young man up to 30 years of age was captured immediately above the Konjević Polje – Kasaba road. The witness did not know if the prisoner was taken for interrogation, but he heard that certain „Sima from Alipašino“ killed him.

890. In contrast, witness S-101 provided a more detailed statement under the investigation. According to him, he was standing some 30-40m far from certain „Simo from Alipašino“, so that he could see him telling the prisoner to go to the edge of the road (there were some bushes below), to turn his back and then he shot.

891. The witness was later on shown the investigation statement in which he recognised “Simo from Alipašino“ and identified him as Zoran Ilić aka “Cindin“. At that time, he said that Zoran Ilić had told the prisoner to go and, when he turned, he shot him in the back. His impression then was that Zoran was cold-blooded, while the man whom he told to go bent down his head and shoulders, as if he knew he would be shot.

892. The witness gave a detailed account of the incident, but he also claimed that the name of Zoran Ilić was suggested to him by investigators who had examined him during the investigation, so that the Panel cannot accept it was precisely that individual who committed the murder. On the other hand, the Panel is satisfied that the evidence presented during the trial proved indiscriminate killings of prisoners, but it was not proved that the Accused Neđo Ikonić bore any responsibility for them. Obviously, the murder

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<sup>308</sup> OIII-5 Witness Examination Record No. 17-04/2-6-04-2-519/09 of 27 May 2009 for witness Tomislav Krstović.

was committed by a member of the 1<sup>st</sup> Company to which witness S-101 belonged. The commander of that Company was the Accused Mendeljev Đurić.

893. It is important to note here that the Indictment fails to explain how and why would the Accused Jević and Đurić be responsible for those individual killings, unless it was implied that those killings too were a natural and predictable consequence of the JCE category III. However, the Panel underlines it was not proved that the Accused were participants in such a JCE.

894. Nonetheless, the Panel is satisfied that the Accused Jević and Đurić, having participated in the mass killings in the Kravica Cooperative warehouse, were fully aware during the search what was the final purpose of capturing the remaining members of the column. They participated in the search in order to capture the men who they knew would be transported in the direction of Konjević Polje, where they would be temporarily imprisoned, awaiting summary mass executions, same as those which had taken place at the Kravica Cooperative warehouse.

895. The Accused ordered and supervised the execution of Srebrenica men and participated in the search of the terrain with the intention to capture the men who would also be executed. In so doing, the Accused clearly showed they were aware of the genocidal intent of the principal participants in the JCE, thereby giving their final contribution to the implementation of the genocidal plan, at the same time agreeing to unsanctioned executions of prisoners by members of the 1<sup>st</sup> Company.

896. Based on the presented evidence, the Panel is satisfied that the persons captured during the search and assembled on the meadow in Pervani were subsequently executed. This follows from the testimony of witness Haso Hasanović, who was on the meadow and noticed Hasan Cvrk and Munib Cvrk among the prisoners. Both of them were later on exhumed from the Cerska mass grave, as was proved by the presented evidence.

897. Notwithstanding that members of the 1<sup>st</sup> and 2<sup>nd</sup> Companies of the Jahorina Training Center did not participate in the execution of these persons, the Panel finds that the Accused Jević and Đurić took part in the search of the terrain with the intention to capture the remaining men from the column, knowing they would be executed in the same manner as the men from the Kravica warehouse, thereby giving their final contribution to the implementation of the genocidal plan.

## **XI. LEGAL QUALIFICATION OF THE CRIMINAL OFFENSE OF GENOCIDE**

898. Considering that the actions of the Accused are qualified as the criminal offense of Genocide in violation of Article 171(1)(a) and (b) of the Criminal Code of Bosnia and Herzegovina, as read with Article 31 of the CC of BiH, the Panel will give general elements of this criminal offense.

899. Article 171 of the CC of BiH defines the criminal offense of Genocide as follows:

Whoever, with a view to destroying, 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 or the community conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group...

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

### **1. Underlying acts of the criminal offense of Genocide**

900. The Accused in this case are charged with Genocide by killing members of the group and inflicting serious bodily and mental harm to members of the group.

901. To that end, the Panel examined the actions and/or acts amounting to the elements of the criminal offense set forth in Article 171(1)(a) and (b) of the CC of BiH as the *actus reus* of the crime of Genocide.

902. Article 171 of the CC of BiH mostly corresponds to Article 141 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) and Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (Convention on Genocide), which entered into force on 12 January 1951.<sup>309</sup>

903. Article 2 of the Convention on Genocide defines the criminal offense of Genocide as:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;

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<sup>309</sup> See also, Statute of the International Criminal Tribunal („Rome Statute“), Article 6, entered into force on 1 July 2002, U.N. Doc. A/CONF.183/9 (identical to Article 2 of the Convention on Genocide).

904. Article 4 of the ICTY Statute and Article 2 of the ICTR Statute take up word for word the provisions of Article 2 of the Convention on Genocide, which confirm that the definition of Genocide accepted under customary international law is identical to the definition in the Convention on Genocide and there can be absolutely no doubt that its provisions fall under customary international law....<sup>310</sup>

905. The International Court of Justice notes that: „The principles underlying the Convention are recognized by civilized nations as binding on States even without any conventional obligation“,<sup>311</sup> which is yet another proof that Genocide is recognized as a criminal offense under customary international law.

906. The Report of the Secretary General in relation to the Security Council Resolution 808, which was unanimously approved under Resolution 827 of the Security Council, states: “The part of conventional international humanitarian law which has beyond doubt become part of customary international law is the law applicable in armed conflict as embodied in: The Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948”.<sup>312</sup>

907. The provisions of Article 171 of the CC of BiH result precisely from observing the responsibilities the State assumed pursuant to the Convention on Genocide, whose Article V reads: “The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular to provide effective penalties for persons guilty of genocide ...” SFRY took active part in drafting the Convention on Genocide and ratified it in 1950.<sup>313</sup> Thus, the provisions of Article 171 of the CC of BiH kept in force the international legal obligation of adherence to the Convention provisions.

908. With regard to the applicability of the cited provision to the state of facts established in this case during the proceedings, the Panel will provide a deeper analysis of the provisions of the criminal offense of Genocide set forth under Article 171 of the CC of BiH, which entails two different groups of elements – chapeau or general elements and genocidal mens rea – genocidal intent, as well as the elements of the underlying acts.<sup>314</sup>

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<sup>310</sup> Trial Judgment in *Jelisić* case, para 60.

<sup>311</sup> Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951), ICJ Reports 23.

<sup>312</sup> Report of the Secretary General pursuant to para 2 of Resolution 808 of the Security Council (1993) („Secretary General Report“) UN Doc. S/25704, para 45. See also *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, (“*Akayesu, Trial Judgment*“) para 495. („The Convention on Genocide is undeniably considered as part of customary international law.“); *Prosecutor v. Jelisić*, IT-95-10-T, Judgment, 14 December 1999. (“*Jelisić, Trial Judgment*“), para 60. („Article 4 of the Statute take up word for word the provisions of the Convention on the Prevention and Punishment of the crime of Genocide, which indisputably forms part of customary international law.“).

<sup>313</sup> Official Gazette of the Presidium of the People's Assembly of the People's Federal Republic of Yugoslavia, no. 2/50.

<sup>314</sup> Although the essential acts enumerated in sub-paragraphs a) through e) can qualify as *actus reus* of Genocide, it has to be borne in mind that these acts themselves incorporate the elements of both *actus reus*

909. In accordance with the amended Indictment, the Panel finds that only first two elements of the criminal offense should be examined in order to reach a decision.

(i) Killing members of the group

910. Article 171(a) of the CC of BiH provides that *actus reus* of Genocide includes „killing members of the group“. Examined in that context are the elements of the act of murder specifically defined under the national legislation.<sup>315</sup> The Panel concludes that Article 171(a) prohibits “depriving another person of his life“, and this act is also codified as an element of Crimes against Humanity and War Crimes under Article 172(1)(a), 174(a), and Article 175(a) of the CC of BiH.

911. The hitherto jurisprudence of the Court of BiH and the ICTY has already established the elements of the criminal offense of murder:

- 1) deprivation of life;
- 2) direct intent to deprive another person of life; since the perpetrator was aware of his act and wanted its perpetration.<sup>316</sup>

912. Given the complexity of the qualification, the Panel analyzed in detail each of its segments. It is important to note that “members of the group” do not necessarily imply a huge or considerable number of victims. In theory, killing a single person can still amount to the element of *actus reus* of Genocide.<sup>317</sup> According to the same qualification, the victims of killing have to be members of the national, ethnic, racial or religious group the perpetrator wanted to exterminate entirely or in part.<sup>318</sup>

913. The following elements of the acts of murder are defined in international law: the death of the victim resulted from the act or omission of the perpetrator intended to kill the victim or inflict serious bodily injury with the reasonable knowledge that the attack was likely to result in death.

914. It was indisputably proved during the proceedings that the Accused Duško Jević and Mendeljev Đurić ordered and supervised the members of the 1<sup>st</sup> Company who

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and *mens rea*. It is therefore advisable to formulate Genocide in the similar manner as Crimes against Humanity, in the way which does not require separate examination of *chapeau* or general elements and underlying acts. This is intended to stress that the crime of Genocide requires proving two separate criminal intents – *actus reus* and *mens rea*.

<sup>315</sup> The Panel refrains from presenting any conclusions with regard to whether the concept of „killing members of the group“ set forth under Article 171(a) of the CC of BiH is broader than the concept of murder.

<sup>316</sup> See *Rašević and Todović*, X-KR/06/275 (Court of BiH), Trial Judgment, 28 February 2008, (“*Rašević and Todović*, Trial Judgment”) page. 61; *Dragan Damjanović*, X-KR-05/51 (Court of BiH), Trial Judgment, 15 December 2006, (“*Damjanović* Trial Judgment”) page 53, 54. See also, *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgment, 17 January 2005, (“*Blagojević and Jokić* Trial Judgment”) para 642; *Prosecutor v. Krstić*, Judgment, 2 August 2001, (“*Krstić* Trial Judgment”) para 543.

<sup>317</sup> In *Ndindabahizi* case, the ICTR Trial Panel concluded that the killing of a single person satisfies the *actus reus* of Genocide. *Prosecutor v. Ndindabahizi*, ICTR-2001-71-I, Judgment, 15 July 2004, (“*Ndindabahizi* Trial Judgment”) para 471.

<sup>318</sup> *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, (“*Brđanin* Trial Judgment”) para 688.

participated in the mass killing of the prisoners in the Kravica Cooperative. This, by itself, shows a high degree of their awareness and willingness to produce negative consequences, which eventually occurred.

915. The death of the prisoners in the Kravica Cooperative has been proved beyond any reasonable doubt not only in this case, but in many other final judgments of the Court of BiH and the ICTY.

916. There is no doubt that their death was violent and occurred as the consequence of gunshots fired by members of the 2<sup>nd</sup> Šekovići Detachment and 1<sup>st</sup> Jahorina Training Center Company, whereby they and those who ordered them to participate in the killings acted with direct intent. Even though the Accused knew that their acts would result in the death of the men from Srebrenica who were shot from firearms by members of the 1<sup>st</sup> Company, they did not depart from the order at any moment. Therefore, there is no doubt that the Accused wanted that to happen.

917. The *actus reus* in this case is qualified as Genocide because of the intent underlying the commission of the criminal offense. Certain acts can qualify as Genocide only if they are intended to destroy the protected group.

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

918. Article 171(b) of the CC of BiH provides that the *actus reus* of the criminal offense of Genocide involves causing serious bodily or mental harm to members of the group.”

919. The term “serious bodily or mental harm” is not precisely defined in the ICTY and ICTR case-law, so that the Panel resorted to *ad hoc* case-law which has specified that the harm need not be permanent or irremediable<sup>319</sup>, but it must be harm that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”<sup>320</sup>

920. Bodily harm refers to harm that seriously injures the health, causes disfigurement, or causes any serious injury to the external or internal organs or senses.<sup>321</sup> Mental harm refers to more than minor or temporary impairment of mental faculties.<sup>322</sup> The ICTY and ICTR construe the term “serious bodily or mental harm” to include acts of torture, inhumane or degrading treatment, sexual violence including rape and deportation.<sup>323</sup> Furthermore, the harm must be inflicted intentionally.<sup>324</sup>

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<sup>319</sup> Trial Judgment in *Blagojević and Jokić* para. 645, *Akayesu* Trial Judgment, para 502, *Krstić*, Trial Judgment, para 513.

<sup>320</sup> Trial Judgment in *Krstić*, para. 513, Trial Judgment in *Blagojević and Jokić*, para. 645.

<sup>321</sup> *Prosecutor v. Kayisheme and Ruzindane*, ICTR-95-1-T, Trial Judgment of 21 May 1999, para. 109, Trial Judgment in *Blagojević and Jokić*, para. 645.

<sup>322</sup> Trial Judgment in *Blagojević and Jokić*, para. 645, *Prosecutor v. Semanza*, ICTR-97-20-T, Trial Judgment, 15 May 2003, para. 321, 322 and *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Appeals Judgment, 7 July 2006, para 644.

<sup>323</sup> Trial Judgment in *Krstić*, para. 513, Trial Judgment in *Blagojević and Jokić*, para. 646.

<sup>324</sup> Trial Judgment in *Blagojević and Jokić*, para 645.

921. The Krstić Trial Chamber held that “inhuman treatment [...] and deportation are among the acts which may cause serious bodily or mental injury.” This Panel fully accepts this position and finds support for this in the case-law of the ICTY as well as in other sources.<sup>325</sup> The Blagojević Trial Chamber finds that the “trauma and wounds suffered by those individuals who managed to survive the mass executions do constitute serious bodily and mental harm”.<sup>326</sup> Furthermore, the Bosniak men “suffered mental harm having their identification documents taken away from them, seeing that they would not be exchanged, and when they understood what their ultimate fate was”<sup>327</sup>. The Trial Chamber is convinced that the forced displacement of women, children and elderly people was itself a traumatic experience under the circumstances, so was the forced separation from their loved ones and the consequences thereof, and, in particular, the fact that they are still searching for the bodies of their loved ones.<sup>328</sup>

922. The account of facts in the Indictment does not expressly state bodily or mental harm inflicted on the prisoners in the Kravica Cooperative, or on the men who were separated from their families in Potočari, or the survived relatives of the killed people. However, based on the presented evidence and mentioned standards, the Panel concludes that the suffering of a few male Srebrenica survivors resulting from the separation of their families, treatment during the capture, imprisonment and attempts of summarily executions, all amount to serious bodily and/or mental harm.

923. It was proved beyond a reasonable doubt that the prisoners in the Kravica warehouse suffered serious bodily and mental harm, resulting both from the conditions of their imprisonment and the acts aimed at depriving their lives.

924. The Panel is satisfied that the forcible separation of men from women, mothers from their minor children and forcible transfer of civilians from Potočari, also amounts to mental harm inflicted on the victims, since the women who survived lost their male family members (husbands, brothers, children) and, having suffered such a tragedy, they were definitely incapable of living a normal and constructive life.

## **B. GENOCIDAL INTENT**

### **(a) Mens Rea**

925. According to the definition of the crime of Genocide in international law, in addition to the existence of the general elements, the specific intent (*dolus specialis*) is also required, as a distinct element of this crime.<sup>329</sup> Any of the underlying acts of the crime must be perpetrated with the aims as defined under Article 171 of the CC of BiH:

- 1) goal;

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<sup>325</sup> Trial Judgment in *Blagojević and Jokić*, para 646, quote from the Trial Judgment in *Krstić*, para. 513.

<sup>326</sup> Trial Judgment in *Blagojević and Jokić*, para 647.

<sup>327</sup> Trial Judgment in *Blagojević and Jokić*, para 647.

<sup>328</sup> Trial Judgment in *Blagojević and Jokić*, paras 650, 652 i 653.

- 2) to destroy;
- 3) in whole or in part ;
- 4) a national, ethnic, racial or religious group.

926. In the case of Miloš Stupar *et al.* (Kravica) and Trbić (final verdict rendered), the trial Panels examined each of these elements as follows,

(i) „Goal“ („intent“)

927. Pursuant to Article 2 of the Convention on Genocide, the term “goal” includes the intention to destroy the group „as such“. The evidence must prove that the “proscribed acts were committed against the victims because of their membership in the protected group“, but not “solely because of such membership.”<sup>330</sup>

928. Prosecutions of both *ad hoc* Tribunals have argued on several occasions that it is not necessary to prove genocidal intent for all types of participation in genocidal criminal intent. It is sufficient, for example, that an accomplice was aware of the genocidal intent of his superior, but he himself did not have to have such an intent, he did not even have to agree with it. This position is indisputably supported by the *ad hoc* Tribunals case law to some extent. The ICTY appeals chamber accepted this position, in particular with regard to accountability for aiding and abetting and for joint criminal enterprise.

929. The cited case-law is used in this case as the argumentation which corroborates the conclusion of the Panel that the Accused had the intention to aid the criminal offense committed by someone else, aware of its legally defined essential elements, therefore of the genocidal intent shared by the principal participants of the JCE.

(ii) „to destroy“

930. It is important to note that the perpetrator must have the intention to destroy a specific group, not only to cause its suffering or discrimination. This implies physical destruction, as opposed to cultural or geographical removal of such group from the territory where it lives. Hence, it does not suffice that the perpetrator had the intention to expel the group from a certain area and/or deprive the group of some rights or privileges, although those circumstances may be relevant to prove the required intent.

931. The perpetrator must intend to destroy the physical or biological existence of a group of people. This means that the intention of the perpetrator to destroy (eradicate) their ethnic, racial or religious characteristics does not suffice. Ethnic, racial or religious affiliation cannot be considered as a protected object, the object protected from this criminal offense can only be the physical group which is distinguished by one of these specific characteristics.

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<sup>329</sup> Report of the International Law Commission on the work of its 48th session, 6 May – 26 July 1996. („OLC Report, 1996“), UN Doc. A/51/10. See also Trial Judgment in Akayesu, para. 498. („Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*.“).

<sup>330</sup> *Prosecutor v. Niyitegeka*, ICTR-96-14-A, Appeals Judgment of 9 July 2004, para. 53. (emphasis in the original text).



932. It does not have to be proved that the accused intended to “entirely destroy one group in the whole world”, but only the group (or its part) which the Court established the accused intended to destroy (the geographic area where the group lives can be of a limited scope).

933. The Convention on Genocide and the laws by which it is implemented at present and which were applicable in the former Yugoslavia enumerate a number of methods which can be used to physically destroy a group. While killing members of a group can be the most direct means of destroying the group, other methods or their combination, applied with the same goal, can also lead to the destruction of the group.

934. The Trial Chamber in *Blagojević* finds that “the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself.” In reaching this conclusion, the Chamber agrees with the Appellate Chamber of the *Krstić* case that “forcible transfer could be an additional means by which to ensure the physical destruction [of the protected group].”<sup>331</sup>

(iii) „wholly or in part“

935. The perpetrator of genocide, as already said, need not necessarily intend to wholly destroy a specific group ‘in the whole world’, his intention is sufficient to destroy such group (wholly or in part) that the Court marked as a protected group. In that context, it can be concluded that the intention to eliminate a group from a limited geographic area, like a territory of a state, or even a municipality, can qualify as genocide since the intent to destroy formed by a perpetrator of genocide will always be limited by the opportunity presented to him.<sup>332</sup>

936. Even though the perpetrators of genocide need not intend to destroy the whole group protected by the Convention, they still have to perceive the part of group they want to destroy as a separate entity that has to be eliminated as such. A large number of victims viewed in the context of other evidence can lead to a conclusion that such an intent existed.

937. On the other hand, killing all or one part of members of a group in a small geographic area, although resulting in a smaller number of victims, can be qualified as genocide if it was perpetrated with the intention to destroy one part of such group in a rather small geographic area.

938. With regard to the notion of destruction “in part”, the ICTY Appeals Chamber defined that destruction in part must be of a ‘substantial’ nature so as to affect the

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<sup>331</sup> Trial Judgment in *Blagojević*, para. 666. Moreover, pursuant to the law which was in force at that time, forcible transfer was one of the listed methods to commit genocide. Article 141 of the Criminal Code of SFRY.

<sup>332</sup> Appeals Judgment in *Krstić*, para. 13.

entirety. The first alternative to the formulation 'in part' in numerical terms implies that the perpetrator intended to destroy 'a substantial number of members of the group'.

939. If the quantity requirement, 'vital' or 'substantial', is not satisfied, the intention to destroy a group 'in part' can be proved in terms of quality – if the part targeted for destruction constitutes a 'vital' or 'characteristic' part of the group, whose destruction would have an impact on the group as a whole. Numerous Panels have found that the destruction 'in part' implies the destruction of a specific group of people, which must affect (or is likely to affect) the remaining part of the whole group.

940. The position of the Trial Panel in *Krstić* is given as an example. They held that the killing of all military aged Bosnian Muslim men of Srebrenica amounted to the destruction of the group 'in part'. The intention to kill all military aged Bosnian Muslim men of Srebrenica satisfies the requirement of intention to destroy 'in part' the group of Bosnian Muslims within the meaning of the definition of the criminal offense of genocide. This conclusion clearly encompasses three grounds: gender of victims (only men), age (only or predominantly military aged men) and geographic origin (Srebrenica and the surroundings). The Appellate Panel further noted that the intention to destroy a substantial part of one group (Bosnian Muslims from Srebrenica) stems from the intention to destroy a limited part part of the group (in this case military aged Muslim men from Srebrenica).

941. This Panel accepts the already presented positions of ICTY Panels and holds that when a conviction relies on "the intent to destroy a group 'in part', the part must be a substantial part of that group".<sup>333</sup> Also, an analysis of the notion of "substantial" part of a group incorporates a number of elements including the numeric size, relative majority of the part relative to the total of the group as a whole, prominence within the group, if a specific part of the group is emblematic of the overall group, or is essential to its survival.

942. According to the estimate of Miroslav Deronjić, the civil affairs commissioner for Srebrenica, there were around 40.000 people in the enclave.<sup>334</sup>

943. The Defense disputed during the proceedings that a "substantial" part of Bosniaks from Srebrenica were killed in Srebrenica. They referred to the Srebrenica Municipality statistics and to the number of men from the column who arrived in the territory of Tuzla. However, the Panel notes that the Defense ignored the fact that there were more people

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<sup>333</sup> Appeals Judgment in *Krstić*, para. 8; KMP Report of 1996, p. 45. (However, the crime of genocide by its nature requires the intent to destroy at least a substantial part of a specific group."). See Trial Judgment in *Jelisić*, para. 82; *Prosecutor v. Sikirica*, IT-95-8-T, Judgment on the Defense Motion to Acquit the Accused, 3 September 2001, para. 65; *Kayishema and Ruzindana*, Judgment, para. 97; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgment, 7 June 2001, ("*Bagilishema* Trial Judgment") para. 64; Trial Judgment in *Semanza*, para. 316. See also, Benjamin Whitaker, Revised and Updated Report on the Prevention and Punishment of the Crime of Genocide, U.N. Doc. E/CN.4/Sub.2/1985/6, para. 29. („In part“ would seem to imply a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership.“).

<sup>334</sup> T-195 (Decision of the Court of BiH of 26 August 2010) Transcript of testimony of a deceased witness Miroslav Deronjić given in the Momir Nikolić case of 28 October 2003.

in the Srebrenica Municipality at that time than the statistics showed, since Srebrenica was a safe area and many refugees came there because they felt safer. This follows from a number of final judgments rendered both by the Court of BiH and ICTY, which established there had been around 40.000 people in Potočari at that time, exclusive of the members of column.

944. According to the established facts, accepted by this Panel, Bosnian Serb forces executed several thousand Bosnian Muslim men after the take-over of Srebrenica. The total number of executed people most probably ranges from 7000 to 8000 men.“

945. The killed men constituted about one-fifth of the Srebrenica community.<sup>335</sup>

946. The Panel concludes that all the killed men, nearly 7000 of them<sup>336</sup>, including all the prisoners killed in the Kravica Farming warehouse (at least 1000 of them) whose killing is the subject of this criminal proceedings, were killed in the same murder operation following the take-over of Srebrenica. Their killing by itself, but also in combination with the transfer of the remaining Srebrenica Muslim population, had a significant impact on that group of Bosnian Muslims as a whole.

947. The issue of perception logically arises – how do the perpetrators understand the notion of “substantial part of a group.” This is certainly a factor that has to be taken into account. Nevertheless, the Panel is satisfied that the group which was the target of the attack objectively represents a substantial part of a specific group.

(iv) „the protected group: national, ethnic, racial or religious group“

948. The protected group here are not individual persons, but national, ethnic, racial or religious groups.

949. The Convention on Genocide and Statutes of *ad hoc* Tribunals identify four categories of protected groups: national, ethnic, racial and religious. These four categories can partially overlap, but each of them has a clear core. The Statutes define the four categories of protected groups bearing different degrees of specificity:

950. A “national group” is a collection of people who are perceived to share a legal bond based on common citizenship, coupled with the reciprocity of rights and duties.’

951. An “ethnic group” is a “group whose members share a common language or culture.”<sup>337</sup>

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<sup>335</sup> The fact established in ICTY proceedings, accepted by this Panel under the Decision of 10 July 2010.

<sup>336</sup> T-78 (estimated number of a minimum number of persons exhumed by the ICTY from 1996 to 2001). The number represents the minimum people killed in Srebrenica, since the figure increases on an annual basis and the reports on the number of killed people are permanently updated.

<sup>337</sup> Trial Judgment in *Akayesu*, para 513, see also para. 720 of the same Judgment, the Trial Chamber is of the opinion that the Tutsi constituted a group referred to as “ethnic” within the meaning of the prohibition of genocide. Trial Chamber in *Kayishema and Ruzindana* holds that an “ethnic” group is a group „whose members share a common language and culture; or; a group which distinguishes itself as such (self-

952. A “racial group” is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors”.<sup>338</sup>

953. A “religious grup” is a “group whose members share the same religion, denomination or mode of worship”.<sup>339</sup>

954. The determination whether a group comes within the sphere of protection “ought to be assessed on a case-by-case basis by reference to the objective particulars of a given social or historical context, and by the subjective perception of the perpetrators.”<sup>340</sup>

955. A protected group can be subjectively identified “by using as a criterion the stigmatization of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnic, racial or religious characteristics.

956. It was proved beyond any reasonable doubt during the proceedings that the civilians who were forcibly transferred from Potočari, and the men separated in Potočari, captured while the column was moving and executed in the Kravica warehouse, were all Bosnian Muslims from Srebrenica.

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identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)” (Trial Judgment in *Kayishema and Ruzindana*, para 98). The Trial Chamber further accepted that the Tutsies were an “ethnic” group in the context of defining the scope of protected groups. (Trial Judgment in *Kayishema and Ruzindana*, para 523). Definition of “ethnic group” within the meaning of genocide formulated by these different Panels is, to say the least, rather vague. The fact that individuals share a common language (as is the case with the majority of people in Nigeria and Australia), or a common culture (like Bosnian Serbs and Bosnian Muslims in many aspects), hardly suffices to say that they belong to the same “ethnic” group within the meaning of the Convention of Genocide. The notion of “ethnicity” is undoubtedly ambivalent and bears strong political weight. Criminal law (including the law on Genocide) requires precision, therefore, the Tribunals should formulate a more precise legal definition thereof, notwithstanding that it is entirely acceptable to leave a relatively broad definition of this notion for the purpose of a mere prevention of genocide.

<sup>338</sup> Trial Judgment in *Akayesu*, para 514. In *Krstić*, the Trial Chamber referred to the International Convention on the Elimination of All Forms of Racial Discrimination which defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin.” (Trial Judgment in *Krstić*, para 555). See also the Trial Judgment in *Kayishema and Ruzindana*, para 98.

<sup>339</sup> Trial Judgment in *Akayesu*, para 515. This definition of religion is blatantly repeated over and over, since it is a group whose identity as a “religious group” is defined by practices which make that group a specific religious group (for instance, the mode of worship). Differences in religions among two or more groups of individuals will mostly be obvious, like between Bosnian Muslims and Bosnian (Orthodox) Serbs. On the other hand, the differences may also be minor, for instance two closely linked sects within the same religion. What about different levels of devotions to the similar religion (like Muslims who do not practice religion as fundamentalists)? What about religions or quasi-religious practices which are not officially recognized as religions (for example Scientology Church or Falun Gong)? However, not a single Tribunal needs to establish those facts given that in both cases (Rwanda and Former Yugoslavia) religious boundaries among different groups were rather clearly defined.

<sup>340</sup> Trial Judgment in *Semanza*, para 317. (emphasis in the original). See also: Trial Judgment in *Bagilishema*, para 65; *Prosecutor v Musema*, ICTR-96-13-T, Judgment of 27 January 2000, (“*Musema Trial Judgment*”) paras 161-163; *Prosecutor v Rutaganda*, ICTR-96-3-T, Judgment of 6 December 1999, (“*Rutaganda Trial Judgment*”) paras 56-58; Trial Judgment in *Kayishema and Ruzindana*, para 98; Trial Judgment in *Akayesu*, para 702.

957. To that end, the Trial Panel finds that Bosnian Muslims undeniably represent a national, ethnic and religious group, and, as such, they belong to the protected group category in terms of Article 171 of the CC of BiH.

958. At that time, Bosnian Muslims were a constituent “people” in the Socialist Republic of BiH (Constitution of SR BiH of 1974), and there is ample evidence, both oral and documentary, showing that members of the other national groups who committed crimes over Bosniak people identified and stigmatized Bosnian Muslims as a separate national group throughout history.

959. The foregoing evidently shows that the criminal offense of Genocide is distinct from other crimes inasmuch as it embodies a special intent, which in this concrete case constitutes an element of the crime, where it is necessary to clearly establish that the perpetrator sought to produce the act charged. Thus, the special intent in the crime of genocide lies in “*the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.*”<sup>341</sup> Consequently, a person may be convicted of genocide only if he had a special intent to commit one of the underlying criminal offenses of genocide.

960. In the absence of direct evidence on the existence of genocidal intent, the Court is authorized to look into other facts and circumstances of the case. The tribunals have listed a number of factors which can be relevant to establish the required genocidal intent of the accused, such as: (1) a general context; (2) the perpetration of other codified acts systematically directed against the same group; (3) the scale of atrocities committed; (4) the systematic targeting of victims on account of their membership of a particular group; (5) the repetition of destructive and discriminatory acts; (6) number of victims; (7) means and methods used for the perpetration of the crime; (8) the area of the perpetrator’s activity; and (9) demonstrated intention of the perpetrator to kill his victims.<sup>342</sup>

961. Also, the statements and/or testimony of the accused, showing his attitude towards the fate of the group or victims, can be taken into account to possibly examine his state of mind at the moment of perpetration of the criminal offense.<sup>343</sup>

962. The problems in establishing the genocidal intent occur because “intent is a mental factor which is difficult, if not impossible, to determine, but, on a case-to case basis, it can be inferred from the documentary evidence submitted to the Panel”<sup>344</sup> In practice, the determination that the accused had a genocidal intent often seems only as a conclusion inferred from the hard evidence on the participation in the commission of

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<sup>341</sup> Trial Judgment in *Akayesu*, paras 498, 517-522; See *Musema*, Judgment, para 164.

<sup>342</sup> See, *inter alia*, Appellate Judgment in *Jelisić*, para 47; Trial Judgment in *Akayesu*, para 523; Trial Judgment in *Jelisić*, paras 73-77; Decision in *Karadžić and Mladić* Rule 61, paras 94-95; Appellate Judgment in *Krstić*, paras 12-14 and 21; Decision in *Milošević* Rule 98bis, paras 246 and 288; Trial Judgment in *Kayishema and Ruzindana*, para 93; Trial Judgment in *Kajelijeli*, para 806 and the cases cited therein.

<sup>343</sup> See Trial Judgment in *Jelisić*, para 73.

<sup>344</sup> Trial Judgment in *Rutaganda*, para 61-63; see also *Musema*, para 167; Trial of Joseph Altstotter *et al.* (“Justice case”), United States Military Tribunal, Nuremberg, 17 February – 4 December 1947, Law reports, Vol. VI, p. 62-64.

the criminal offense, coupled with the knowledge that members of the group were massively killed or ill-treated. Therefore, the accused willingly decided to participate in the criminal campaign, aware of what was going on (an enemy group being destroyed or was designated as a group to be destroyed), so it can be concluded that the accused who participated in that campaign undoubtedly had the intention to destroy the group.

963. The Panel holds that the knowledge of the Accused about the genocidal intent of others is relevant since it shows his certain genocidal *mens rea*. However, the existence of genocidal intent within the meaning of Article 171 of the CC of BiH must be the only reasonable conclusion from the evidence and must be established beyond a reasonable doubt.<sup>345</sup>

964. In other words, the offender is guilty of the crime of Genocide, regardless of the scope of the committed crimes, only if he had the specific intent:

- a) to destroy, in whole or in part, a group as such; or,
- b) he knew that the acts committed would destroy, in whole or in part, a group as such; or
- c) he knew that the acts committed would likely result in destroying, in whole or in part, a group as such.<sup>346</sup>

965. The intent of the accused should first of all be established on the basis of his words and actions, and should follow from the pattern of actions which have a specific goal.<sup>347</sup> The circumstances based on which the Court can establish the intent would include other actions too, in addition to those listed.<sup>348</sup>

966. In examining whether the Accused had the genocidal intent, the Panel observed the standards which protect the presumption of innocence – meaning that evidence must be clear and unambiguous and the conclusion of the Panel must be the only reasonable conclusion from the evidence.

967. Genocide is the gravest criminal offense codified under the Criminal Code of BiH and one of the worst crimes known to the humankind, and its gravity is reflected in the stringent requirement of specific intent.

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<sup>345</sup> See, inter alia, Trial Judgment in *Kayishema and Ruzindana*, paras 531-545.

<sup>346</sup> Trial Judgment in *Akayesu*, para 520.

<sup>347</sup> Trial Judgment in *Bagilishema*, para 63.

<sup>348</sup> *Prosecutor v Karadžić & Mladić*, Review of Indictments pursuant to Rule 61, cases no. IT-9S-S-R61 & IT-95-18-R61 (11 July 1996) (“*Karadžić and Mladić* Indictment”) page 52, para 94; see also *Prosecutor v Nikolić*, Review of Indictments pursuant to Rule 61, case no. IT-94-2-R61, 20 October 1995, para 34 (“the constitutive intent of the crime of genocide may be inferred from the very gravity of those discriminatory acts” like mass murders being committed in the region); *Trial of Bruno Tesch and two others* (“*the Zyklon B case*”), Law Reports, Vol. I, p. 102 (the conclusion about the knowledge can be inferred from “the general atmosphere and conditions of the firm itself”).

968. In this case, the knowledge of the accused of the mass killings committed at the relevant time in the area of Srebrenica cannot alone support an inference of genocidal intent,<sup>349</sup> so that the Panel inferred from the evidence that the Accused were only aware of the genocidal intent on the part of the principal perpetrators of the criminal offense of Genocide and by their actions, which will be elaborated in detail further in the Verdict, they significantly contributed to the commission of the criminal offense. Thus, the Panel found them guilty of aiding in Genocide.

## **XII. RESPONSIBILITY OF THE ACCUSED FOR AIDING IN GENOCIDE**

969. Based on the presented evidence, the Panel could not infer beyond any reasonable doubt that the Accused had the genocidal intent, but they were aware of the intent of some members of the VRS Main Staff to commit genocide, and, with that knowledge, they did nothing to prevent the use of Jahorina Training Center members to forcibly transfer civilians, separate men and keep them in the “Bijela kuća” detention facility, and for the mass killings of Srebrenica men, so that the Panel finds them responsible for aiding in Genocide.

970. Since the acts of the Accused are codified under Articles 180(1) and 31 of the CC of BiH, the Panel will proceed by explaining why it finds the Accused culpable as aiders in the commission of the criminal offense of Genocide.

971. According to Article 180(1) of the CC of BiH, a person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of the criminal offense referred to in Article 171 (Genocide)... of this Code shall be personally responsible for the criminal offense. The official position of any accused person, whether as Head of State or Government, or as a responsible Government official person, shall not relieve such a person of criminal responsibility nor mitigate the punishment.<sup>350</sup>

972. As already explained, the Panel is not satisfied that the Accused Jević and Đurić participated in the planning of the committed crimes since they did not share the genocidal intent with the participants therein. Accordingly, the Panel has not found them culpable for the co-perpetration in Genocide, as alleged in the Indictment, but only for aiding in the commission of Genocide.

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<sup>349</sup> The Appeals Chamber holds that all that the evidence can establish is that Krstić was aware of the intent to commit genocide on the part of some members of the VRS Main Staff, and, with that knowledge, he did nothing to prevent the use of Drina Corps personnel and resources to facilitate those killings. This knowledge on his part alone cannot support an inference of genocidal intent. Genocide is one of the worst crimes known to humankind, and its gravity is reflected in the stringent requirement of specific intent. Convictions for genocide can be entered only where that intent has been unequivocally established. There was a demonstrable failure by the Trial Chamber to supply adequate proof that Radislav Krstić possessed the genocidal intent. Krstić, therefore, is not guilty of genocide as a principal perpetrator.

<sup>350</sup> Emphasis added.

973. In reaching this conclusion, the Panel has taken into account the case law accordng to which “aider [and abettor] contributes to the commission of the criminal offense either by assisting the perpetrator who physically committed the criminal offense or a participant in the joint criminal enterprise who perhaps did not physically commit the offense.”<sup>351</sup>

974. Therefore, the Panel need not establish who presicely were the participants in the joint criminal enterprise whom the Accused assisted, but they were definitely highest officials in the military and police forces. The important thing is that the menitoned individuals, together with Milorad Trbić and other persons convicted under non-final ICTY judgments, devised and participated in the joint criminal enterprise to commit Genocide.

975. On the other hand, the Panel has not accepted the allegations of the Indictment that Goran Sarić and Dragomir Vasić participated in the principal JCE, since those persons have not been indicted for the events in Srebrenica and they were examined as prosecution witnesses in this case.

976. The *actus reus* of aiding and abetting within the meaning of this provision consists of acts and omissions aimed at assistance, encouragement or moral support to the commission of a specific criminal offense which has a substantial effect on the perpetration of a specific criminal offense (Genocide in this case).

977. Assisting or encouraging must have a substantial effect upon the perpetration of a crime, and the Prosecution need not prove that the offense would be committed without aider’s contribution.<sup>352</sup>

978. With regard to *mens rea* for aiding and abetting in Genocide, pursuant to Article 180(1) of the CC of BiH, the Prosecution must prove beyond any reasonable doubt that the (1) accused knew or was aware of the gonocidal intent of the principal perpetrator, and (2) with such knowledge and state of mind, he took actions which assisted or contributed to the commission of Genocide.

979. Aiding is defined under Article 180(1) of the CC of BiH, which incorporates the provisions of the ICTY Statute, but also in Article 31 of the CC of BiH, which provides in its sub-paragraph 1: “*Whoever helps intentionally another to perpetrate a criminal offense shall be punished as if he himself perpetrated such offense, but the punishment may be reduced.*” Sub-paragraph 2 defines that “*the following shall be considered as helping in the perpetration of the criminal offense: giving advice or instructions as how to perpetrate a criminal offense, supplying the perpetrator with tools for perpetrating the criminal offense, removing obstacles to the perpetration of the criminal offense, and promising, prior to the perpetration of the criminal offense, to conceal the existence of hte criminal offense, to hide the perpetrator, the tools used for perpetrating the criminal*

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<sup>351</sup> Appeals Judgment in *Blagojević and Jokić* para. 127; Appeals Judgment in *Brđanin* para 484; Appeals Judgment in *Simić* para 86; Appeals Judgment in *Blaškić* para 49; Appeals Judgment in *Vasiljević* para 102;

<sup>352</sup> Mrkšić and Šljivčanin, Appeals Judgment, par. 81.



*offense, traces of the criminal offense, or goods acquired by perpetration of the criminal offense.”*

980. It follows from this provision that aiding as a mode of complicity exists when a person intentionally supports a perpetrator of a criminal offense, and/or encompasses acts aimed at facilitating the perpetration of a criminal offense by another person.

981. The Panel is satisfied beyond doubt that Genocide was committed in Srebrenica in 1995. Given the nature of the criminal offense, it could not have been committed by only one person, but required an active involvement of multiple persons, each of whom had their specific roles. However, it is clear that not all participants in the events in Srebrenica acted with the same *mens rea* at the relevant time, nor did they take the same actions.

982. It is the duty of the Court to establish criminal responsibility of each and every accused person and in every specific case, having in mind his actions, objective and intent. Based on the presented evidence, the Panel is not satisfied beyond any reasonable doubt that the Accused Jević and Đurić shared the genocidal intent with the principal perpetrators, but it was clearly proved they were aware of it, so that they intentionally took actions by which they gave a substantial contribution to the implementation of the genocidal plan, so that the Panel finds them guilty as aiders of Genocide.

**1. Knowledge of the Accused of the genocidal intent of the principal perpetrators**

983. The Panel is satisfied beyond doubt that the Accused Duško Jević and Mendeljev Đurić were fully aware of the genocidal intent of the principal participants in the JCE and/or perpetrators of Genocide. In other words, they were aware of the objectives of all segments of implementation of the genocidal plan, including the forcible transfer of civilians from Potočari, separation and capture of men and their mass execution, whose ultimate goal was to destroy a substantial part of Bosniak population of Srebrenica.

984. Although a specific plan to destroy does not constitute an element of genocide, it would appear that it is not easy to carry out a genocide without such a plan, or organisation.”<sup>353</sup> It is virtually impossible for the crime of genocide to be committed without some or indirect involvement on the part of the State given the magnitude of this crime. It is unnecessary for an individual to have knowledge of all details of the genocidal plan or policy,<sup>354</sup> but the existence of such a plan would be strong evidence of the specific intent requirement for the crime of genocide.<sup>355</sup>

985. The extent of knowledge of the details of a plan or a policy to carry out the crime of genocide would vary depending on the position of the perpetrator in the government hierarchy or the military command. Therefore, the information of the plan was not, nor

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<sup>353</sup> Trial Judgment in *Kayishema and Ruzindana*, para 94.

<sup>354</sup> Trial Judgment in *Kayishema and Ruzindana*, para 94.(quote omitted).

<sup>355</sup> Trial Judgment in *Kayishema and Ruzindana*, para 276.

could have it been of the same quality as the knowledge of the generals of the VRS General Staff and the Accused, who, as members of the VRS Special Police Brigade intentionally took actions which substantially contributed to the implementation of the genocidal plan on the ground.

986. To that end, it is important to note that there is no rule which defines the degree of quality information the accused had to possess at the relevant time. Therefore, the Defense is entirely unjustified in requesting the Accused to be exculpated only because they did not possess the same quantity of information about the general plan or policy as their superiors.

987. Since the Accused clearly held certain positions in the chain of command in the armed forces of the Republika Srpska at the relevant period, it can be reasonably inferred that, as such, they were aware of the intentions of their superiors, or they could not be unaware of them after receiving an order to commit numerous unlawful actions against persons belonging to a specific group. As longtime MUP employees, they were fully aware of the unlawful actions they were taking, which were evidently aimed at a total destruction of victims, selected only on the grounds of their belonging to a specific group. Thus, they cannot avoid responsibility by arguing they were not familiar with all details of the overall genocidal plan or policy.

988. In *Krstić*, while establishing the knowledge of Radoslav Krstić about the genocidal intent of the principal perpetrators, the Appeals Chamber gave significant weight to the fact that he was aware of the mass killings.<sup>356</sup>

989. It was important to examine in this case whether the Accused knew about the genocidal intent of the participants in the JCE and do that by applying the mentioned standards to establish their knowledge and participation in a number of offenses charged, like forcible transfer, random and mass killings.

990. Considering that the Accused had a *de facto* command over members of the Jahorina Training Center 1<sup>st</sup> and 2<sup>nd</sup> Company in the area of Srebrenica at the relevant period, the Panel examined the *actus reus* of aiding and abetting on their part, bearing in mind the position taken by the ICTY Appeals Chamber in *Blagojević and Jokić*. The Chamber established that „*actus reus* of aiding and abetting may be satisfied when the commander allowed the resources and soldiers under his command to be used to facilitate the commission of the criminal offense,<sup>357</sup> as was done in the specific case.

991. On the other hand, the *mens rea* for aiding and abetting requires that the actions taken facilitated the commission of the specific criminal offense by the principal

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<sup>356</sup> Appeals Judgment in *Krstić*, par. 26.

<sup>357</sup> Same position is taken in the Appeals Judgment in *Krstić*, para. 137, 138 and 144.

perpetrator. In offenses mandating a showing of a specific intent, like genocide, an aider and abettor must be aware of the principal perpetrator's intent.<sup>358</sup>

992. The Appeals Judgment in *Blaškić* and the Appeals Judgment in *Vasiljević* state as follows: „for the mens rea of aiding and abetting, the aider and abettor need not share the required mens rea of the criminal offense; his knowledge is sufficient that that his acts assist in the commission of the principal perpetrator's crime. The aider and abettor must also be aware of the “essential elements” of the criminal offense committed by the principal perpetrator, including the mens rea of the principal perpetrator.“

993. A review of the ICTY Trial and Appeals Judgements in *Blagojević and Jokić*<sup>359</sup> reflects that the Trial Chamber based its finding that the accused knew of the genocidal intent of the principal perpetrators on the following facts: (1) his knowledge that the “Krivaja 95” operation was to create conditions for the elimination of the Srebrenica enclave, (2) his knowledge that the entire Bosnian Muslim population was driven out of Srebrenica towards Potočari, (3) his knowledge that Bosnian Muslim men were separated from the rest of the population, (4) his knowledge that Bosnian women, children and the elderly were forcibly transferred to non-Serb held territory, (5) his knowledge that Bosnian Muslim men were detained in inhumane conditions in temporary detention centers pending further transport, (6) his knowledge that the Bratunac Brigade contributed to the murder of Bosnian Muslim men detained in Bratunac, and (7) his knowledge of and participation in a mopping-up operation with the purpose of capturing and detaining Bosnian Muslim men from the column so as to prevent them from reaching the territory under the Army of BiH control.

994. As already stated, in the *Blagojević* Trial Judgment, the Trial Panel identified several facts which amount to “providing practical assistance” to the “murder operation” in order to precisely define the acts of aiding. Based on the presented evidence, the Panel concluded that on the orders and under the supervision of the Accused Duško Jević and Mendeljev Đurić, members of the Jahorina Training Center participated in: (1) the transport of Muslim civilians in Potočari, and through their presence in Potočari and conduct of the unit members, they contributed to the creation of an atmosphere of terror and uncertainty surrounding the stay of civilians in Srebrenica, so that the Accused were aware that civilians were leaving against their own will, (2) separation of Bosnian Muslim men from the rest of the population in Potočari, (3) guarding the detained men in the “White House”, (4) mass execution of the men in the Kravica warehouse, (6) search of the terrain above Konjević Polje to capture the remaining groups of men from the column, who the Accused Jević and Đurić knew would be summarily executed, same as the men from the warehouse.

995. ICTY Trial Chamber noted and Appeals Chamber upheld the conclusion that the killing was engineered and supervised by some members of the Main Staff of the

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<sup>358</sup> Appeals Judgment in *Ntagerura et al.* para 370 and Appeals Judgment in *Krstić*, par. 140 i 141.

VRS.<sup>360</sup> The fact that the Accused Jević and Đurić ordered members of their unit to actively participate in the forcible transfer of civilians, separation of men and their execution in the “Kravica” warehouse, clearly shows that they were aware of the genocidal intent of some members of the Main Staff of the VRS. More precisely, they must have become aware of it at least when the men were separated in Potočari and transported in the direction of Bratunac without their personal belongings and identification documents.

996. This conclusion is supported by an indisputable fact – during the executions in the Kravica warehouse, the Accused did not at any moment show any surprise or disagreement with the way the captured men were treated, precisely because they had already been aware of the plan as to how to treat all the separated and captured men.

997. The Panel concludes accordingly that those actions, viewed in combination, undeniably prove the act of providing practical assistance to the implementation of the genocidal plan, and/or to the commission of the criminal offense of Genocide.

998. The Defense for the Accused Duško Jević presented a number of exhibits during the proceedings<sup>361</sup> to dispute that the Accused had known about the plan to kill the men and his participation in the JCE, primarily referring to the portions of testimony given by Momir Nikolić in the Trbić case of the Court of BiH and the Nikolić case of the ICTY.

999. The Defense argues that those portions of testimony marginalize and clarify the role of the Accused Duško Jević, who was only an executioner on the ground, without knowledge of a broader context of the committed crime, or of the plan to kill all able-bodied men, same as the witness Momir Nikolić attempted to do in his testimony<sup>362</sup> in the Trbić case, in the context of his own actions in the field mission in Srebrenica.

1000. The Defense for the Accused Mendeljev Đurić also argued that the Accused did not know of the existence of any “plan” prior to leaving for a field mission in Srebrenica, nor did he act with genocidal intent while executing his assignment. In that respect, the Defense examined witness Jovica Gligić, who had attended the College of Internal Affairs in Zemun together with the Accused Đurić in December 1994. The witness, who stayed in the boarding school of the College until September 1995, claims that the Accused had exams until 20 June same year,<sup>363</sup> more precisely, he believed that the Accused had left around 26 June. The witness further explained that the Accused, as a part time student, was an active MUP employee.

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<sup>359</sup> Appeals Judgment in Prosecutor v Vidoje Blagojević and Dragan Jokić No. IT-02-60-A of 9 May 2007, paras. 121 and 122.

<sup>360</sup> Appeals Judgment in *Krstić* para 35.

<sup>361</sup> Documentary evidence presented at the main trial hearing of 16 May 2011.

<sup>362</sup> OI-34 Transcript of Momir Nikolić’s testimony *Trbić*, X-KR-07/386 of 1 September 2008.

<sup>363</sup> At a main trial hearing of 23 May 2011, witness Jovica Gligić was shown a photocopy of Mendeljev Đurić’s Mark Book, and he confirmed that all students of the College in Zemun had such Mark Books. He added that the Accused was a part-time student, as stated in the document admitted as Exhibit OII-8.

1001. According to witness Ljuban Popržen, who stayed on Jahorina as an instructor with a part of recruits when others had left to the field mission in Srebrenica, he did not even know at that time that Srebrenica was a “safe area”, nor did he know about the forcible transfer of people or mass killings. He did not learn about that before August 1995. Upon return from the field mission, no one spoke about the assignments the recruits had during the field mission in Srebrenica and he was not aware of any disciplinary action against any person.

1002. Almost all the examined witnesses, including Jevto Doder, who was a platoon commander in July 1995, claim that members of the Jahorina Training Center did not know about the “Krivaja 95” plan prior to their departure to the field mission in Srebrenica; they were particularly unaware of the plan to forcibly transfer Bosniak civilians or to kill able-bodied men.

1003. Witness Radomir Pantić arrived in Bratunac with members of the PJP Zvornik 1<sup>st</sup> company and met Ljubomir Borovčanin in front of the Police Station. They were ordered to go in the direction of the Yellow Bridge in the evening of 11 July and wait for further instructions. In claiming so, he attempted to support the allegations of a number of examined witnesses who stated they were unaware of any plan for Srebrenica, since they received specific assignments only when they arrived in the field and resubordinated to the superior in charge. This witness did not learn about the “safe area” status before the following day, when they passed through Potočari on their way to the Srebrenica town.

1004. The Panel could not accept these averments as true given that this witness was the Chief of the Milići Police Station, therefore, he lived and worked very close to the Srebrenica safe area and was suspected of the events relating to Srebrenica, so that he had a clear interest to avoid mentioning in his testimony those things which bore specific weight in the final evaluation of evidence. Knowing that this witness would use his right not to incriminate himself and would avoid answers to some questions or give vague responses, the Panel still found relevant the portion of his testimony in which he objectively described the structure of the police forces assigned to the field mission in Srebrenica in July 1995 under the command of Ljubomir Borovčanin.

1005. Based on the other presented evidence, the Panel found that the Accused were aware of the general context of the genocidal plan implementation. Given the specific situation in the field and the execution of assignments, they could not have been unaware of the plan, as follows from numerous pieces of evidence presented to the court.

1006. Throughout the proceedings, the Defense disputed not only the existence of genocidal intent on the part of the Accused, but also their awareness of the genocidal intent of the principal perpetrators. The Panel referred to the Judgment in the case of Ljubomir Borovčanin, a superior officer to the Jahorina Training Center units, who was not found guilty of aiding and abetting in the criminal offense of Genocide.

1007. The Panel notes that the Indictment by the Prosecutor's Office of BiH and the one before the ICTY Chamber do not incorporate the same mode of responsibility and the factual framework. In addition, decisions rendered by the ICTY about the mode of responsibility of a person do not in any way imply the responsibility of the Accused in this case, since the decision on responsibility of the Accused Jević and Đurić is based solely on the presented evidence.

1008. Another substantial difference is that Borovčanin was found guilty for his passive conduct in the field, while the Accused in this case actively participated in the implementation of some segments of the genocidal plan, which ended by mass killings of the men in the Kravica warehouse.

1009. The Defense argued that the attack on Srebrenica was legitimate since the safe area did not comply with the Order on Demilitarization of Srebrenica. The Defense for the Accused Duško Jević presented a number of exhibits to support this averment<sup>364</sup>, including numerous combat reports of the 28<sup>th</sup> Army of BiH Division concerning the supply of material and technical equipment (MTS), executed combat assignments, orders to set up sabotage groups and regular combat reports sent to the 2<sup>nd</sup> Corps Command.

1010. According to witness Jevto Doder, prior to their departure to the field mission, members of the Jahorina Training Center, including himself, knew only that Srebrenica was a "safe area", which implied a demilitarization of the Army of BiH and VRS, with no exchange of fire. However, the Army of BiH did not obey that and frequently raided the VRS territory, as follows from the testimony of the then President of the Executive Board of the Bratunac municipality. He argued that prior to the fall of Srebrenica, Muslim forces had killed 109 (one hundred and nine) women and children in the Bjelovac village, around 60 (sixty) in Kravica and there had also been some random incidents of arson and killing.

1011. This was confirmed by expert witness Butler in the cross-examination,<sup>365</sup> when he stated that Srebrenica had not been fully demilitarized in July 1995, which means that the Division was able to engage in combat activities outside the safe area as well.<sup>366</sup>

1012. In this context, witness Kingori stated that there indeed existed the so called "Bandera Triangle" to which the UN had no access, but the situation was exactly the same in the VRS-controlled territory, since there were also some locations there to which the UN had no access. He agreed with Butler's conclusion that Srebrenica was not fully demilitarized at that time and added:

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<sup>364</sup> Exhibits admitted at a main trial hearing of 16 May 2011.

<sup>365</sup> During the examination, the expert witness explained that the "Bandera Triangle" was used by members of the Dutchbat for the safe area location where they suspected the 28<sup>th</sup> Division was collecting ammunition, weapons and other military equipment. In January or February 1995, the Dutch were prevented from inspecting the location.

<sup>366</sup> OI-3 to OI-21: the Defense presented ample evidence relating to this circumstance.

„The Muslims did have some weapons, but it was close to none comparing to those the Serbs had, so that it was considered that Srebrenica was demilitarized after all. Personal or light weaponry I saw on the Muslim part, which we in any case rarely saw, could not even be compared to what we saw their opponents had. We saw Serbs aiming their heavy weaponry towards Muslims, we saw them taking positions, and on the other side, there was one Muslim soldier with his personal weapons. We reported about that, but I have to repeat yet again that it was incomparable.”

1013. The Defense Counsel commented that it was not up to the witness to compare the belligerent parties. to which the witness responded:

“That is our profession. You cannot stop me from seeing what I see. If I see a Muslim with an AK, it is wrong and I put it in the report. But, in reality, how could you compare that with artillery ... because Bosnian Serbs did not remove the weapons at all ... we cannot watch only one side, I saw them gradually moving the border line towards the center of the enclave, moving at the same time their heavy weaponry, so that they were not stationed outside of the enclave any more.”

1014. The Panel took into account the document presented by the Defense as evidence<sup>367</sup> about the quantity of MTS (material technical equipment) brought to Srebrenica and the remark made by the Army of BiH General Rasim Delić, that neither Goražde nor Sarajevo had such a quantity of equipment. The Panel also kept in mind the instances when weapons were seized from the Division by UN members within the safe area on one hand, and the large scale operation launched by the VRS against the Žepa and Srebrenica enclaves, involving considerable military and police resources and material and technical equipment, which largely overpowered that of the 28<sup>th</sup> Division, both in terms of quantity and technical sophistication.

1015. Notwithstanding that the safe area was not entirely demilitarized, the Panel still could not accept the Defense arguments that the mass crimes committed in Srebrenica were actually an unplanned “retaliation” of the VRS and police forces for Army of BiH incursions into the Republika Srpska territory which resulted in individual crimes, since crimes committed by one side cannot be exonerated by the crimes committed by the other belligerent party.

1016. This is the position the Panel took in respect of the entire Defense evidence relevant to this circumstance.

1017. In that regard, the Panel also relied on the ICTY Judgment which states that ... *when establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent’s civilian population. The existence of an attack from one side against the other side’s civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side’s forces were*

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<sup>367</sup> Defense Exhibit OI-26.

*targeting a civilian population as such. Each attack against the other's civilian population would be equally illegitimate and crimes committed as part of this attack could, all other conditions being met, amount to crimes against humanity...*"<sup>368</sup>

1018. The Defense also argued that that Muslim population "voluntarily" left Potočari.

1019. However, the Panel is satisfied that it follows from the presented evidence that the plan already existed when the meetings were held in the "Fontana" hotel as to how to treat the civilian population in Potočari. This was confirmed by witness Momir Nikolić in his statements, which the Panel accepted. According to him, General Mladić did say at the meetings that those who wish might stay, which was an option, but only in theory.

1020. He knew what would happen and was aware of the plan to transfer women and children and separate and kill the able-bodied men. The witness learned about the plan to attack Srebrenica from General Živković in early June. He said so in an informal conversation in front of the Mountain Brigade Command, explaining that "*Srebrenica should be attacked, cut off from Žepa, defeated military and cleansed from Muslims.*" The witness further explained that he did not see any official order to attack, but he was there during the preparations.

1021. Witness Joseph Kingori testified<sup>369</sup> that he was also present at a meeting in the "Fontana" hotel in June 1995, together with Mayor Nikolić, Colonel Vuković and several other senior officers. The purpose of the meeting was to talk about the people in the enclave. Colonel Vuković said that the people from the enclave did not belong there and that all of them should leave. When asked by the Prosecutor how he understood those words, the witness said that in his opinion those were threats, since General Vuković said later on he would kill all those Muslims if they did not leave.

1022. Therefore, it indisputably follows from the entire body of evidence relevant to the factual situation on the ground that the meetings in the "Fontana" hotel were used only to cover up the already planned actions. Consequently, the agreement to transfer all the people who were in Potočari was not a result of the meetings among General Mladić, civilian representatives and UNPROFOR.

1023. General Mladić used the meetings to send ambiguous messages to the Muslims through their representatives, that "*the Muslims can either survive or disappear.*" The Panel inferred that the purpose of his arrival in Potočari and promises he gave to all the people there was to cover up the genocidal plan. It was a public performance intended to avoid international condemnation.

1024. On 12 July at 7.30 a.m, Major-General Krstić issued an order to start organizing the transfer of the Muslim population from the enclave, for which he requested 50 buses

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<sup>368</sup> Kunarac, Kovač and Vuković, Appeals Chamber, Judgment of 12 June 2002, paras 87-88

<sup>369</sup> T- 186 (Court Decision of 26 August 2010) Transcripts of testimony by witness Kingori in Krstić case of 31 March 2000.



from the areas of Pale, Višegrad, Rogatica, Sokolac, Han Pijesak, Vlasenica, Milići, Bratunac and Zvornik, which had to arrive in Bratunac by 17:00 hours. The fact that this order had been issued before the mentioned meetings best illustrates just how “serious” was the offer to the Muslim population to stay in the area.<sup>370</sup>

1025. That same day, the RS Ministry of Defense requested a mobilization of buses in the Municipalities of Milići, Zvornik, Višegrad, Vlasenica, Milići and Bratunac, which had to be brought to the sports stadium in Bratunac.<sup>371</sup> Fuel was also no problem. According to Miroslav Deronjić’s statement, preparations for Srebrenica started in May already, when Karadžić gave him certain indications and he obtained some fuel supplies. In line with the order to provide 50 buses for evacuation from the Srebrenica enclave, the Drina Corps approached the VRS Main Staff on 12 July at 10 a.m. requesting additional 12.000 liters of fuel.

1026. General Franken<sup>372</sup>, a military officer, who testified in the Krstić case, with the Panel accepting the transcript of his testimony, said there were between 25.000 and 30.000 people in Potočari. He agreed that the preparation for the transfer was a huge logistic operation, as was also confirmed by witnesses who participated in the transfer of civilians on behalf of the Bratunac Municipality.

1027. The foregoing clearly shows that the preparations for a transfer of such a huge number of people must have started before the meeting on 12 July ended. Numerous other facts support this conclusion, which was also corroborated by witness Joseph Kingori.<sup>373</sup>

1028. Throughout the proceedings, the key Defense argument was that the Muslims wanted to leave, but the Panel concluded based on the presented evidence that the unbearable conditions in Potočari at that time did not leave them with any other option, but to leave.

1029. In addition to the permanent transfer of women, children and the elderly, the men separated from them also had to be transported to the place of detention. The Panel infers that the highest command structures were aware already at that time of the real plan regarding the separated men.

1030. Witness Miroslav Deronjić stated<sup>374</sup> he had met Colonel Beara in his office after the telephone conversation with Karadžić, when he informed him about the President’s suggestion to take the prisoners „to the south – towards the warehouses.“ In his opinion,

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<sup>370</sup> T-81 (Butler report), attachment (Intercepted conversations between Krstić and Krsmanović over military phone on 12 July 1995 at 7:35).

<sup>371</sup> T-228 Order of the RS Ministry of Defense no. 05-80-350 of 12 July 1995 and T-81 (Butler report), attachment no. 0062-7878-0062-7878 (Request for mobilization of buses of 12 July 1995).

<sup>372</sup> T- 188 (Court Decision of 26 August 2010) Transcripts of testimony of witness Robert A. Franken in Krstić case of 4 April 2000.

<sup>373</sup> Witness Joseph Kingori testified at the main trial hearing of 31 October 2011.

<sup>374</sup> T-195 Transcript of testimony of Miroslav Deronjić of 28 October 2003 in Momir Nikolić case, accepted under the Decision of this Court dated 26 August 2010.

the President was referring to the Bijeljina-Zvornik direction and the Batkovići camp. Beara responded that he had received orders from the “highest authority” that the prisoners “be killed in Bratunac.”

1031. This was supported by witness Dragomir Vasić, who was present during the discussion between Colonel Beara and M. Deronjić, and argued that Beara came there with the assignment to execute the prisoners on General Mladić’s orders.

1032. While buses full of men were still in Bratunac, highest municipality officials discussed the available machinery and manpower the organizers of the genocidal plan needed for a subsequent burial of the killed men from Srebrenica.

1033. Witness Joseph Kingori stated he was called even earlier to a meeting in Bratunac, in June 1995, where he was told to convey a message to Bosnian Muslims that the VRS would take over the enclave, that all of them should accept a safe passage, or else they would all be killed. He added “we could not trust the Republika Srpska Army and we did not expect Muslims to trust them either.”<sup>375</sup>

1034. Nevertheless, the Defense argued during the proceedings that the Accused were not aware of the plan regarding the captured men, as they belonged to the lower levels in the military structure.

1035. Witness Mile Janjić, a military policeman of the Bratunac Brigade, claimed that ordinary VRS soldiers did not know at that time about the final plan concerning the separated men. They received specific assignments from their superiors in the field and executed them, and he was firm in stating that none of the superiors issued the order to kill the men. They only knew that the men were temporarily detained on the order of General Mladić and they would be subsequently transported to Kladanj. The witness was persistent in claiming that there was not a single fact or circumstance at that time which could by itself indicate what would happen to the separated men.

1036. Dragomir Vasić, CSB Zvornik Chief, understood in the same way Mladić’s order to separate able-bodied men from other civilians. In his opinion, the men were separated in order to identify persons suspected of war crimes against Serbs, and no one could even imagine at that moment what would happen to them.

1037. As opposed to them, there were witnesses who had the same assignments at that time and eye-witnessed the treatment of Muslim population, whose perception was entirely different, based on a real situation, common sense, experience and logic.

1038. The Panel accepts the fact that the plan to kill the men was not disclosed to all army and police members at that time, but there is no doubt that everyone present could notice that, after the separation, the men were detained in the White House, they had to leave all their personal belongings in front of it and did not take them when they were

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<sup>375</sup> Witness Joseph Kingori (Testimony admitted under the Panel Decision of 26 August 2010).

transported to Bratunac. So, despite the rumours that the State Security Service intended to examine the detained people as POWs about the committed war crimes, the burning of their personal belongings was indicative since it made impossible their identification, as a prerequisite for an objective screening and examination.

1039. Witness Butler confirmed that the prisoners were not treated in accordance with military rules. During the cross-examination, he clarified that the unit that captured prisoners was in charge of them, while the commander of that unit was responsible for surrendering them to the designated authority or unit which could take care of them. In any case, there was a military responsibility to search the prisoners and seize weapons from them, if any, and to establish their identity. However, according to the expert witness, this was not done on 12 and 13 July because all prisoners' identification documents were destroyed.

1040. It was indicative that both the number of prisoners and the conditions of their detention were attempted to be concealed from the general public, so that some soldiers who guarded the imprisoned men forbade journalist Piroćanac to film them.<sup>376</sup>

1041. Witness Mile Janjić personally saw that the separated men did not join the rest of the convoy heading in the direction of Kladanj and that same night he went to secure the Vuk Karadžić school in Bratunac where the men were imprisoned, and witnessed an incident which involved fire arms. He knew that in the following days those men were transported from Bratunac in the direction of Zvornik and on or around 15 July saw a large group of men detained in the school in Ročević, but was not sure if those were the same men he guarded in the primary school in Bratunac.

1042. ICTY judgments confirmed that the men brought from Bratunac were *en masse* executed in Ročevići. The Panel therefore concluded that in this portion of his testimony, same as in the part thereof in which he incriminated the Accused or brought himself into connection with the executed men, the witness deliberately avoided responses or gave vague or ambiguous answers.

1043. According to witness Tomislav Kovač, both the Accused and members of the Jahorina Training Center were entirely unaware of the overall plan to kill able-bodied men, since they received police assignments directly in the field to the extent necessary for their engagement.

1044. Nevertheless, the seizure of personal documents from the separated men raised suspicions with the defense witness Jevto Doder, one of the Jahorina Training Center 1<sup>st</sup> Company platoon commanders. It was in his opinion indicative since a logical question emerged: how would personal belongings be returned to every man, since they were all unselectively thrown in a single pile.

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<sup>376</sup> Testimony of Defense witness Neđo Jovičić at the trial hearing of 13 June 2011.

1045. Members of the Training Center, who were even lower ranked than the Accused, who were in Potočari at that time and eye-witnessed the separation of men and their detention in the White House, stated that the manner of separating the men and their treatment in general told them that they would not be exchanged, nor would the perpetrators of the alleged war crimes be identified, since upon their departure in the direction of Bratunac all their personal belongings and documents which had remained in front of the White House were burned. This was a clear message that they would not need those things any more.

1046. Even if the Accused acted in the very beginning on the basis of very scarce information and concrete, seemingly legitimate orders of their superiors, their profession and years of experience should have soon made them aware of a plan, whose implementation they consciously facilitated. In view of the foregoing, the Panel dismissed the Defense's argument that the Accused did not know nor could they know the real purpose of the detention, specifically, that the men would not be exchanged or transported to the Batković camp.

1047. Based on the positions the Accused held at that time and their role in the operation of forcible transfer and killing of the imprisoned men, as has been explained earlier in the Verdict, the Panel is satisfied that the Accused were aware of the mass execution plan already in Potočari.

1048. The Order<sup>377</sup> sent on 13 July 1995 by Colonel Milomir Savčić to the VRS General Staff Commander, Assistant Commander for Moral Guidance and Religious matters and Commander of the Military Police 65th ZMTP (Protected Motorized Regiment), shows that an exchange was not the ultimate goal of the separation and capture of men. The Order states that more than 1000 members of the former Army of BiH 28<sup>th</sup> Division were captured in the area of Kasaba and they were under the control of the Military Police. The VRS General Staff Commander for Intelligence and Security proposed the following:

“Ban access to all uninvited persons, recording and photographing of prisoners, (2) prohibit until further notice passage of UN vehicles in the Zvornik - Vlasenica direction, (3) Commander of the Military Police to take measures to remove the prisoners from the Milići – Zvornik main road, keep them indoors or at places protected from air and land surveillance, (4) Upon receiving the order, the Military Police Battalion Commander shall contact General Miletić and receive further orders from him...”

1049. There is another very important Order,<sup>378</sup> sent that same day by General Milenko Živanović to all Commands of subordinated units, which reveals the real intentions concerning the captured Muslims. The Order was “to prevent Muslim groups from passing towards Tuzla and Kladanj” and to:

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<sup>377</sup> Exhibit T-152 (Report of the 65<sup>th</sup> ZMPT Borike at 14,00 hrs, 13 July 1995, Treatment of POWs, drafted by Commander Colonel Milomir Savčić)

<sup>378</sup> T-141 (Order by the Drina Corps Commander, “str.pov” No 03/156-12 of 13 July 1995 to prevent Muslim groups from passing towards Tuzla and Kladanj)

“Accommodate the captured and disarmed Muslims on suitable premises which can be secured by small forces and immediately report to the superior command ... Approach relevant authorities and MUP structures in order to employ all available manpower and secure cooperation in the implementation of these assignments“.

1050. One of the most important Dispatch Notes which involves MUP members in the plan of mass killings is the one sent on 13 July 1992 by Dragomir Vasić, Chief of the Center, to the Office of the Minister and Police HQ in Bijeljina:

“At a meeting with General Mladić this morning, we were informed that the VRS would continue its operation in the direction of Žepa and hand over all other activities to the MUP as follows:

1. Evacuate the remaining civilians from Srebrenica in buses to Kladanj (around 15.000)

2. Execute around 8.000 Muslim soldiers we blocked in the forest close to Konjević Polje. Combat activities ongoing. The assignment is executed only by MUP units.”

1051. All the foregoing, in the context of the fact that all orders were dated 13 July 1995 and a number of orders issued to prevent the column of Muslims to pass through to the territory under the Army of BiH control, leads to the only reasonable conclusion that there was a plan to kill all the men separated in Potočari, captured along the Bratunac - Konjević Polje road and kept in the detention facilities in Bratunac and Konjević Polje. The Accused could not have been unaware of the plan since they directly participated in the separation, capture and execution of the Muslim men.

1052. In his closing argument, the Accused Jević himself claims he was unaware of any list of POWs who should be found among the separated men, which clearly shows the real plan behind the participation of the Accused in the separation of the men and in their subsequent execution they were in charge of. In so doing, the Accused substantially contributed to the implementation of the genocidal plan which was devised and executed on the ground by the highest VRS military authority, specifically some of its members, several of whom have been sentenced under final judgments both of this Court and the ICTY.

1053. Witness Mladenko Borovčanin, a longtime MUP member, who knew the Accused very well, said:

“When I, as a senior police officer, find out that members of my forces act in contravention of international humanitarian law, the officer in charge in the field must be informed, no matter if he is a commander of the brigade or of a tactical group. Normally, I would stop those unlawful acts.”

1054. Not a single piece of evidence presented during the proceedings indicated that the Accused, at any moment or in any way, stopped the unlawful acts of which they were found guilty, or that they attempted to alleviate their consequences. This only supports

the conclusion of the Court about the conscious and willful aiding by the Accused Duško Jević and Mendeljev Đurić in the implementation of the genocidal plan.

1055. Ali members of the police and military forces who were in the field mission in Srebrenica at that time had a common assignment – to prevent the Muslim forces to break through from the enclave, which in this case meant taking all available measures to prevent the Muslims from passing through to the territory under the Army of BiH control, by means of ambushes, shelling the column, searches, capture, taking them to the places of temporary detention and eventually their execution.

1056. The events in Baljkovica can best illustrate the seriousness and ultimate goal of those orders – the VRS command, faced with the losses in the field, ordered the opening of a corridor to allow a certain number of people to pass through, but it was closed before the agreed deadline expired, resulting in the capture and execution of the remaining part of the column.

1057. This conclusion is substantiated by witness Momir Nikolić who stated that the capture of the men on the road and their subsequent execution was part of a joint operation. In his testimony, Dragan Obrenović stated that following the close-down of the corridor at Baljkovica on 17 July, several 28<sup>th</sup> Division groups stayed behind as they did not manage to pass through the corridor with the column, so that the area was intensively searched until the end of the month in order to find those men.

1058. This follows from the Order<sup>379</sup> to join activities to break up the remaining Muslim forces which was issued by General Ratko Mladić. It says that “*The 1<sup>st</sup> blpbr (Bratunac Light Infantry Brigade), 1<sup>st</sup> mlpb (Milići Light Infantry Brigade), 67<sup>th</sup> pv (infantry platoon), 65<sup>th</sup> Military Police Battalion zmtp and MUP forces engaged in the broader area of Bratunac – Milići - Drinjača to search the terrain in the area of Bratunac – Drinjača – Milići to find and destroy the Muslim groups who stayed behind.*”

1059. Therefore, the ultimate goal of the principal participants in the JCE is absolutely clear – to physically destroy all Bosniak men from Srebrenica, those who were (1) separated in Potočari, (2) captured while the column was moving or surrendered and executed in the Kravica warehouse, and finally (3) those who stayed in the territory under the VRS control on 17 July because they did not manage to pass through with the part of the column to the territory under the Army of BiH control.

1060. Commander Pandurević’s order was not to take prisoners, but to execute them on the spot, which was done.<sup>380</sup> When asked by the Prosecutor if he was referring to an improper execution or execution in combat, Obrenović said he referred to both.

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<sup>379</sup> OI-32 Order of the GŠ VRS “str.pov”. no. 03/4-1670 of 17 July 1995.

<sup>380</sup> T-184 Transcript of testimony before ICTY in the case No. IT-02-60-T of 2 October 2003. pages 56 and 57 accepted under the Decision of the Panel dated 26 August 2010.

1061. The objective of all operations carried out in the area of Srebrenica at that time was to partly destroy a substantial part of Bosniak population of Srebrenica as a group, through mass transfer of civilians, women, children and the elderly and kill able-bodied men.

### **XIII. CONCLUSION ABOUT THE RESPONSIBILITY OF THE ACCUSED DUŠKO JEVIĆ AND MENDELJEV ĐURIĆ**

1062. As explained earlier in the Verdict, the Panel is satisfied beyond any doubt that genocide was committed in the area of Srebrenica in July 1995 and that the highest VRS General Staff members were involved in the perpetration of genocide.

1063. Based on the presented evidence, the Panel concludes that by their actions in July 1995 the Accused Duško Jević and Mendeljev Đurić gave a substantial contribution to the implementation of the genocidal plan by the principal perpetrators who shared the genocidal intent the Accused were aware of. It was with such a state of mind that they commanded and supervised the Jahorina Training Center units, which participated in the search of the terrain at the entrance to Potočari aimed at rounding up people in Potočari, wherefrom they would be forcibly transferred.

1064. The Accused commanded over the members of the Center in disarming the UNPROFOR members at the entrance to Potočari, weakening their power and/or preventing them from protecting the people gathered in the UN base and the surrounding factories. These activities left the people unprotected, so that they could be unobstructedly exposed to violence in the form of looting, rape, killing and eventual forcible transfer, as one of the segments of the genocidal plan of the principal participants in the JCE.

1065. The other segment of the implementation of the genocidal plan started in Potočari by separating able-bodied men and their imprisonment in the "White House", wherefrom they were transported without their personal documents and belongings to the temporary places of detention in Bratunac. The Jahorina Training Center members actively participated in all those activities under the command and supervision of the Accused Duško Jević and Mendeljev Đurić.

1066. In addition, the Accused deployed the Center members along the Bratunac - Konjević Polje road to capture Bosniak men, escort them to the Kravica Cooperative warehouse in order to support and assist the principal perpetrators of the criminal offense of Genocide.

1067. Members of the Jahorina Training Center 1<sup>st</sup> company, under the command and supervision of the Accused Duško Jević and Mendeljev Đurić, participated in the killing of Srebrenica men incarcerated in the Kravica warehouse, which resulted in the death of around 1.000 people and gave substantial contribution to the implementation of the genocidal plan in the field.

1068. Then, on 17 and 18 July, members of the 1<sup>st</sup> company under the command and

supervision of the Accused Duško Jević and Mendeljev Đurić, together with members of the 2<sup>nd</sup> company and parts of the Bratunac Brigade, participated in the search of the terrain to find people from the column who had passed there moving in the direction of Tuzla, knowing they would be executed, same as the men from the Kravica warehouse. During the search, several wounded people were captured and killed by members of the 1<sup>st</sup> company who acted under the supervision of the Accused. They were neither reprimanded nor were any disciplinary sanction imposed. This additionally corroborates the conclusion of the Panel that the ultimate goal of the search was to collect the remaining men from the column, who the Accused Jević and Đurić knew would be summarily executed, same as the men from the Kravica warehouse.

1069. Therefore, the Panel is satisfied that the actions of the Accused amount to the elements of the criminal offense of aiding in the commission of genocide, notwithstanding that they were charged in the Indictment with co-perpetration in the commission of the criminal offense of genocide.

1070. The presented evidence shows that there was a plan shared by the participants in the joint criminal enterprise, including some officers of the VRS General Staff, VRS senior security officers and other members of the highest civilian and military authorities of the Republika Srpska, to commit genocide in the area of Srebrenica and exterminate Bosniak population by forcible transfer of women, children and the elderly and the execution of able-bodied people.

1071. Participation of members of the Jahorina Training Center 1<sup>st</sup> Company was a link in the chain of activities aimed at the implementation of the genocidal plan. Still, the presented evidence did not show that the Accused Jević and Đurić shared the intent to commit genocide, which had to be proved to convict them as the co-perpetrators in the commission of this criminal offense. On the other hand, the Panel is satisfied beyond doubt that the Accused were fully aware of the intention to exterminate Bosniak population from that area, and with such a state of mind, they actively participated in the actions that substantially contributed to the implementation of the genocidal plan.

1072. The Panel concludes that this follows from the entire context in which the criminal offense was committed. The most obvious thing is the persistence of the 1<sup>st</sup> Company members who participated in the executions in the Kravica Cooperative under the permanent supervision of the Accused. This, viewed together with all other presented evidence, additionally supports the conclusion that the ultimate goal was to leave no survivors in the warehouse. The Accused were aware that the persons who were being killed belonged to the group of Bosniak population and that their execution, together with the forcible transfer of people, could have only one outcome – destruction of the Bosniak population in the territory of Srebrenica.

1073. Aware of their contribution to the commission of genocide in Srebrenica, when the Accused Duško Jević and Mendeljev Đurić returned to Jahorina, they even prohibited talking about the field mission in Srebrenica and the activities there, in an effort to hide the scope and magnitude of the committed crimes.



1074. In this regard, it is important to refer to the testimony of witness S-117, who stated that the Accused Duško Jević said that after the field mission in Srebrenica “people should keep their mouth shut”. Moreover, the majority of the Center members stated that upon their return to Jahorina the platoon commanders wanted them to surrender everything they had taken from the civilians during their field mission (referring to money, valuables or personal weapons) and they were advised not to talk about those events.

1075. According to witness S-119, Mendeljev Đurić was one of the senior officers who advised them not to talk about the events.

1076. Therefore, the Accused gave a substantial contribution to the implementation of the genocidal plan through their actions taken during the field mission in Srebrenica. The plan was implemented on the ground by the participants in the JCE, who had the genocidal intent, of which the Accused were completely aware, same as they were fully aware that their actions substantially contributed to the extermination in part of the Bosniak population, as a national, ethnic and religious group.

#### **XIV. DECISION ON SENTENCE**

##### **1. The purpose of punishment**

1077. The purpose of punishment is defined in the general part of the Criminal Code of Bosnia and Herzegovina.

1078. Article 2 of the CC of BiH provides that the types and the range of criminal sanctions shall be based upon the “necessity” and its “proportionality” with the degree and nature of the danger against the protected values. When genocide is concerned, the degree and nature of the danger are enormous given that it is the most severe criminal offense codified under the law and may carry a long-term imprisonment.

1079. Apart from this general principle, the Criminal Code further stipulates the goals and circumstances the Court must take into account when determining and imposing a sanction. These can be divided in two groups: (1) those relating to the criminal offense and their impact on the community, including victims, and (2) those which specifically concern the accused.

1080. Pursuant to Article 48(2) of the CC of BiH, the punishment must be necessary and proportionate to the danger and threat to protected objects and values.

1081. According to the same Article, the punishment must be necessary and proportionate to the suffering of direct and indirect victims.

1082. In this case, the Accused were found guilty of the crime of genocide whose direct victims were hundreds of men who lost their lives during the massacre in the Kravica warehouse from 13<sup>th</sup> to 14<sup>th</sup> July. The aggrieved parties are women and children, as family members of the killed men, since such a loss destroyed their personality forever. An indirect victim of this crime is the protected group of Bosniaks from Srebrenica, whose existence was endangered by this genocidal act.

1083. Pursuant to Articles 6 and 39 of the CC of BiH, the punishment must be sufficient to deter others from perpetrating criminal offenses.

1084. In order to prevent future commission of genocide, it must be codified as the gravest criminal offense, and the perpetrators thereof must not remain unpunished.

1085. Article 39 of the CC of BiH provides that punishment must express the community's condemnation of the perpetrated criminal offense. This is also included in a number of international documents since all international legal systems prohibit genocide. Condemnation of genocide in international law is a *ius Cogens* (a *peremptory norm*) from which no derogation is ever permitted.

1086. There are numerous important legal reasons which have to be taken into account with regard to reformatory measures and concrete prevention, which affect a decision on punishment of the accused as an individual. They include: the degree of criminal liability, the past conduct of the perpetrator, his conduct at the time and after the perpetration of the criminal offense, his motive and personality.

1087. The above circumstances can be taken both as aggravating and extenuating when ruling on punishment on the basis of facts. Their purpose is to help the Panel to mete out the sentence that is not only necessary and commensurate with the goals and circumstances of the criminal offence and their impact on the community that have already been taken into account, but to adjust the sanction to the needs of prevention and correction of the specific perpetrator of the criminal offense.

## **2. Principles of meting out punishment**

1088. When deciding on the nature and length of sentence, the Panel evaluated all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), in accordance with Article 48 of the CC of BiH.

1089. Genocide, 'the crime of crimes', is punishable by the most severe sanction that may be imposed under national and international legal systems. Genocide may be punished by death penalty even in the countries which have cancelled or abolished death penalty for all other crimes.<sup>381</sup>

1090. Bosnia and Herzegovina accepted to abolish death penalty for all criminal offenses, which is entirely consistent with the respect for human life. However, participation in the killing of hundreds of helpless people, as it was obviously done in this

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<sup>381</sup> Rwanda, as a country which *de facto* abolished death penalty, executed 22 perpetrators of genocide convicted before national court in 1997; Israel abolished death penalty for all criminal offenses except for genocide and they sentenced Adolph Eichmann to death. Schabas, *Genocide*, p. 396-397. Death penalty is justified as a "fair" punishment for genocide, which sends a message that the perpetrators of the crime intended to deprive the entire group of their right to existence, lose their own right to existence. *Id.* p. 397.

case, even in the absence of genocidal intent, justifies imposing the most severe sanction foreseen under the national law.

1091. No punishment can properly reflect the gravity of depriving hundreds of people of their lives and mental suffering caused to their families. The crime becomes even worse when such killing is committed with the aim to deprive the entire group of human beings of their right to existence.

1092. Notwithstanding that the maximum sentence prescribed by the law can be appropriate in this case, the Panel still holds that, no matter how horrific this act of genocide may be, there are perpetrators of multiple acts of genocide and those who implemented a broader genocidal plan, while the forcible transfer of civilians from Potočari, separation of men from their families, their capture and mass execution were only one of its elements. Therefore, the Panel holds that the most severe sanction has to be reserved for the crimes which could be less horrifying in quality, but may even surpass this crime in terms of quantity.

1093. Since the Accused were found guilty as aiders in genocide, the following provisions were relevant in meting out the sentence:

1094. Whoever intentionally helps another to perpetrate a criminal offense shall be punished as if he himself perpetrated such offence, but the punishment may be reduced. (Article 31(1) of the CC of BiH)

1095. The accomplice shall be considered criminally responsible within the limits set by his own intent or negligence, and the inciter and the accessory within the limits of their own intent. (Article 32(1) of the CC of BiH).

608. It follows from these provisions that the law binds the court to duly evaluate the acts of the accused within the limits of his intent as an accessory and leaves it to the court to decide whether he will be punished “as if he himself perpetrated such offense” or “the punishment may be reduced”.

609. This implies that the law itself defines aiding as the most lenient form of complicity, where the aider most often supports the act of perpetrator.

609. However, the Panel found in this case that the acts of the Accused amount to aiding only because the presented evidence did not satisfy Panel beyond any reasonable doubt that they had the genocidal intent. On the other hand, there is no doubt that their individual acts underlying the crime – direct participation in the forcible transfer of civilians and killing of a huge number of people, grossly surpass the usual acts of aiding in the commission of the criminal offenses which do not require the “special intent”, so the Panel concludes that no lesser punishment may be imposed.

### 3. Individualization of punishment

610. In order to satisfy the legal requirement of a fair sentence, personal circumstances of the perpetrators of the criminal offense have to be examined in addition to the criminal offense itself.

611. There are two legal objectives with regard to the person convicted of a criminal offense: (1) to deter the convicted person from perpetrating the criminal offense in the future (Article 6 and Article 39 of the CC of BiH); and (2) his rehabilitation (Article 6 of the CC of BiH).

612. Rehabilitation is not binding upon the Court only under the CC of BiH; this is the only purpose of punishment acknowledged and explicitly requested under international legislation on human rights, which the Court of BiH must observe pursuant to the Constitution of BiH. Article 10(3) of the International Covenant on Civil and Political Rights (ICCPR) prescribes that: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and their social rehabilitation."

613. Suljo Šabanović<sup>382</sup> testified about the personality of the Accused Duško Jević. According to him, the Accused always maintained good relations with his colleagues and he was even over-disciplined, he always executed his assignments so properly and correctly that he was given a nickname "Stalin". Defense witness Mladenko Borovčanin stated to have known the Accused Duško Jević since 1982. The Accused was always professional, he never showed any signs of insubordination and he awarded while in service. The Accused was strict with his associates, but he was fair. He never noticed that the Accused was ever arrogant towards his colleagues, subordinates or people of other ethnicity. He was obedient to his superiors.

614. As opposed to them, witness PWS-100 described the Accused as a "conflicting personality" type who was saying that prisoners should be treated in accordance with the Geneva Conventions, but then he would come and say that "killing a person is not such a big deal."

615. It follows from the testimony of these witnesses that the Accused Duško Jević was professional in performing his duties and unquestioningly executed the assignments entrusted to him. Therefore, having such personal characteristics, and being a superior officer and long-time member of the MUP, the Accused should have reacted to an unlawful order such as the mass execution of imprisoned men in the Kravica warehouse. He is held responsible precisely because he did not find the order unlawful, quite the

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<sup>382</sup> Defense witness Suljo Šabanović testified at a main trial hearing on 12 May 2011.

opposite, he directly and willingly participated in the implementation of the plan of forcible transfer, separation of the captured men and their execution.

616. Witness S-102 had professional contacts with the Accused Mendeljev Đurić and he has a positive opinion of him, same as witness Mladenko Borovčanin, a longtime member of the MUP. His opinion of him was entirely positive, the Accused was always professional in performing his duties, as a person, he was “*normal and reasonable*“. The witness never saw the Accused showing any intolerance towards people of other ethnicity, nor did he ever express any antagonism towards people of other religions. This was all corroborated by witness Jovica Gligić, who was a student at the College in Zemun from September 1994 to June 1995 together with the Accused Đurić. According to the witness, “*Đurić is a decent and responsible man, I did not notice any bad characteristics of his, I did not notice he was violent, he took care of 16 people who studied with him and all of them had successful careers afterwards.*” Defense witness Milan Stojčinović also had a positive opinion of the Accused.

617. The Panel reached the same conclusion about the Accused Mendeljev Đurić as about the Accused Jević. Both of them were longtime MUP members, professionals and, as already stated, both of them were aware of the rules of international law. Same as the Accused Jević, the Accused Mendeljev Đurić did not consider he was executing unlawful orders in the field mission in Srebrenica because he consciously and willingly participated in all actions of which he was found guilty. The Panel bore this in mind when meting out the sentence. In addition, the Accused was subordinated to the Accused Duško Jević, so that the Panel imposed a more lenient sanction on him than on the Accused Duško Jević, as in line with Đurić’s role in the field, his position in the chain of command and his contribution to the perpetration of the criminal offense of which he was found guilty.

618. When meting out the sentence, the Panel took into account the responsibility of the Accused and the gravity of the criminal offense of which they were found guilty. It has to be noted that the crime of genocide is the most serious crime known to the mankind, whose proportions are best reflected in the lasting effects on the aggrieved families of victims and on the entire nation which has suffered a loss of a considerable part of its population, which will inevitably affect future generations.

619. Notwithstanding that both Accused were longtime MUP members, they consciously and willingly took actions aimed at the implementation of the genocidal plan, instead of protecting the life and bodily integrity of all people and preserving the public peace and order. In so doing, they breached their human and official duty.

620. The Accused were particularly persistent in pursuing actions of which they were found guilty, by issuing orders to their subordinates during the killing of the men in the night between 13 and 14 July, which continued through 14 July. This all clearly shows that they were fully aware of the genocidal intent of the principal participants in the JCE - not to leave a single Bosniak man from Srebrenica alive, which included those who were brought and imprisoned in the Kravica warehouse.

621. Around 1,000 men were killed on that occasion. The Panel also took into account their agony before being brought to the warehouse: the uncertainty surrounding their fate, deprivation of food and water during the hottest month of July, and their eventual brutal execution in the warehouse. Those who were wounded and survived had to endure enormous pains lying on a pile of death bodies, expecting to be killed, until, finally, on 14 July, they were tricked into coming out to receive assistance, but those who got out were also executed.

622. The Panel could not take no prior convictions of the Accused as a mitigating circumstance given that all professional MUP staff members had to satisfy this requirement.

623. The fact that both Accused were family men could neither be taken as extenuating, considering that the victims of the crime of which they were convicted included under-age children. All this, coupled with the gravity of the criminal offense of which they were found guilty, invalidates these circumstances, whose quality or quantity was not such to have an important bearing on the sanction imposed.

624. Based on the foregoing and the prison sentences imposed for this and similar offenses, the Panel holds that the imposed prison sentences of 35 and 30 years respectively are adequate and commensurate with the committed crime. Moreover, they are necessary and proportionate to the suffering of direct and indirect victims and to the extent of danger to the protected object in terms of Article 48 of the CC of BiH. They will also achieve the purpose of punishment.

## **XV. ACQUITTING PART OF THE VERDICT RELATING TO THE ACCUSED GORAN MARKOVIĆ**

625. The Prosecution did not prove beyond any reasonable doubt that the Accused Goran Marković commanded over the 2<sup>nd</sup> platoon of the 1<sup>st</sup> company of the Jahorina Training Center as part of a widespread and systematic attack of the RS army and police on Bosniak civilians of the UN Safe Area of Srebrenica by ordering, instigating, aiding and abetting the plan of extermination in part of the Bosniak population, inflicting on them severe physical and mental suffering, forcibly transferring the population, separating men from their families, capturing and executing Bosniak men from the Srebrenica Safe Area.

### **1. Participation in the search of the terrain (village of Budak)**

626. *Under the amended Indictment, the Accused Goran Marković is charged with commanding over the platoon which searched Bosniak houses near Potočari on 12 July 1992, at the time when Bosniak population was leaving their property, escaping to a UN Compound in Potočari, knowing that the Bosniak population would be transferred against their will.*

627. The Panel indisputably concluded that the Accused Goran Marković, together with his platoon and part of Jahorina Training Center's 1<sup>st</sup> company, left towards Potočari in

the morning of 12 July.

628. Part of the unit under the command of the Accused Duško Jević and Mendeljev Đurić first arrived at a UN check-point and disarmed UNPROFOR members.

629. The Panel notes here that in the presence of the Accused Đurić, his superior company commander, and the Accused Jević, the Accused Marković could not have had any significant authority relevant to the further course of action, hence the Accused Goran Marković is not charged with the participation in these activities.

630. Witness Tomislav Krstović recalled seeing the Accused Mendeljev Đurić there, and he thought that his colleague instructor Goran Marković was also present, but he was not sure. He remembered that because immediately before entering the check-point, there was a short break, someone was wounded,<sup>383</sup> and it was then when Marković asked Jević through radio communication „*commander, how about some soup?*“

631. After that, a group with the witness Tomislav Krstović started searching the terrain behind the compound, while the group with the witness S-126 searched the terrain on the right-hand side of the road. Based on the statements of other members of the same platoon, the Court concludes that Goran Marković's platoon actually searched the Budak village.

632. Witness S-104, member of the platoon under the command of Goran Marković, could not remember the precise wording of the search order, but he assumed that all people they found should be surrendered to the superior commanders. The witness did not know exactly what were the instructions as to what to do with the persons who could not move.

633. When they went down to the collection point,<sup>384</sup> witness S-104 noticed later on the commander Duško Jević and his immediate superior officer Goran Marković, coming to the collection point in a group of officers. Witness S-102 identified the same location as the “collection point.”

634. According to the presented evidence, the Accused Duško Jević and Mendeljev Đurić were in charge of the search, while Goran Marković's platoon also participated in the search. However, the Prosecution failed to prove that the Accused Goran Marković participated in the search knowing that the civilians would be forcibly transferred from Potočari and that they were being collected for that purpose. The actions taken by this Accused do not *per se* amount to the criminal offense of genocide.

635. Therefore, the Panel is not satisfied that the presented evidence proves the liability of the Accused Goran Marković.

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<sup>383</sup> It follows from other evidence that he referred to the wounding of a Bratunac Brigade member who stepped on a mine during the search of the terrain.

<sup>384</sup> T-57 Witness S-104 also marked this location on the photograph presented to him showing the point of intersection between the road towards Potočari and the road from Budak, at the very entrance to Potočari.

## **2. Presence in Potočari, participation in the forcible transfer and separation of men**

636. *According to the Indictment, on 12 and 13 July, the Accused commanded over the platoon whose members, together with members of the 1<sup>st</sup> company, participated in the forcible transfer of the civilian population from Potočari, separated more than 1000 men, not allowing them to get on the trucks and buses together with their families, and they escorted them to the nearby "White House", where they were kept under guard, wherefrom they were taken by trucks and buses to provisional places of detention.*

637. The Panel holds that the Prosecution failed to prove beyond any reasonable doubt the acts of participation of the Accused Goran Marković in the forcible transfer of civilians, separation of men and taking away their personal property, nor did they prove beyond any reasonable doubt that the Accused was aware at that time that the separated men would be summarily executed.

638. Ample evidence presented during the proceedings shows that there were a lot of soldiers and police on 12 July in Potočari. Witness Jovičić saw the Accused Duško Jević and Mendeljev Đurić there, more precisely, all superior officers, including Milidragović and Marković.<sup>385</sup>

639. On the other hand, witness Tomislav Krstović was not sure about the presence of the Accused Goran Marković, and the Defense disputed his presence in Potočari on 12 July, during the forcible transfer of civilians, referring to the testimony of defense witness Slavko Bojanić, a member of his platoon. According to him, the 1<sup>st</sup> company was lined up on 12 July, then one part went for a field mission, while several other members, including Goran Marković, received an assignment that same morning to go to a factory and bring some pads for spare parts for trucks.

640. According to witness Bojanić, on that occasion they saw some abandoned cattle and they decided to catch some for the forthcoming celebration on 13 July. He could also remember that on 12 July he went with the Accused Marković to buy some salad, beer and cognac.

641. The Panel does not find credible the portion of this witness testimony which gives an alibi to the Accused for the whole day of 12 July 1995 and in relation to the events in Potočari, since other witnesses recognized the Accused Goran Marković during the search of Budak and while the unit was gathering at the entrance to Potočari after passing through the UN check-point.

642. The Panel concludes that witness Bojanić was interested in testifying to the benefit of the Accused Goran Marković, who protected him during the field mission by

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<sup>385</sup> The witness mentions these Accused persons in his statement under the investigation and confirms that at the main trial.



not sending him for assignments. The witness said: *“When giving assignments, Goran always asked if anyone was sick and then he would say – Bojanić, you are staying!”* The witness enjoyed such a preferential treatment most probably because of Ratomir Draganić, commander of the special brigade in Janja and witness Bojanić’s brother-in-law. It was precisely him who sent witness Bojanić to the Training Center, then he phoned all the Accused and told them *„this is my child, do not push him too hard, he could get hurt.“*

643. Therefore, the Panel holds that, by giving an alibi, witness Bojanić wanted to “return the favor” to the Accused Marković for his fair treatment while he was in his platoon. He further explained *“the two of us always did everything together, we were very close.“*

644. Nevertheless, the Panel is not satisfied that the Accused Goran Marković spent the whole day of 12 July in Potočari and/or that he in any way commanded over his platoon. As it will be later explained, the evidence shows that he had mainly logistics duties while he was on the field mission, he prepared meals for unit members and, in his own words, was sent back to the base by the Accused Mendeljev Đurić to bring food to members of the 1<sup>st</sup> company who were engaged in the transport of civilians in Potočari. Witness Slavko Bojanić, who was mostly in the school building, confirmed that the Accused would bring food to the units members in the field, stay there for an hour or two and would then return to the base.

645. The Panel accepts this as true, considering that the majority of his 1<sup>st</sup> Company platoon members examined about this circumstance were unsure about his presence in Potočari on 12 July. None of them heard the Accused issuing any orders in relation to the boarding and transport of civilians, separation of men and their detention in the “White House”.

646. As opposed to this, the presence of the Accused Jević and Đurić at those locations was indisputably established through the testimony of witnesses and a video record presented during the trial which clearly shows the Accused actively participating in all stated actions by issuing orders to their subordinates of the 1<sup>st</sup> company.

647. It follows from the statement of the Accused Marković that he and members of his unit had arrived at the check point at the entrance to Potočari on 12 July. On Đurić’s orders, he brought food to his unit members in Potočari, where he saw civilians boarding on buses. He claims he did not command over his platoon at that time since he executed only logistics assignments in the unit and prepared food the whole time of his field mission in Srebrenica. During that time, the Accused Đurić or Deputy Aco Golijan were in command of his platoon. Many witnesses confirmed this.

648. The only thing the Prosecution managed to prove was a short presence of Goran Marković in Potočari and nothing else. They did not prove that he had participated in the forcible transfer of civilians from Potočari, nor did they prove that he had issued orders to members of his unit to participate in the separation of men or supervising them while

doing so.

(a) Pillaging of men in the “White House”

649. *Under the same count of the amended Indictment, the Accused is charged with taking away money and valuables from the separated men kept in the “White House”.*

650. Protected witness S-101 explained that a Center member known as “Štakor” and sometimes a man known as “Hercegovac” used to enter the “White House” where the men were detained. He learned later on that the “Štakor” took money from the people on that occasion. A man whom members of his unit knew as “Arkan” was believed to be a commander since he made the roster and deployed people. The witness stated that the unit of deserters from Jahorina had a certain role in the transport of civilians and separation of men from women. On a photograph<sup>386</sup> presented to him, he showed where the Accused Mendeljev Đurić was standing, occasionally the Accused Duško Jević appeared, but he did not remember seeing the Accused Goran Marković among the people present there.

651. The Accused Maković did not remember witness S-100, who was firm in stating that he had seen only Đurić and Milidragović at the separation area. Witness Ljubodrag Gajić, a member of his platoon, also did not see the Accused Marković throughout his stay in Potočari on 12 July.

652. Witness S-101 recognized members of the unit, “Arkan” and “Mrča”, among those who escorted the men to a nearby house (“White House”). He also saw “Štakor” and some other Center members around the men in Potočari, and he found out later on that they had taken away their money and valuables. According to witness S-100, platoon commanders Milidragović and Marković ordered him and another unit member under the *pseudonym A*, to take away money, gold and other valuables from civilians.

653. Witness S-100 was shown a photograph<sup>387</sup> and marked a house with number 7, as the so called “White House” where the men were detained. He also marked houses with numbers 3, 5 and 6<sup>388</sup> where his group went to take money and valuables from civilians. He further explained:

“Upon entering in those houses, we told the people to give us the money they had because they would be searched when boarding the buses and they were not allowed to have anything of value, otherwise they would be executed. Our orders were to take everything we found to the base, to Milidragović and Marković, but many people, us included, kept something for themselves. I cannot be precise about a total sum of money, there were some Dollars ... there was really a lot of money ... gold as well, but not that much.”

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<sup>386</sup> Prosecution exhibit No. T- 99-102.

<sup>387</sup> Prosecution Exhibit T-38.

<sup>388</sup> T-38 Photograph shown to the witness.

654. The Defense disputed the testimony of this witness<sup>389</sup> by referring to his statement to the Prosecution in which he did not at all mention the Accused Goran Marković. The witness tried to explain this inconsistency by stating that his immediate superior was Neđo Milidragović and he believed it was more important to mention his name at that time.

655. When examining the credibility of this testimony, the Panel paid special attention to the testimony of the person under *pseudonym A*, since he and this witness were together in the office of Neđo Milidragović and Goran Marković when they received the order to take away money and valuables from the civilians detained in Potočari.

656. This witness later testified before the Court and was granted protection measures, including pseudonym S-105. In his testimony, he confirmed that witness S-100 and some other members of the unit, on the orders of Neđo Milidragović, entered houses and took money and valuables. The witness, together with several members of the unit, searched the bags which men left behind and they usually found food and money inside. He found 400 German Marks and he knew that others also found money which they surrendered to Neđo Milidragović.

657. Tomislav Krstović, one of the instructors corroborated in his testimony that Neđo Milidragović was the only one who issued orders. According to him, upon their return from the field mission in Srebrenica, some members of the Center "*had more money than when they had left*", including Neđo Milidragović.

658. Witness S-100 clearly did not mention the Accused Goran Marković before the main trial, and during the cross examination he could not explain this important discrepancy between his statements. Witness S-105 stated that members of the Training Center participated in the looting, exclusively on the orders of Neđo Milidragović. He did not see other platoon commanders in Milidragović's vicinity. Given such inconclusive evidence, the Panel was not satisfied beyond any reasonable doubt that the Accused Goran Marković ordered at any moment whatsoever the members of his platoon to take money and valuables from the separated men.

### **3. Participation in the executions in front of the Kravica warehouse**

659. *Under the amended Indictment, the Accused Goran Marković was charged with commanding over the platoon during the night of 13 July, which together with other members of the 1<sup>st</sup> company participated in the capture of men from the column and their escort to the Kravica Farming Cooperative warehouse where they were executed.*

660. In the course of the proceedings, the Prosecution failed to prove beyond any reasonable doubt the presence of the Accused Goran Marković in front of the Kravica

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<sup>389</sup> OII-3 Record on Examination of witness S-100 No. KT-RZ-101/07 of 18 February 2010.

warehouse or on the Bratunac - Konjević Polje road; therefore they did not prove his responsibility for the execution of men in the Kravica warehouse.

661. Tomislav Krstović, a platoon commander, arrived in front of the warehouse together with the Accused Duško Jević and Mendeljev Đurić. In addition to the Accused, he could remember seeing Goran Sarić's driver at one moment (he was not sure if Sarić was in the vehicle) in front of the warehouse, who brought some cigarettes. During the execution, Minister Tomislav Kovač passed by the warehouse, he only said hello and proceeded without stopping.

662. During the cross-examination, he claimed he was not sure if the Accused Goran Marković had come in front of the hangar, or he stayed at the school in Bjelovac, but he added "*he was there, he must have been there, the instructors were there .. he must have been ... he was there.*" According to this witness, the shooting lasted for some 3-4 hours, fire from infantry weapons could be heard which was not constant, and there were explosions. The witness was firm in stating that the shooting lasted all night long, but that members of the Šekovići Detachment were shooting.

663. That same night, witness Ljubodrag Gajić, a member of Goran Marković's platoon, was brought by bus in front of the Kravica warehouse and he was deployed with members of his platoon about half a kilometer from the warehouse, on the road. The assignment was to transport back to the warehouse all those who surrendered. "*I and that Saša guy captured three men, they actually surrendered and we just pushed them on a truck and drove them down. I did not ask one of the men who had surrendered to show me his identification, he was a civilian, had no arms, I just waited for a bus and pushed him inside.*"

664. Witness S-102, who was brought to the site in a bus, also confirmed the presence of the platoon and company commanders close to the warehouse at the time of execution of prisoners. He claimed that there was always "*some of the instructors and senior officers with them, so I assume that Jević was there, Mane was there, while Marković moved around.*"<sup>390</sup> The witness was shown a photograph<sup>391</sup> and he marked the place where the bus stopped, the bus that brought members of the Training Center some time between 10 and 11 p.m. While he was getting off the bus, he heard some random shooting around the warehouse, but he did not yet know who was inside. He recalled that he and members of his unit were ordered to deploy along the road in groups of two to three.

665. Witness S-104 did not remember seeing the Accused Goran Marković on that occasion, but he was sure that Marković drove along the road in his white "Golf 2" vehicle the following day to check on the persons deployed there and brought them some cigarettes. This was corroborated by witness S-102 who was brought in front of the

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<sup>390</sup> Since the witness was brought in front of the hangar during the night of 13 July, he explained he had seen the Accused Goran Marković the following day, on 14 July.

<sup>391</sup> T-96 Photograph shown to witness S-102 when he testified at a main trial hearing of 28 February 2011.

Kravica warehouse in the night hours of 13 July and claimed he did not see the Accused Goran Marković before the following day.

666. The Defense examined witness Radenko Radivojević about the presence of the Accused Goran Marković in front of the warehouse at the time of killing during the night of 13 July. The witness was a member of the 1<sup>st</sup> company of Neđo Milidragović's platoon and he was a guard at the school in Bjelovac. He recalled seeing Goran Marković in the morning of 14 July in the school. *"He had a hangover, after eating and drinking the night before"*.

667. The witness confirmed that one part of the unit left for a field mission in the evening of 13 July, there was a celebration that night, so that the other part of the unit stayed in the school.

*"The celebration took place near the school in Bjelovac. I remember seeing Milidragović and Marković, but I do not remember if Jević was there. The celebration lasted until late at night. People drank a lot, but not everyone was under the influence of alcohol, I had some beer ...three or four. I went to bed around 11 p.m, and I think that one part of the unit went to a field mission in the evening, around 9 p.m, I think. There were some 30 of them ... I don't know who took them for the assignment, I don't know the names of people who left either.*

*I am sure that Marković stayed at the celebration and he got drunk, I mean he was drinking. He was really drunk ... I could tell it because of his eyes and his behavior. I remember I saw him on 14 July around 11 or 12 hrs."*

668. The Defense summoned witness Slavko Bojanić and examined him about the same circumstances. The witness, a member of Goran Marković's platoon, stated *"that night of 13 July, I don't know if my unit had any assignments, it was not my business. I do not know where they went and what they did, but I can give you my word that Goran drank a lot. .... he was dead drunk .... He had a hangover the following day. He is like that, when he gets drunk, it takes him three ... to four days to recover."* When asked why he remembered he had seen the Accused in the school precisely on 14 July, while he could not remember other details, the witness said *"I do not remember other details, but two of us were always together in everything, we were very close"*.

669. Witness S-117, a member of Marković's platoon, confirmed that the Accused Marković mainly executed logistics and quartermaster assignments. The witness also remembered that witness Slavko Bojanić mainly stayed in the school building. While they were on the road during the night of 13 July, witness S-117 noticed that food, more precisely "some meat"<sup>392</sup> was brought by the vehicle usually used by the Accused Goran Marković, but he did not see the Accused.

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<sup>392</sup> Witnesses confirmed that there was a spit-roast on 13 July at the school in Bjelovac since the Accused Goran Marković celebrated a religious holiday, his Family Patron's Day.

670. However, members of his platoon were deployed a bit further from the warehouse the relevant night, as witness S-117 stated. It follows from the other presented evidence that Aca Golijanin, Deputy to the Accused Marković and a squad commander in his platoon, left for the field mission on that occasion.

671. The facts that Aca Golijanin, the Accused's Deputy, led members of this platoon, that another squad commander of the platoon (Nešković) issued orders in front of the warehouse, only additionally substantiates the conclusion of the Panel that it was not proved that the Accused Marković had been with members of his platoon in the evening of 13 July, nor was it proved that he had issued any orders to them.

672. Based on the foregoing, the Panel could not indisputably conclude that the Accused Goran Marković was present in front of the warehouse during the execution of prisoners, more specifically, the Prosecution failed to prove beyond any reasonable doubt the presence of the Accused in front of the warehouse in the evening of 13 July. Some witnesses testified that he "had moved around" near the warehouse, but they did not mention any specific actions he had taken on that occasion, so that the Panel could not establish any responsibility of the Accused under this Count of the amended Indictment.

(a) Calling up volunteers

673. *The Accused was charged under the same Count with calling up volunteers for the purpose of execution of men in the Kravica Farming warehouse.*

674. Since the presence of the Accused Goran Marković in front of the Kravica warehouse in the evening of 13 July was not proved beyond any reasonable doubt, the Panel will explain further in the Verdict why they do not find proved that the Accused called up volunteers that night for the executions in the warehouse.

675. According to witness Dragan Bešić, upon their return from Potočari, while they were sitting in the school, the platoon commander Neđo aka "Mesar" asked if there were any volunteers to go for an assignment. The Accused Goran Marković also asked for volunteers, but "*not as actively as Neđo*", the witness said and added that he thought at that time it was an "ugly" task, although no one openly spoke about the executions during their stay in the school.

676. Witness S-117<sup>393</sup> also heard that Dragan Bešić was among the volunteers. He submitted that the same day after the surrender and taking the prisoners from Sandići to the Kravica warehouse, volunteers were sought, but no one said why. The witness assumed they were sought to execute the prisoners. As for members of his platoon, he could remember that Golijanin went there, since he was a squad commander and they

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<sup>393</sup> Witness S-117 testified at a main trial hearing of 24 October 2011.

were not attached to a single location. At that time, both witness S-117 and Aca Golijanin aka Aleksa belonged to the platoon of the Accused Goran Marković.

677. Witness PW-100 explained that the Accused Goran Marković was commander of the platoon to which Aleksa - Aco Golijanin belonged and he acted as deputy to the Accused since he was often under the influence of alcohol and he did not accompany his platoon to the field. Witness S-117 corroborated this averment.

678. The Defense for this Accused tendered a witness statement in which witness PW-100 submitted that Goran's deputy "Aleksa" was in command in the field in Srebrenica because the Accused was drunk all the time and stayed in Bjelovac.<sup>394</sup>

679. The testimony of witness Bešić was imprecise time-wise and he claimed the volunteers were called by the platoons commanders, not in the field, but during their stay in the school, however this was not substantiated by other presented evidence, so that the Panel could not give credence to this part of his testimony.

680. The Panel is satisfied that it follows from the testimony of other witnesses that Neđo Milidragović, the platoon commander at the 1<sup>st</sup> Company, called up certain individuals for the execution of prisoners in the Kravica warehouse, while some members of the 1<sup>st</sup> company went spontaneously to the warehouse because they heard shots and detonations from the place where they were standing and they were interested to see what was going on in front of the warehouse.

681. The Panel concluded that the selection of individuals to carry out executions was not done on a voluntary basis, which implies a free will of an individual, since nothing like that was possible under the conditions in which "deserters" were brought and stayed in the field in Srebrenica.

682. Therefore, the Indictment is illogical in alleging that it was a free will of every individual to decide whether he would participate in some actions, since that was impossible in a situation in which members of the unit were called precisely by their immediate superiors in the chain-of-command.

683. Notwithstanding that the presence of the Accused Goran Marković in front of the Kravica warehouse at the relevant time was not proved during the proceedings, the Panel examined the option that the Accused briefly came to the road during the night to call up volunteers, as follows from the testimony of witness Milorad Savić, who stated to have heard "*Goran's voice calling volunteers*" that night. However, further in his testimony, he himself was not sure it was the Accused Marković, because it was dark and he did not see well.

684. During the testimony of this witness, the Defense claimed they were unable to cross-examine the witness since they were not provided with his statement given to the

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<sup>394</sup> Defense Exhibit OIII-8.

ICTY investigators. However, the Informative Report<sup>395</sup> of 25 July 2006, drafted by Investigation Team B, clearly outlines the contents of conversation between witness Sarić and ICTY investigators, so that the Panel concluded that the absence of statement in this situation did not infringe on the right of the Defense, since in this statement the witness entirely denied belonging to any police units and participation in any activities following the fall of Srebrenica. Therefore, this portion of his statement does not bear any significance whatsoever.

685. The presented evidence shows that Goran Marković's platoon left for the assignment in the evening of 13 July and they deployed a bit further from the warehouse. According to witnesses, it was led by Aco Golijanin, a squad commander and deputy to the Accused Marković.

686. On the other hand, the Panel is not satisfied that the testimony of witnesses Sarić and Bešić were sufficiently clear, unambiguous and consistent to produce an undeniable conclusion that the Accused Marković had come to the road the relevant night in order to call members of his platoon to go and kill the prisoners in the warehouse. Therefore, the Accused is acquitted of charges under this Count of the Indictment.

(b) Continuation of execution on 14 July

687. The members of Goran Marković's platoon who were deployed on the road a bit further from the warehouse confirm that the Accused brought food in his *white Golf* sometime on 14 July and then he drove in the direction of the warehouse. Witness S-102 noticed him there and, according to him, the Accused stay there very briefly, but he did not remember if he was present during the executions. In his statement under the investigation, witness Tomislav Krstović submits that the Accused Đurić, Jevto Doder and the Accused Marković were all in front of the warehouse, but he could not say how long he stayed and what his activities were.

688. The Panel did take into account that on his way back the Accused shortly stopped in front of the warehouse, but as witness S-102 said, he was not sure if he was present during the execution of prisoners, which were supervised by Neđo Milidragović on the orders of the Accused Jević and Đurić.

689. Since the Indictment does not charge the Accused Goran Marković with the events in front of the warehouse during 14 July, the Panel does find it necessary to further elaborate on this issue.

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<sup>395</sup> Informative Report 25 July 2006 drafted by Investigation Team B of 25 July 2006.



#### **4. Search of the terrain on 17 and 18 July, killing of prisoners and escorting prisoners in the direction of Konjević Polje**

690. *The Indictment charges the Accused with commanding on 17 and 18 July over the platoon whose members, together with members of the 1<sup>st</sup> and 2<sup>nd</sup> Company, participated in the search of the forest area above the Bratunac - Konjević Polje road in order to find, capture and execute Bosniak men. During the search, a number of the found and captured men were executed.*

691. It follows from the presented evidence, as already explained in the convicting part of the Verdict, that members of the 1<sup>st</sup> and 2<sup>nd</sup> Company of the Jahorina Training Center participated in the search of the forest area above the Bratunac – Konjević Polje road, on the orders of commander Goran Sarić.

692. According to witness Jevto Doder, who also took part in the search, after the search all of them went down to a meadow by the Konjević Polje – Bratunac road, near the school where members of the 2<sup>nd</sup> Company were quartered. The witness noticed 20-30 captives there, in civilian clothes, some could be in camouflage shirts, they were lying facing the ground with their hands backtied with a wire or rope. Members of the army, police and Center unit were standing on the road by the captives, and in his opinion, all platoon commanders were close by. Of members of the 1<sup>st</sup> Company, he could remember the Accused Duško Jević, but he could not remember Mendeljev Đurić, he only assumes that he was in the vicinity.

693. In contrast, Defense witness Slavko Bojanić, a member of the platoon of the 1<sup>st</sup> Company, firmly stated that on that occasion he saw his platoon commander, the Accused Goran Marković, and Mendeljev Đurić.

694. Witness Ljubodrag Gajić also noticed the captives assembled on the meadow on his way back from the search of a part of the terrain in which he participated with his platoon commander, the Accused Goran Marković. His platoon did not find any soldiers on that occasion, they only saw some dead bodies in the forest.

695. Based on the presented evidence, the Panel is satisfied beyond doubt that Goran Marković's platoon did participate in the search of the terrain under the supervision of the Accused Duško Jević. However, during the proceedings, the Prosecution failed to prove beyond any reasonable doubt that the Accused had participated in the search of the terrain with the intention to capture men, knowing that they would be summarily executed, following the same pattern of executions as in the Kravica warehouse, in which he had not participated, as already explained.

(a) The Accused Goran Marković ordered A.G, a member of the 1<sup>st</sup> company, to kill one individual

696. *The same Count of the Indictment charges the Accused with the killing of at least*

*4 prisoners. One of them was executed by Aco Golijanin on the order of the Accused.*

697. In this context, the Panel notes in the first place that the Indictment does not define a precise mode of liability of the Accused relating to the killing of all 4 prisoners, which, according to the Indictment, took place during the search. The killing of the prisoner on the order of the Accused was not proved beyond any reasonable doubt during the proceedings.

698. Witness Tomislav Krstović describes how they found a person in uniform during the search who was lying on the ground “*facing us, his head turned in our direction, he was looking at us, he was alive, I don’t know if he was wounded.*” On that occasion, the Accused Goran Marković, as a commander, ordered Aleksa Golijan who was in his platoon, to shoot, he said “Aco, shoot!” Witness Krstović had given a more detailed account of this incident in his investigation statement.

699. Witness S-117 participated in the search as a member of Goran Marković’s platoon, and he confirmed that a member of his unit did shoot in the direction of a wounded man who was sitting leaning against a tree when they came by. In his investigation statement, the witness stated he had not heard a shot, but it is possible that the wounded man was killed<sup>396</sup>. However, in his next statement<sup>397</sup>, he recalled that a member of the same platoon, Aco Golijanin, was nearby. In the cross-examination during the trial, he was not sure if he had fired in the direction of the captive.

700. When the two statements relevant to the same incident are thoroughly examined, it can be noticed that they are inconsistent in important elements – the position of the face when they found him, and the identity of the individual who had shot at him on the relevant occasion. Therefore, the Panel could not conclude that Aco Golijanin had killed the captive, and, in particular, it was not proved that the murder was ordered by none other than the Accused Goran Marković.

701. Witness Slavko Bojanić was with the Accused throughout the field mission, therefore all the time during the search, and he claims they did not find any members of the 28<sup>th</sup> Division column, only some weapons they threw away. The Accused ordered them to load the weapons on a horse they also found during the search.

702. Based on such evidence, the Panel could not find the Accused Goran Marković guilty of killing the prisoner.

703. The Accused Goran Marković did participate in the search of the terrain on 17 and 18 July when several wounded members of the column were killed after they had stayed behind the column which was moving in the direction of Tuzla. On the other hand, the

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<sup>396</sup> Record of examination of witness S-117 given to SIPA No. 17-04/2-6-04-2-462/10 of 26 August 2010.

<sup>397</sup> Record of examination of witness S-117 No. KT-RZ-101/07 and KT-RZ-82/08 of 13 September 2011 given to the Prosecutor’s Office of BiH.

Prosecution did not prove beyond any reasonable doubt that any of those murders were committed on the orders of the Accused Goran Marković.

704. Since it was not proved that the Accused Goran Marković ordered the killing of any prisoner during the search, the charges against him in the Indictment remain unclear. He is charged with the mere participation in the search given that it was not proved he knew that the people found would be subsequently executed, nor was it proved that he participated in the killings of the prisoners in the Kravica warehouse.

705. In this specific situation, the order was issued by the commander of the Special Police Brigade, while the Accused Jević and Đurić led the 1<sup>st</sup> Company during the search. Therefore, the role of the Accused Marković was identical to that of other platoon commanders, like Tomislav Krstović and Jevto Doder, who were even examined as prosecution witnesses about this event.

## **XVI. ACQUITTING PART OF THE VERDICT RELEVANT TO THE ACCUSED NEĐO IKONIĆ**

706. Under the Indictment, the Prosecution charges the Accused Neđo Ikonić with the participation in the JCE to commit genocide, but he is not charged with the search of the terrain, disarming the UN members, participation in the forcible transfer of civilians and separation of men.

707. As explained earlier in the Verdict, the Prosecution entirely failed to prove that the Accused Jević, Đurić and Ikonić had participated in any Joint Criminal Enterprise together with members of the VRS General Staff and the RS MUP, whose names are specified in the Indictment.

### **1. Deployment of members of the 2<sup>nd</sup> Company along the road**

708. *Under the Indictment, the Accused Neđo Ikonić is charged with deploying members of the 2<sup>nd</sup> Company along the Bratunac - Konjević Polje road on 13 July to capture men from the column. Members of the 1<sup>st</sup> and 2<sup>nd</sup> Company participated in the capture and search of the men, seizure of their personal belongings and valuables, taking and imprisoning them in the Kravica Farming warehouse.*

709. The Prosecution did not prove during the proceedings that members of the 2<sup>nd</sup> Company participated in the capture, robbing and escorting the men to the Kravica warehouse, nor did they prove any involvement of the Accused Neđo Ikonić in that respect.

710. It was only proved that the Accused Neđo Ikonić deployed members of the 2<sup>nd</sup> company on the road section Pervani- Hrnčići up to the school in Konjević Polje.

711. In the morning of 12 July, members of the Jahorina Training Center **2<sup>nd</sup> Company** left Jahorina and arrived in the area of Konjević Polje in the afternoon, when they went to the school close to the road junction and spent the night there.

712. According to witness Siniša Renovica, members of the 2<sup>nd</sup> company were deployed along the Konjević Polje- Bratunac road the following morning, approximately 1.5 km far from the school in the presence of the Accused Neđo Ikonić, commander of the 2<sup>nd</sup> company.

713. Witness Radovan Sladoje, one of the platoon commanders, explains:

„When we arrived on the spot, we were tasked to gain control over the road section from Bratunac to the point where the last member of the Jahorina Training Center 2<sup>nd</sup> Company was positioned. They said that a column of buses would come along and it had to pass without any unobstruction. At the same time, we were told to prevent anyone coming down from the hill to pass, since it was suspected there were soldiers there. Naturally, members of those groups could be captured. The order was issued by commander Neđo Ikonić. Our instructions were to send detained persons towards Konjević Polje.”

714. This witness also claims that the Accused Neđo Ikonić went along the road on that occasion and he once told the people there *“you know why we are here! Be very careful! There is an unprotected area behind you!”* The witness could remember the Accused Duško Jević was going along the road in his jeep, he once stopped briefly and asked *„How are things, boys? Is everything under control?“*

715. According to witness Nebojša Aleksić, member of the 2<sup>nd</sup> Company platoon under the command of Radovan Sladoje, when they arrived on the road, they were told it was secured.

„We were deployed along the road, one man each 20 meters, we could see each others. We were just brought there, no one gave us any explanation. No one mentioned the presence of the enemy, and for me, everyone was the enemy at that time. We were only told that there were Muslims around, and to be very careful, watching all directions. My understanding was that they could attack us. Muslims could appear, but no one told us what to do with them. While we were on the road, a ‘PUH’ jeep passed along with platoon commander inside, I don’t know who was with him, but he had no contacts with us, other than the first day when he had deployed us.“

716. Jelenko Kljajić<sup>398</sup> was one of the men who was deployed on the road around 1 km from the school in Konjević Polje by the platoon commander Sladoje. According to him *“Civilians surrendered and we just sent them in the direction of Konjević Polje. We only checked if they had any weapons, I did not see anyone had any, our assignment was not to establish their identity.“*

717. The witness added *“I did not know, but I could assume what would happen to the people we captured. They were not given any food or water, so I could guess what would happen to those people who would allegedly be exchanged“.*

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<sup>398</sup> Rejoinder witness Jelenko Kljajić testified at a main trial hearing of 26 September 2011.

718. The statements of the members of the 2<sup>nd</sup> company who were examined as witnesses are inconsistent since they were unable to give precise time of their deployment on the road.

719. Some witnesses, like Nebojša Aleksić, Nedeljko Kljajić, Željko Šehovac, S-124 and S-125 claim they were deployed immediately upon arriving in front of the school, therefore in the afternoon of 12 July. No men surrendered that day to the witnesses, they were only in an ambush since there was some shooting from a Praga, and they saw trucks and buses carrying civilians towards Kladanj.

720. According to the other group of witnesses, including platoon commanders Radovan Sladoje and Siniša Renovica, they arrived in front of the school in Konjević Polje in the afternoon, they spent the night there and were not deployed along the road before the following day – in the morning of 13 July. Witness S-123 also states that the deployment took place the second day of the field mission.

721. The testimony of these witnesses indicates that they were deployed along the road on 13 July, when they saw buses and trucks transporting civilians in the direction of Kladanj, which continued that day as well. There was some sporadic shooting that day, small groups of men surrendered and members of the 2<sup>nd</sup> company sent them in buses in the direction of Konjević Polje. Some of the examined witnesses described the capture of a rather large group of men the following day – 14 July. This will be elaborated further in the Verdict.

722. The Panel concludes that members of the 2<sup>nd</sup> company were deployed along the road on the left-hand side of the Konjević polje- Bratunac road, one member of the Center each 50m. According to witness S-124, they took up covered positions, they were in a sort of an “ambush” and were not allowed to abandon their positions.

723. Based on the presented evidence, the Panel is satisfied that the Accused Neđo Ikonić did deploy members of the 2<sup>nd</sup> company along the road as described; however, this has nothing to do with capturing the men in Sandići, their imprisonment and execution in the Kravica Farming warehouse. No involvement of either members of the 2<sup>nd</sup> Company or the Accused themselves in those activities was proved.

724. Witness S-124 says *„I do not know about the locations of Kravica or Sandići, we did not even reach the road junction in Konjević Polje, we were not allowed to leave the place where we were deployed.“*

725. Under this Count of the Indictment, the Accuse is charged with random killings along the road allegedly committed by members of his company.

(a) Killings allegedly committed by 2<sup>nd</sup> platoon commander Siniša Renovica

726. Based on the presented evidence, the Panel concluded that individual murders took place.

727. Witness S-123, another member of the 2<sup>nd</sup> company, describes the incident as

follows:

“Bomb explosion was caused by Muslim combatants. Later on, I had the opportunity to see those combatants when they surrendered. There was some shooting ... they surrendered at our request. They were in their middle ages ... maybe 25 to 30 years of age. One of them had trousers and a civilian T-shirt, another one was wearing a shirt. As for weapons, one had a hunting rifle, another one an automatic rifle of old make ... probably left after the previous war. They threw away the weapons and it stayed by the asphalt.

Some time after that, a man came along and asked us why we did not kill them. We were on the way to the house, but I stayed there. He asked the prisoners whose rifle it was. One of them said it was his, and then the man who came by took the rifle ... I think he folded it and fired the man in the chest, the man flew back, while his legs remained on the asphalt. Another captive was killed by a burst of fire from automatic rifle, the entire clip was fired at him. Several seconds later, this captive also fell down, facing the ground.”

728. The witness explained that the murderer was a man who used to *“appear from time to time, come and go, he was like a lone shooter. I do not think he was in our company, but he was around us. I used to see him on Jahorina. He worked, he was always somewhere around the commander.”*

729. Based on such testimony of witness S-123, the Court could not indisputably establish that Siniša Renovica, 2<sup>nd</sup> company platoon commander, committed those murders, in particular because witness S-123 himself proceeded by stating that this name was suggested to him several times during the examination.

730. Witness S-124, member of the platoon of the 2<sup>nd</sup> Company, who was deployed close to the scene, testified about that incident. He knew that those persons were killed, but there were two versions of this incident, one referred to Siniša Renovica, the other one to a blond man.

731. Witness S-121, who also heard this story, asked Siniša Renovica about the referenced murders, but he told him he did not know what he was talking about. Siniša Renovica was examined before the court as a prosecution witness, but he was not examined about this incident. The bodies were taken from the mentioned location by trucks, so that only the Accused Duško Jević was informed about that and he was informed by witnesses S-124 and S-123, members of the 2<sup>nd</sup> company. He responded by saying: *“This is my problem and I am going to solve it”*.

732. On the other hand, these witnesses do not know whether Neđo Ikonić, the commander of their company, was informed about that, since the bodies had been taken away prior to his arrival.

733. The Panel could not establish on the basis of the presented evidence who participated in the execution of prisoners, but finds it was proved that the murders had

taken place in the manner described by witnesses S-123 and S-124. Since it was not proved that Siniša Renovica participated in the killing of prisoners, as the commander of a platoon of the 2<sup>nd</sup> company, nor was it proved that the Accused Neđo Ikonić had been informed about that, he could not be charged accordingly.

734. Another member of the 2<sup>nd</sup> Company, witness S-125, describes a similar situation. He heard that a civilian had been murdered on one occasion. He was going along the road, carrying a plank on his shoulder and when they told him to stop, he did not want to. His body was also taken away from the road in a truck. Company Commander Neđo Ikonić did not see this murder either.

735. It is important to note that the Indictment fails to precisely define the mode of liability of the Accused for the murders. If the Accused is charged with the killings of men as a participant in the JCE (III), this implies that the murders were a natural and foreseeable consequence of his actions. However, since he was obviously unaware of the individual killings along the road, the Panel finds that the participation of the Accused in the JCE (III) was not proved beyond any reasonable doubt.

(b) Murder of at least one prisoner committed by 2<sup>nd</sup> company platoon commander known as „Brko“

736. Only witness S-125 testified about the incident described in the Indictment. One night, while he was on the road, he heard some moaning from a creek, someone was calling for help. It went on until morning, then the platoon commander everyone knew as “Brko” took a by-pass and went in the direction of “moaning and calling” sounds, a shot was heard and the calling stopped. He assumes that “Brko” killed that person and does not remember that anyone pulled the dead body out of the creek.

737. The Court could not indisputably establish only on the basis of the testimony of this witness exactly who committed the murder, which was anyhow imprecisely outlined in the Indictment, both in temporal and factual terms. Moreover, it does not follow from the presented evidence who among the Jahorina Training Center members had this nickname, nor was any causal relationship with the Accused Neđo Ikonić proven.

738. The Prosecution should have given the full name of the perpetrator in the Indictment, rather than leave it to the Panel to establish the identity of this person on the basis of the presented evidence, in particular because it is not clear if “Brko” was only his nickname or a physical characteristic. Also, this person is charged with committing at least one murder, but the acts of perpetration were not at all described.

739. The evidence shows that a number of witnesses confirmed individual murders had taken place, but they did not identify the perpetrator. In a situation when the Panel is faced with this fact, with the unknown identity of the person whose nickname was “Brko”, with at least one murder charged, but without any description of the acts of perpetration, it was impossible to establish if the murder was indeed perpetrated and who was the perpetrator.

## **2. Alibi of the Accused Ikonić for the events of 13 July**

740. Notwithstanding the the participation of the members of the 2<sup>nd</sup> company in the executions in the Kravica Cooperative warehouse was not proved, the Panel nevertheless examined the movement of the Accused Neđo Ikonić during 13 and 14 July.

741. The evidence shows that in the morning of 13 July, the Accused Neđo Ikonić, together with other platoon commanders, deployed members of the 2<sup>nd</sup> company 1.5 km from the school in Konjević Polje.

742. Conversely, defense witness Vojislav Tokanović testified about the alibi of the Accused. In the early afternoon of 13 July, he noticed the Accused Neđo Ikonić in Zvornik, playing with his daughters in front of the building. He first met the Accused when he hitchhiked, more precisely, his son introduced him, because both of them were karateka. That was their first official contact and the witness could remember that Neđo said on that occasion that he had been stationed in the school with his unit, but the witness did not know what school that was, nor did he know what their role in the field was.

743. Witness Duško Kusmuk,<sup>399</sup> who was in Zvornik during the same period, testified about the incident. He recognized the car of platoon commander Siniša Renovica under the balcony, he knew that the Accused Ikonić lived in the building on the opposite side, and after a short time, he saw the two of them leaving the building. The witness called Ikonić, but he told him he had only come to have a bath and had no time. He did not say anything about the location of his deployment or assignments he executed.

744. The testimony of these witnesses shows that the Accused Neđo Ikonić spent short time in Zvornik in the morning of 13 July with his family. This is in no contravention of Siniša Renovica's testimony, since he claims to have deployed the men along the road in the morning hours and, during the day, he went to see Neđo Ikonić who was deployed on the road section closer to the school, with the platoon commander Rade Sladoje.

745. Hypothetically, the Accused did have time to go briefly to Zvornik on 13 July, but the Panel notes that he did not need an alibi for that date since it does not follow from the other presented evidence that he was present in Kravica at the time of mass executions on 13 July 1995.

746. He passed by the Kravica warehouse at the time when dead bodies were transported, but this will be elaborated in more detail further in the Verdict, in the Section relevant to the killings of prisoners in the warehouse the following day – 14 July.

## **3. Surrender of 100-150 prisoners on 14 July in the AOR of the 2<sup>nd</sup> Company**

747. A group of around 100 prisoners surrendered on 14 July in the AOR of the 2<sup>nd</sup> Company. Witness Siniša Renovica gave a detailed account thereof:

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<sup>399</sup> Defense witness Duško Kusmuk testified at the main trial hearing of 4 July 2011.



"A young man surrendered on 13 July in the AOR of my platoon, they brought him to me, we talked, I told him not to be afraid because no one would do him any harm. He told me that he had happened to be in Srebrenica at the beginning of the war and his family lived abroad. He did not want to go to anyone's territory and asked me if I could transfer him to Serbia, he had someone there and he wanted to proceed to Austria. I told him I would try to transfer him or to drive him to Sarajevo, but he did not want to go there. He said there were some 1500 armed men in the hills around us, some of them would surrender and they asked if they would be safe if they surrendered to us. I said that they could surrender as far as I was concerned and that there would be no incidents. He stayed there for an hour or two, I told him he did not have to go back if he did not want to. I was worried when I heard there were so many armed people, since there was only a few of us on the road and our flanks were not linked up. I informed Neđo Ikonić about that, he was a bit further on the road with Rade Sladoje, but I still believed that those people would not appear and that the young man had come only as a reconnaissance. Neđo also told me *"he won't show up."*

However, he did show up the following day - 14 July and said there was a group of people who wanted to surrender. Someone called Neđo, we assigned some men to secure the section where those people would surrender. The young man waved and they started coming down from the hill towards a creek, they crossed the creek and went to a meadow on the right-hand side of the Konjević Polje - Bratunac road. They laid down the weapons they had when they crossed the creek. I did not see anyone ordering that anything else be seized from those men, I only saw them lay down their weapons and nothing else. The prisoners were mainly dressed in civilian clothes, only a few of them wore parts of uniform. I was present all the time while they surrendered, same as the Accused Ikonić. Some people from the Command, officers, arrived only when the buses came, they wanted us to provide some escort since only drivers were inside the buses. The men left on the buses, around 100 people inside.

We were on the road and the only communication we had was with the Command in Konjević Polje. I think they sent the buses. They left in the direction of Konjević Polje. Our men who escorted them told us they had first taken them to the stadium in Nova Kasaba, but the stadium was already full of people there, so they refused to take them in, after which they took them to the barracks in Zvornik. Our men returned from there on foot."

748. Witness S-125 also remembers this incident. According to him, platoon commander "Brko" told the young man to go and call others, while he told the witness to accompany him. The young man then called people from the column by their names. *"We were on the road, he went towards a household, there were some demolished sheds there and they started coming out from there. There were some parts of the road when I could not see him, I thought that he would flee, but he returned with others. It looked strange to me ... we were in war ... he received no promises. What could "Brko" promise him? It never even crossed my mind that he would come back. Most probably, he informed his superior about that, since it was impossible that someone came just like*

*that to lead those people.”*

749. Witness Željko Šehovac, another member of the 2<sup>nd</sup> Company, more precisely of the platoon under Sladoje’s command, also spoke about the surrender of the group of 100 prisoners.

750. Witness Siniša Renovica further states that the group was searched before boarding the buses, which was a routine police procedure in his opinion, carried out by members of the 2<sup>nd</sup> company. The young man who had surrendered the day before, stayed with the witness, who warned him not to go to the road, otherwise, some soldier might “put him in danger.” The witness told the young man that he would go to Konjević Polje, to try to find a superior officer and obtain a permit to transfer him to Serbia, as he promised. However, when the witness returned to the place where he had left the young man, he did not find him there, he made some inquiries and found out that Milidragović had come by and taken away the young man. He asked members of the platoon why they had allowed Milidragović to take the man away, they said that Milidragović was rude and threatened them.

751. The witness could not find Neđo Milidragović, the platoon commander of the 1<sup>st</sup> Company, nor could any of the people around tell him about his whereabouts. Upon their return to Jahorina, Milidragović personally told him he had remembered that young man and he had handed him over with a group which surrendered in the area of Bratunac.

752. Witness Živorad Lakić, the then member of the police station deployed near the road junction<sup>400</sup> in Konjević Polje, confirmed that the group had been taken away in the direction of Zvornik. He saw the buses carrying men on the way to Zvornik, and he noticed a young man who was pushed out of the bus, he swore their Serbian mother, he was a kind of unconscious.

753. He was taken in the direction of a storage, where a group of people had already been brought, it was *“like a transit center for young people from 17 to 28 years of age”*, others were taken in the direction of Zvornik. Witness S-125 corroborates this by stating that *“There were instances when people were taken off buses and trucks.”*

754. That same day, witness Siniša Renovica, together with the Accused Neđo Ikonić, passed by the Kravica warehouse, when he heard intensive gunfire, he thought that there were combat activities nearby so he increased the speed of his vehicle.

755. Notwithstanding that they tried to pass by as fast as possible, witness Renovica and the Accused Ikonić saw loaders and excavators in front of the Kravica warehouse, the truck tarpaulin was partially uncovered, and they clearly saw dead bodies inside. The witness and Neđo commented on how *“horrible and terrifying was what we saw, but we did*

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<sup>400</sup> T-93 The witness was shown a photograph and he recognized the location where he was deployed, the location of the former warehouse, now a petrol station, primary school some 300m far from there in the

*not know what combat could result in such a huge number of victims, we did not know at the time about the mass killings in Kravica, and the section we saw was not in our AOR.*" The witness was firm in stating that he was unaware of the incident and the death of a huge number of people, although a "*fierce shooting*" could be heard.

756. According to witness Renovica, when he arrived in the Bratunac SJB, the Accused Neđo Ikonić informed Ljubomir Borovčanin about everything they had seen. He says:

"We went to the Bratunac SJB to get information where to find our superiors, Jević and others to contact them. We went upstairs, Borovčanin was there and many people in the office. He was the commander-in-chief, above Jević. I do not remember why we came to see him, we talked to him. Ikonić informed him what we had seen on the way to Bratunac, he looked at me and asked me what I was doing there. Neđo told him about those hundred prisoners and asked him how much longer we would have to stay there under such conditions ... I referred to our unsupported flanks ... we were not safe. I don't remember if he mentioned Jević in that conversation, or he might have even been present there, but I don't think he was, because we would have then talked to him, not to Borovčanin."

757. On the way back, he was not stopped at the check point near Kravica warehouse, but Neđo Ikonić saw a platoon commander or an instructor on that occasion, told the witness to stop the car and then briefly talked to them.

758. Witness S-101 was in a nearby house at the time when dead bodies were loaded in front of the Kravica warehouse and he heard someone calling for help, saying that one of the survivors was fleeing towards a corn field. When the witness arrived in front of the warehouse, he saw dead bodies were loaded manually, and a loader was close by. He recognized local people "Jole" and a certain Ilija, and the Accused Neđo Ikonić who was quarreling with "Arkan" and "Neđo from Zvornik". As far as the witness could understand, they were quarreling over the way of killing, "*why it was done in Kravica, they swore at each other, Neđo even pulled out his knife.*" In the cross-examination, the witness made a clear distinction between Ikonić and Milidragović, and argued there was no misidentification of the people he saw in front of the warehouse at that time.

759. The testimony of witness S-101 was the one mostly contested during the proceedings. Nevertheless, the Panel notes that there were other witnesses as well who testified about the presence of the Accused in front of the Kravica warehouse. Witness S-102 noticed people who were not from his unit in front of the door to the warehouse in the morning of 14 July. One part of his unit was in the nearby houses. According to him, the Accused Duško Jević "moved around" at that time, some of the instructors were also present, including Neđo Milidragović, while Neđo Ikonić passed by along the road at a certain moment. This witness, however, did not mention any quarrel between the instructors who were there.

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direction of Bratunac. He explained that the PJP CJB Zvornik check-point was directly at the road junction.

760. As already explained, the Panel does not accept that there was any “quarrel” or “incident” among the Accused Neđo Ikonić and other platoon commanders who were in front of the Kravica warehouse, since that part of witness S-101 testimony was not corroborated by any other presented evidence.

761. It was indisputably proved in the proceedings that the Accused passed by the Kravica warehouse with his driver on 14 July, while dead bodies were being loaded. The Accused went out of the car and talked to some platoon commanders he found there. On the other hand, this part of witness S-101 testimony remained unsubstantiated, since neither witness Siniša Renovica, who was with the Accused at that time, nor any other witness, mentioned any incident or fight among the instructors.

762. The Panel notes that the executions of prisoners had finished by that time, therefore any disagreement of Neđo Ikonić with the already finished executions of prisoners does not seem logical, nor does his conflict with the colleagues present in front of the warehouse, considering that the location was not in the AOR of the 2<sup>nd</sup> Company which was under his command.

763. The Prosecution did not prove beyond any reasonable doubt the presence of the Accused Neđo Ikonić in front of the Kravica warehouse during the killing of prisoners, nor did it prove any participation of members of his Company in those executions. His very short stay in front of the warehouse on 14 July was proved, as opposed to any participation of members of the 2<sup>nd</sup> Company in the executions.

764. The surrender of 100-150 prisoners, which was already explained, clearly shows how the Accused treated the captured men. He informed his superior command about the surrender, handed those men over to the military police and assigned several soldiers to escort them. The Accused was afterwards informed that the prisoners had been surrendered to the Military Command in Zvornik, and, as of that moment, he was no longer responsible for their future treatment. He informed his superior on the premises of the Bratunac SJB about all actions he had taken, and, under the circumstances, that could be considered as professional conduct.

#### **4. Search of the terrain on 17 July and taking the prisoners in the direction of Konjević Polje**

765. *Under the amended Indictment, the Accused is charged with the participation in the search of the terrain – forest above the Bratunac- Konjević Polje road, which is when at least 4 captured Bosniaks were executed.*

766. During the proceedings, the Panel indisputably established that members of the 1<sup>st</sup> and 2<sup>nd</sup> Company, on the orders of the Accused Duško Jević, participated in the search of the forest area above the Bratunac- Konjević Polje road on 17 and 18 July.

767. Witness Tomislav Krstović gave a detailed account of the search of the terrain. He could remember that the Accused Neđo Ikonić was present in the area, but he could not remember if he was present when the prisoners were being tied up and transported by

buses, but witnesses S-123 and S-121 were positive that he was present, adding that there were also some “military and police” members at the same location.

768. Witness Željko Šehovac, who participated in tying up the prisoners, could not remember Ikonić, while witness Jevto Doder submitted that the Accused Mendeljev Đurić was in charge of the search, but he did not notice either the Accused Neđo Ikonić on the scene, or any of the commanders of the Jahorina Training Center 2<sup>nd</sup> Company. On the other hand, witness Stanislav Vukajlović, member of the 2<sup>nd</sup> Company under the command of the Accused Neđo Ikonić, did see Siniša Renovica, the platoon commander, and occasionally he saw the Accused Duško Jević and Neđo Ikonić.

769. Besides, it would be absurd to expect that the Accused who were sent precisely to lead the units did not actively implement their assignments or at least did not supervise their implementation in the field, bearing in mind that their role in the field was in accordance with their position in the chain-of-command.

770. Based on the other presented evidence, the Panel is satisfied that witness Krstović is consistent in stating that the search was conducted in the mentioned areas, when a number of individuals were captured, and that it was the Accused Duško Jević who decided when and how they would be transported. The Panel opines that the witness deliberately avoided to confirm the presence of Neđo Ikonić, in an effort to exculpate him from all unlawful activities which took place during the search. At the main trial, the witness failed to provide a reasonable explanation as to why he had changed his testimony in this part, so that the Panel finds his investigative statement to be more precise as back then he confirmed to have seen the Accused Ikonić in the search of the terrain and when the prisoners were brought. This was corroborated by other witnesses as well.

771. Witness S-104 gave a similar account of the incident. The 1<sup>st</sup> Company met with members of the 2<sup>nd</sup> Company only during the search of the terrain. On that occasion, they did not find any Muslims, other than the one for whom he did not remember if they had brought him along or left him there. He could remember there was a number of Muslims in one village, but they did not go there. They went down to a meadow where they found a lot of Muslims, but they were surrendered to other soldiers who tied them up and transported them. He did not remember seeing the Accused Ikonić at that time in the field. Witness S-125, member of the 2<sup>nd</sup> Company, also claimed that members of another unit searched the prisoners and tied them up.

772. There was no doubt about the participation of the 2<sup>nd</sup> Company under the command of the Accused in the search of the terrain on 17 and 18 July, but the Prosecution failed to prove that the Accused, unlike the Accused Jević and Đurić, was aware and knew during the search that the prisoners found during the search would be summarily executed. They did not prove that members of his unit (2<sup>nd</sup> Company) randomly killed the wounded people. Therefore, it was proved that the Accused participated in the search of the terrain, but according to the evidence it was an entirely legitimate military action, carried out in accordance with the military rules, which ended

by surrendering all captured people to the military police in the warehouse located at the road junction in Konjević Polje, where they were subsequently executed. On the other hand, the Prosecution did not prove beyond any reasonable doubt to which unit the individuals who had participated in the executions belonged, especially having in mind that the witnesses were firm in stating that members of the 2<sup>nd</sup> Company had not participated in that action.

773. As already explained in detail, the Panel indisputably concluded during the proceedings that the people who were captured in the search of the terrain on 17 and 18 July and collected on the meadow in Pervani were among the victims of the executions, including Munib Cvrk, Munib (Hasan) Cvrk and Munir (Munib) Cvrk, who were subsequently identified together with other bodies found in the Cerska mass grave.

774. The amended Indictment does not give a precise explanation as to whether those individuals were executed in the storage in Konjević Polje, nor does it charge precisely the members of the 2<sup>nd</sup> Company, including the Accused Neđo Ikonić, with those executions.

775. If the intention was to charge the Accused with the murders as a part of the JCE (III) to kill the men, which implies that all the murders were a natural and foreseeable consequence of the acts of the Accused, then the Panel notes that such a mode of liability of the Accused was not proved beyond any reasonable doubt.

776. As opposed to the Accused Duško Jević and Mendeljev Đurić, the Panel does not find it proved that the Accused Neđo Ikonić shared the same motives when he participated in the search of the terrain; specifically, it was not proved that he was aware that the captured men would be executed, since he did not participate in the executions of the men in the Kravica Farming warehouse, he did not agree with the commission of the crime as he immediately informed about it his superiors in the Bratunac SJB.

## **XVII. DECISION ON COSTS OF CRIMINAL PROCEEDINGS**

777. Applying Article 188(4) of the CPC of BiH, the Court relieved the Accused Jević and Đurić of the duty to reimburse the costs of criminal proceedings with regard to the sentencing part of the Verdict due to their being indigent, which is clearly corroborated by the fact that even their defense costs were paid from the Court budgetary appropriations.

778. Besides, the Accused have been in custody throughout this time and have therefore not been in a situation to earn any income. Therefore, binding them to pay the costs of proceedings would certainly threaten their existence or the existence of their families.

779. Considering the foregoing, the Court decided that the costs of the criminal proceedings be paid from the budgetary appropriations.

780. Pursuant to Article 189(1) of the CPC of BiH, the costs of criminal proceedings related to the acquitting part of the Verdict shall be paid from the Court budgetary

appropriations.

### **XVIII. DECISION ON CLAIMS UNDER PROPERTY LAW**

781. With regard to the claims under property law, the Prosecutor moved the Court during the proceedings to examine the President of the Association whom the Panel found not to be authorized to file this type of claim, and the Prosecutor on the case was therefore instructed to obtain the required data to that end.

782. Afterwards, at the main trial held on 5 March 2012, the Prosecutor informed the Court that the referenced data could not be obtained and, considering that the aggrieved parties did not specify their claims under property law, that the data gathered during these proceedings did not provide a reliable ground for the Panel to make a partial or complete resolution, and that determining any amount of the claim under property law would lead to an unnecessary delay of the referenced proceedings, the Court applied Article 198(2) and (3) of the CPC of BiH and referred the aggrieved parties to civil action.

**RECORD-TAKER:**

**Lejla Kurtanović**

**PRESIDENT OF THE PANEL**

**JUDGE**

**Mira Smajlović**

**LEGAL REMEDY:** The Parties and Defense Counsel may file an appeal from this Verdict with the Appellate Division of the Court within 15 (fifteen) days from the receipt of a written copy of the Verdict.

Pursuant to Article 293(4) of the CPC of BiH, the aggrieved parties may contest the verdict by an appeal only with respect to the decision of the Court on the costs of the criminal proceedings and with respect to the decision on the claim under property law.

\* An appeal is filed with this Court in a sufficient number of copies.

## XIX. ANNEX I

### A. PROCEDURAL DECISIONS

#### 1. Exclusion of the public and granting protective measures to witnesses

##### (a) Protected witnesses A1 and A2 and exclusion of the public

783. On 20 May 2010, prior to examining witnesses A1 and A2, the Prosecution moved the Court to exclude the public and enable the witnesses to orally explain the reasons why they seek protective measures. After the defense made its comments, the Panel found that the requirements set forth in Article 235 of the CPC of BiH have been satisfied, and concluded that the exclusion of the public would serve the purpose of protecting the private life of these witnesses. Having weighed the witnesses' reasons and following deliberation and voting, the Panel rendered a decision to protect personal details of the witnesses, and that they would testify at the trial under the pseudonyms A1 and A2, whereby, pursuant to Article 13 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses (Law on Witness Protection), any transfer of the image of the witnesses via printed or electronic media should also be banned, while audio records of their testimony may only be issued with the consent of the Court.

##### (b) Trial Motions 3 and 5 by the Prosecution

784. On 24 May 2010, protective measures were granted to witnesses S-110 and S-113, while the ICTY protective measures for the witness S-111 remained in effect. Those were the Prosecution's trial motions 3 and 5.

785. On 7 May 2010, the Prosecutor's Office of BiH moved the Court to order protective measures for witness S-110 and extend protective measures for witness S-111. It was stated in the reasoning that, on 26 March 2009, witness S-110 informed the Prosecutor of the Prosecutor's Office of BiH that unidentified persons had threatened to kill his entire family should the witness testify about what he knew. This is a witness who was assigned a pseudonym S-4 in the criminal case conducted before this Court against the Accused *Miloš Stupar and others*, and who testified in closed session, while in the case conducted before this Court against the Accused *Radomir Vuković and Zoran Tomić* he was assigned a pseudonym D-5, along with other protective measures ordered by the Decision of the Court of BiH, number: X-KR-06/180-2 of 3 February 2009.

786. With regard to witness S-111, the Prosecutor moved the Court to keep in effect the protective measures the ICTY granted to the witness in *Blagojević* IT-02-60-T, and to grant him the protective measures that were granted to him by this Court in *Stupar and others*, number: X-KR-05/24, and *Vuković and Tomić*, number: X-KR-06/180-2.

787. In its response to the referenced motion, the Defense objected to granting the



protective measures to witness S-110, arguing that this witness had appeared before this Court to testify in other cases about the same event, so his identity has already been known to the public, which effectively annuls the purposefulness of the protective measures. Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, argued in his submission of 18 May 2010 that a non-disclosure of the protected witness's identity or imposing any other restrictions on the defense in gathering evidence to challenge the credibility of such a witness constitutes a violation of Article 14 of the CPC of BiH, which provides for the equality of arms. However, the Defense Counsel, in principle, does not object to ordering the protective measures if the Defense is provided with all non-redacted transcripts from all trials at which they testified, including their statements made during the investigative procedure, so that the Defense can prepare for cross examination. Besides, this is a key witness for the Prosecution and the disclosure of non-redacted statements of this witness is of vital importance to the Defense.

788. With regard to the protective measures the ICTY granted to witness S-111, the Defense only raised an objection in principle.

789. On 17 May 2010, the Prosecutor's Office also filed a motion for protective measures for witness S-113, because the person concerned is a victim of rape and has direct knowledge of the July 1995 events as charged. Thus, this is a seriously mentally traumatized person who expresses her justified fear that the disclosure of her identity during testimony in this case would result in intimidation and would threaten her safety and the safety of her family, which is not fully aware of what the witness experienced.

790. In his written submission of 19 May 2010, Defense Counsel for the Accused Neđo Ikonić, Attorney Mihajlović, objected to the referenced motion, as he believed that its reasoning does not provide the circumstances set forth in the legal provisions to which the motion referred. He also finds it unacceptable that the witness's identity was disclosed only seven days before her testimony at the main trial, and submits that that period of time was inadequate for them to properly prepare for cross examination.

791. However, at the hearing held on 20 May 2010, Defense Counsel for other Accused stated that they deferred to the Panel to decide on the referenced motion.

792. Having considered the referenced motions and responses by Defense Counsel and the Accused, the Panel found that the Prosecution motions number: KT-RZ-101/07 of 7 May and 17 May 2010, for the protective measures for witnesses S-110, S-111 and S-113 are partly well-founded.

793. Namely, the Panel concludes that the witness with the pseudonym S-110 is subject to the provisions of Article 3(1) of the Law on Witness Protection, that is, this is a person who has relevant information on the event the accused in this case have been charged with, and the disclosure of his identity would certainly threaten his own and the safety of his family, because he has previously received threats for testifying about the relevant events.

794. In this context, the Panel finds it justifiable to also order protective measures sought by witness S-113, considering that Article 3(2) of the Law on Witness Protection also stipulates protection for witnesses who experienced severe mental trauma due to the experienced events of which they testified at the main trial, to which the defense for the accused did not object.

795. By the protective measures stated in the operative part of the Decision, witnesses' identity and safety will be sufficiently protected, hence the partial refusal of the Prosecution's motion seeking a ban on disclosure of the content of the testimony and protection of personal details of witnesses for a period of 15 years following a final and binding decision, considering that the Panel did not find the motion for such strict measures to be well-founded. Also, it was not accepted that any of the proposed witnesses be examined at a closed session, considering that the motion does not offer the reasons thereof. However, this does not prevent the Prosecutor on the case from deciding on his own to ask for a closed session if any argument about the transcript content and that by which the identity of protected witnesses could be disclosed are to be presented before the Court.

796. Furthermore, with regard to the witness under the pseudonym S-111, the Panel reviewed the ICTY decisions and it is evidently proposed in this specific case that the measures granted to the witness S-111 by the ICTY (*Vidoje Blagojević, number: IT-02-60-T*) should remain in effect. In this context, the Panel was guided by Rule 75 (F)(i) of the Rules of Procedure and Evidence (ICTY) "*Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures shall continue to have effect mutatis mutandis in any other proceedings before the Tribunal ("second proceedings") or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule*".

797. Therefore, it clearly follows from the interpretation of the foregoing provision that the Court of Bosnia and Herzegovina, as another jurisdiction, is obliged to adhere and keep in effect all protective measures already granted to witnesses testifying before the ICTY. Therefore, acting in accordance with the foregoing, the Panel decided to keep the protective measures granted to the witness in the referenced ICTY cases in effect in the case against Jević Duško and others as well.

798. In the referenced ICTY case, the witness was granted the pseudonym P-106 and image distortion, and the Panel's decision, stated in the operative part of the Decision, was guided by that. Therefore, the Panel did not accept the arguments in the motion requesting voice distortion in addition to the already assigned protective measures considering that, pursuant to the provisions of Rule 75 (H) of the Rules of Procedure and Evidence (ICTY), there is no room for this Panel to vary, rescind or augment the protective measures without previously contacting the ICTY.

799. Finally, the Panel noted that it granted a new pseudonym to this witness for the sole purpose of making distinction in the reference procedure, because he already

enjoyed protective measures in other cases conducted before this Court as well; therefore the foregoing shall not be deemed to be a variation of the previously ordered measures.

800. Keeping the protective measures for the witness S-111 in effect and ordering protective measures for witnesses S-110 and S-113 will not undermine the right to a defense, considering that Defense Counsel and the Accused were given the opportunity to comment on the referenced Prosecution's motions. However, there still remains an obligation that, at least 15 days prior to witness examination, the Defense should be presented sufficient data to enable them to prepare for cross examination.

(c) Trial Motion 6: witness protection

801. On 30 August 2010, deciding on the motion filed by the Prosecutor's Office of Bosnia and Herzegovina (Prosecutor's Office) of 13 August 2010, number: KT-RZ-101/07 to grant protective measures to witnesses S-100, S-101, S-102, S-104 and S-105, pursuant to Article 91 of the Criminal Procedure Code of BiH, Article 3(1) and (2) and Articles 12 and 13 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses (Law on Witness Protection), the Court rendered a decision to assign them pseudonyms S-100, S-101, S-102, S-104 and S-105, by which they were addressed during the further course of the proceedings.

802. According to the same Decision, these witnesses were told to testify at the main trial from the courtroom, with their image and voice distorted for the public, while witness S-105 was to testify at the main trial from the courtroom with the image distorted for the public.

803. It was decided that the real names and family names and other personal details of the witnesses under pseudonyms known to the Court be considered secret, and authorized persons and those who anyhow come into possession of confidential information about this witness are obliged to keep it confidential. Unauthorized disclosure of such information constitutes a criminal offence under Article 240 of the CC of BiH.

804. Confidential data, that is, the names, family names and other personal details of witnesses under the pseudonyms S-100, S-101, S-102, S-104 and S-105, shall remain confidential over a period of 15 years following the final termination of the case.

805. According to the Decision, confidential details of witnesses to testify under pseudonyms shall not be disclosed by the Prosecutor's Office of BiH to the Accused and their Defense Counsel; however, the Prosecutor's Office shall be obliged, pursuant to Article 12(8) of the Law on Witness Protection, to reveal sufficient data to the Defense at least 15 days prior to their testimony at the trial so that they can prepare for cross examination of witnesses.

806. Without the Court's consent, the transmission of photographic and video recording of the witnesses' image via electronic or printed media, and the issuance of audio recording and content of the testimony may only be done with the approval of the Court.

807. It was decided that the Court of Bosnia and Herzegovina would take care of the decision implementation and would take measures to secure that all personal details remain confidential.

808. Namely, on 13 August 2010, the Prosecutor filed a motion requesting protective measures for witnesses S-100, S-101, S-102, S-104 and S-105, whose examination was proposed in the Indictment against Duško Jević and others, number: KT-RZ-101/07, and in the Indictment against Neđo Ikonić, number: KT-RZ-82/08.

809. It is stated in the reasoning that all witnesses whose names were stated in the motion requesting protective measures were former members of the Jahorina Training Centre and also eye-witnesses of the events referred to in the Indictment against Duško Jević and others, and it is therefore necessary to secure that they give their testimony without fear for their personal and the safety of their family. All proposed witnesses were present in Potočari at the relevant time when men were separated and taken to the “white house”, and they also eye-witnessed the killings in Potočari and in the Farming Cooperative “Kravica”.

810. According to the motion, the proposed witnesses agreed upon the proposed measures and notified the Prosecutor’s Office of their wish to testify in open court if their identity and image are not disclosed to the public. During the examination by the Prosecutor, they expressed fears for their lives and lives of their immediate families due to testifying before the Court of Bosnia and Herzegovina. While commenting on the protective measures, all witnesses believed that the disclosure of their identities after the testimony could result in threats to and intimidation of their immediate family members.

811. Considering that all proposed witnesses were former members of the Jahorina Training Centre and eye-witnesses of the events as charged, the Prosecutor’s Office believed them to be extremely important witnesses whose own and the safety of their families may be put at risk due to their testifying before the Court of BiH, and that it is therefore justified to grant them measures to protect their identities.

812. At the hearing held on 23 August 2010, the Defense Counsel for the Accused Mendeljev Đurić objected in principle to protective measures, submitting that the arguments of the witnesses S-101 and S-105 were insufficient.

813. Defense Counsel for the Accused Goran Marković and Neđo Ikonić noted in their written responses that the Prosecutor’s Office did not provide valid reasons for their motion, without making clear distinctions between the categories of the referenced witnesses relative to Article 3(1) and (2) of the Law on Witness Protection. Furthermore, the Defense Counsel hold that there exists no specific evidence on the exerted influence, that is, threats to the proposed witnesses, and it is therefore unclear as to what is the ultimate purpose of the motion by the Prosecutor’s Office which have unlimited resources for gathering evidence, while the defense is prevented from contacting potential witnesses and checking their credibility, which is contrary to the principle of the equality of arms under Article 14 of the CPC of BiH. In addition, Attorney Veljko Čivša submits that the procedural requirements for granting protective measures to the proposed witnesses<sup>244</sup>

have not been satisfied, considering that, according to the arguments stated in the Indictment, they were co-perpetrators of the criminal offense with which the Accused have been charged in this case.

814. Having considered the motion of the Prosecutor's Office and the responses by the Defense Counsel for the Accused, the Panel granted the motion as being well-founded.

815. Namely, the witnesses have been assigned pseudonyms because, in the Panel's view, they are subject to Article 3(1) and (2) of the Law on Witness Protection, that is, they are persons who have direct knowledge on the events the Accused have been charged with in this case. Therefore, disclosure of their identity to the public would certainly threaten their and the safety of their families because direct influence has already been exerted on some of them. This was the case with witnesses S-101 and S-105, who were directly threatened not to talk to anyone about the events in Srebrenica. This is sufficient to indicate the seriousness of the knowledge the witnesses have, which makes them feel a justified fear for their safety if they present the incriminating data while their identity is unprotected. Considering the fear the witnesses still feel, the Panel did not accept the arguments of the Defense Counsel Vera Lazić, suggesting that the lapse of time from the time the threats were made diminishes their seriousness.

816. Also, pursuant to Article 3(2) of the Law on Witness Protection, it is justified to assign protective measures to witnesses S-100, S-102 and S-104 as well, considering the assessment that they have been seriously mentally traumatized by the experienced events about which they are going to testify at the main trial.

(d) Variation of protective measures

817. At the hearing of 1 November 2010, the President of the Panel varied the protective measures previously assigned to the witness S-100, considering that there was no technical possibility for testifying from the courtroom with his voice distorted for the public, whereupon it was decided that the remaining part of the Decision remain in effect and that the witness should testify under the pseudonym and with his image distorted.

818. At the main trial of 28 February 2011, witness S-102 whose identity and personal details were protected by the Decision of this Court was examined, and it was decided for the witness to testify with his image distorted for the public. Considering that the Court did not have a technical possibility to apply this measure, it was decided for the witness to be present in the courtroom and the public to be separated by a screen. His voice was not distorted during his testimony, nor was the publication of the content of his testimony prohibited.

819. On 2 December 2010, the Panel rendered a Decision to vary the prohibitive measures for the witnesses S-101, S-102, S-103, S-1045, S-105, S-110 and S-111, so that their testimony may be used in the *Nešković and Ilić* case conducted before this Court.

820. At the hearing of 10 February 2011, the protective measures granted to the witness S-111 were changed to enable his testimony from another room and with his image

distorted for the parties and the Defense Counsel, while his image was only visible to the Trial Panel. The content of his testimony remained available to the public, and the initially imposed measures remained in effect as well.

821. At the hearing of 26 May 2011, the Panel decided to render a decision on the motion by the Prosecutor's Office to protect witness S-117 only if this witness appears in the witness capacity either for the prosecution or the defense. Considering that none of the parties commented on the foregoing, the Panel found it premature to grant protective measures to the witness because his identity has already been known to the Defense, which means that the protective measures would therefore be unnecessary. Given the circumstances, it was decided that the Prosecutor provide the Defense with non-redacted statements of this witness in order to decide as to whether to summon him as their witness too.

(e) Protection of witness Enver Husić

822. Pursuant to Article 91 of the Criminal Procedure Code of BiH and Article 5a) 3(2) and 13 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Law on Witness Protection), on 7 October 2010 the Panel rendered a decision that, without the Court's consent the transmission of photographic and video recording of witness Enver Husić's image via electronic or printed media is prohibited. Also, the issuance of audio recording and content of the testimony may only be done with the approval of the Court.

823. At the main trial held on 7 October 2010, the Prosecutor filed a motion requesting protective measures for witness Enver Husić, finding that the disclosure of his image in the public via electronic or printed media would threaten his own or the safety of his family. Witness Husić agreed to the referenced motion and the Defense for the Accused did not object to that either.

824. To this effect, the Court rendered a decision to protect the witness's image from the public, as this is a person who was a minor at the relevant time and also eye-witnessed a certain number of events as charged. It was therefore concluded that the witness's fear was justified and that the disclosure of the image would put at risk his own and his family's safety. By assigning the protective measures as referred to in the referenced operative part of the decision, the Court concluded that the safety of this witness who testified at the main trial without having his identity protected, has been sufficiently secured.

(f) Protective measures for witness S-126

825. On 21 October 2010, a decision was rendered to ban the disclosure of this witness's name and family name, transmission of photographic and video recording of this witness's image, and the audio recording of the content of his testimony at the main trial via electronic and printed media.

826. At the hearing held on 11 October 2010, the Prosecutor filed a motion requesting protective measures for the witness S-126, as it believed that the witness had relevant information for the referenced proceedings, and that the disclosure of the information without the protective measures would certainly threaten the safety of this witness and

246

his family. The Prosecutor filed the same motion at the hearing on 21 October 2010 at which the witness testified, and moved the Court to ban the disclosure of a photograph or image of the witness, and audio recording of his testimony in the electronic or printed media.

827. At the hearing held on 11 October 2010, Defense Counsel for the Accused Duško Jević, Attorney Dragan Gotovac, objected to the referenced motion as he believed that there was no need for ordering the requested measures, considering that the public had previously been informed of the identity of this witness, while Defense Counsel for the Accused Goran Marković, Attorney Veljko Čivša, pointed out that the Prosecution did not offer any evidence on possible threats to this witness. Defense Counsel for the Accused Mendeljev Đurić, Attorney Miodrag Stojanović, moved the Court to examine the witness about the referenced circumstance, leaving the final decision on the motion to the Trial Panel, while Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, supported the arguments of the other Defense Counsel.

828. Considering Article 5a) of the Law on Witness Protection, according to which the measures of protection shall only be implemented with the consent of the witness, witness S-126 asked that his name or image not be published in the media as he lived in a small community in which people know each other and he believed that the content of his testimony would cause additional tensions and pressures. He also noted that he had already received a threat directly connected with the referenced event, which was made by one of the former members of the unit to which the witness himself belonged at the relevant time.

829. Having examined the parties and Defense Counsel, and after the witness consented to the proposed measures, the Court rendered a decision that the name and family name, the image of the witness and the content of his testimony should not be published in the electronic or printed media.

830. At the relevant time, the witness witnessed the events the accused in this case have been charged with, and has information relevant to these criminal proceedings. Considering that he had already received a threat directly connected with the testimony about the referenced events, the Court found it justified to order the protective measures thus enabling the witness to testify at the main trial freely and without fear of threats or pressures.

831. On 18 November 2010, upon motion by the Prosecutor's Office, the President of the Panel banned the disclosure of the image of the witness Haso Hasanović who survived a massacre in the warehouse and who currently lives in the Srebrenica area, finding that the referenced measure was sufficient to protect the witness from possible disturbance caused by his testifying in this case.

(g) Trial motion 8 by the Prosecution – Protection of witnesses S-117 through S-126

832. In these proceedings conducted before the Court of Bosnia and Herzegovina, by the Panel's Decision of 26 September 2011, the witnesses in relation to whom the Prosecutor's Office sought protective measures by the Motion number: 8 /KT-RZ-<sup>247</sup>

101/07/ of 23 May 2011 and the motion number 9 /KT-RZ-101/07/ of 17 June 2011, were granted the pseudonyms S-117, S-118, S-119, S-121, S-123, S-124 and S-125 and would be addressed accordingly in the further course of the proceedings.

833. It was decided that the real name and family name and other personal details of the witnesses under the pseudonyms were to be considered secret, and authorized persons and those who anyhow come into possession of confidential information about this witness are obligated to keep it confidential. Unauthorized disclosure of such information constitutes a criminal offence under Article 240 of the CC of BiH.

834. Confidential data, that is, first name, family name and other personal details of the witnesses under the pseudonyms S-117, S-118, S-119, S-121, S-123, S-124 and S-125 shall remain confidential for 15 years following the final completion of the case.

835. Confidential details of witnesses to testify under the pseudonyms shall not be disclosed by the Prosecutor's Office of BiH to the Accused and their Defense Counsel, however, the Prosecutor's Office shall be obliged, pursuant to Article 12(8) of the Law on Witness Protection, to reveal sufficient data to the defense so that they prepare for cross examination of witnesses, at least 15 days prior to their testimony at the trial.

836. Any transmission of photographic and video recording of the witnesses' image via the electronic or printed media is prohibited without the Court's consent, while the issuance of audio recording and content of the testimony may only be done with the approval of the Court.

837. On 23 May 2011, the Prosecutor's Office filed with the Court a Trial Motion No. 8, seeking procedural measures for the protection of the witness S-117. It is stated in the reasoning of the motion that this is a witness who was a member of the Jahorina Training Centre and also an eye-witness to the events referred to in the Indictment in this case, and it is therefore necessary to secure that this witness may give his testimony freely and without fear for his personal and the safety of his family.

838. Witness 117 was present in Potočari at the relevant time when men were singled out and taken to the "white house", and also when people surrendered at a meadow and were then handed over to another unit. That was a group of about 1000 prisoners who were said to be taken to the "Kravica" hangar. He also testified that volunteers were sought and he supposed that they were needed for killing those prisoners. He would also testify about the search of the terrain in which Duško Jević participated, on which occasion 10 to 12 persons were captured.

839. Afterwards, on 17 June 2011, the Prosecutor filed Motion No. 9 requesting the presentation of additional evidence wherein it listed the names of witnesses, and simultaneously moved the Court to grant protective measures to witnesses S-118, S-119, S-120, S-121, S-122, S-123, S-124, S-125 and S-126.

840. All witnesses in relation to which the protective measures were sought had been members of the Jahorina Training Centre and eye-witnessed the events referred to in the



Indictment in this case, and it is therefore necessary to secure that this witness may give his testimony freely and without fear for his personal and the safety of his family. All referenced witnesses were present in Potočari at the relevant time when men were separated and taken to the “white house”, and eye-witnessed the killings in Potočari and executions by firing squad in the farming cooperative “Kravica”.

841. According to the arguments of the motion, the proposed witnesses have agreed upon the sought protective measures, and they thereafter informed the Prosecutor’s Office that they would be willing to testify at the open session, however, they did not want for their identity and image to be disclosed to the public.

842. At the trial held on 26 September 2011, the Prosecutor notified that the witnesses S-120 and S-122 gave up the protective measures they had initially sought, and he also abandoned his examination of the witness for which the pseudonym S-126 was planned.

843. In his responses of 16 June, 5 July and 7 July 2011, the Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, challenged the referenced motion claiming that the witnesses whose statements the defense requested by their previous submissions to the Prosecutor’s Office were among those in relation to which the protective measures were sought, believing that their statements were acquitting in their nature. The Defense Counsel also notes that he has repeatedly asked the Prosecutor to provide him with the statements of members of the First and Second Companies, which the Prosecutor’s Office claimed not to possess, while the fact is that the motion for witness protection refers exactly to the members of the First and Second Companies of the Jahorina Training Centre. Therefore, the Defense submits that the provisions of Articles 14 and 47(4) of the CPC of BiH have been violated and the Defense prevented from gathering evidence. Besides, the Defense has been provided with the redacted statements of witnesses at the time when they did not have the status of protected witnesses. However, it was evident nevertheless that not one witness expressed fear for their own safety, nor did they seek the protection of their identity as a protective measure. Therefore, the requirements of Article 3 of the Law on Witness Protection have not been satisfied. The foregoing eventually confirmed the right to a defense as guaranteed under Article 6 of the European Convention for the Protection of Human Rights and Freedoms.

844. In her response of 7 July 2011, the Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić challenged the Prosecution’s motion for assigning the protective measures, considering that no one witness explicitly expressed fear for his own or the safety of his family due to testifying in the referenced proceedings. The Defense Counsel believes that, by acting so, the Prosecutor’s Office wants to make the witnesses unreachable to the defense, that is, to prevent the Accused and the Defense Counsel from preparing their defense in a quality manner. At the trial held on the same day, the Defense Counsel for other Accused also offered their responses, finding the Prosecution’s motion premature. Besides, the Defense Counsel for the Accused Mendeljev Đurić, Attorney Miodrag Stojanović, submits that the proposed witnesses could not be summoned during the rebuttal by the Prosecutor’s Office, considering that the defense’s evidentiary procedure has not been terminated, nor have any of the examined witnesses for the

defense testified about the circumstances to be challenged by the testimony of the proposed witnesses for the prosecution.

845. Finally, the Defense Counsel for the Accused Goran Marković, Attorney Veljko Čivša, challenged the need for assigning the protective measures to witnesses, considering that no one witness expressed for the record any fear for their safety, nor did they seek any protective measure.

846. Having considered the motion by the Prosecutor's Office and the response by the defense, the Panel adopted the referenced motion considering that, after reviewing the provided records, the Panel found that those were the witnesses who had been members of the Jahorina Training Centre at the relevant time, and they therefore had direct knowledge of the events subject matter of the Indictment.

847. In that context, the arguments of the Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, are unacceptable when claiming that the Prosecutor at all times disposed of the statements of members of the First and Second Companies of the Jahorina Training Centre, which he did not provide even after numerous requests by the defense, that is, he violated the right to a defense by providing subsequently the redacted witness examination records in which their identity was blurred.

848. Namely, having reviewed the case file, the Panel found that this Defense Counsel has repeatedly addressed the Prosecutor's Office asking for the examination records pertaining to a larger number of the listed witnesses who were members of the Jahorina Training Centre at the relevant time. However, by comparing the list held by the Defense Counsel Rubež, the Panel found that only one person in relation to whom the defense previously asked for the Examination Record made during the investigation phase was among witnesses S-117 through S-126,<sup>401</sup> and the Prosecutor's Office provided it immediately upon request. With regard to other members of the Jahorina Training Centre covered by this motion of the Prosecutor's Office, the Examination Records did not even exist at the time the Defense Counsel asked for their submission.

849. The same arguments also pertain to the objections by the Defense Counsel Veljko Čivša who stated in his response that the Prosecutor's Office had had the statements of the proposed witnesses in its possession from the very beginning and that it therefore attempted to make them unavailable to the defense by seeking the protective measures.

850. Finally, the fact is that the full identity of these witnesses will be disclosed to the defense 15 days before their examination at the main trial, and the Panel finds that period of time to be sufficient for the preparation of cross examination.

851. Pursuant to the foregoing, the Panel decided to assign pseudonyms to the witnesses to protect their identity, finding that those witnesses fall under Article 3(2) of the

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<sup>401</sup> This refers to Željko Šehovac. The defense requested the Examination Records for this person during the proceedings, but the Prosecution claims they have been properly submitted.

Law on Witness Protection, that is, they are eye-witnesses to the offenses as charged, which makes them justifiably fear for their safety if the incriminating information is disclosed without having their identities protected.

852. Considering that Article 5a) of the Law on Witness Protection requires the witnesses to consent to the proposed protective measures, the Prosecutor's Office interviewed all of the proposed witnesses, of which an Official Note number: KT-RZ-101/07 of 26 July 2011 was produced. It follows from its content that the witnesses expressed their fear of testifying without protection of their identity which could result in threats and intimidations against them and against their families as well.

853. Considering the explicitness of the referenced provision, the Panel notes that, at the main trial at which they will appear, the referenced witnesses will be examined again about the circumstance of justifiability and necessity of the protective measures.

854. However, the Panel finds it justifiable to grant to these witnesses the protective measures as stated in the operative part of the Decision so that, prior to examination of the referenced witnesses, their identity and safety are protected.

(h) Denying access to the protected witnesses' statements

855. On 17 May 2010, the Defense Counsel for the Accused Goran Marković, Attorney Veljko Čivša, objected to granting protective measures to a large number of witnesses, submitting that the defense would thus be denied access to the witnesses' statements made during the investigation. According to Čivša, the Prosecution has not even provided the defense with the redacted statements of these witnesses prior to filing a motion requesting protective measures.

856. A similar objection has also been raised by the Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, at the main trial held on 14 October 2010, who pointed at the inappropriate conduct of the Prosecutor in terms that he addressed most of the witnesses by their temporary pseudonyms, thus reserving the right to provide the defense with the Witness Examination Records no sooner than 15 days prior to examination, although none of these witnesses confirmed at the main trial that they ever sought protective measures.

857. In order to avoid abuse of the procedural rights, the President of the Panel stated at the main trial that the defense has to be provided with the non-redacted records for all witnesses in relation to whom the Prosecutor's Office does not intend to propose the protective measures, and that they are obliged to revise the names of these witnesses and submit them to the defense for review within 15 days, so that they may prepare for cross examination of these and other witnesses as well. The defense was also instructed to directly examine and summon those members of the First and Second Company of the Training Centre whom it believed to have relevant information on the events being the subject matter of the Indictment, and who were not examined by the Prosecutor during the investigation phase.

858. Afterwards, at the next hearing on 21 October 2010, the Prosecution informed the Court that it withdrew the proposal for protective measures for the witnesses under pseudonyms S-103 (Miladin Mihajlović), S-106 (Nebojša Aleksić), S-108 (Milorad Sarić), S-109 (Siniša Renovica), and gave up the examination of witness under pseudonym S-114.

859. When examining one of the referenced witnesses, witness Milorad Sarić specifically, the defense sought cross examination to be delayed, considering that they have not been provided with a statement this witness gave to the ICTY Investigators, which the President of the Panel refused, finding that, by providing a report that was tendered into evidence, the content of the referenced Witness Statement was considerably disclosed to the defense, and the requirements for the delay of cross examination have therefore not been satisfied.

(i) Exclusion of the public

860. The public was excluded at the session held on 14 October 2010, when the Defense Counsel Veljko Čivša requested to be provided with the Witness Examination Records for the protected witness who was yet to be examined in his capacity as a witness for the Prosecution. The attorney requested to be provided with the referenced records in order to prepare himself for cross examination of the witness S-126; however, considering the status of the protected witness, it was decided that the Witness Examination Records related to the protected witness would be disclosed to the defense 15 days prior to his examination at the main trial, which was not a problem, and that the Defense Counsel should summon the same witness subsequently and examine him in his capacity as a defense witness.

861. On 31 January 2011, the public was excluded during the part of the trial in which the witness presented data on possible protective measures he enjoyed before the ICTY and the statements he gave to other authorities. Considering that, according to the ICTY Rules of Procedure and Evidence, once assigned protective measures shall continue to have effect in all other jurisdictions, the Panel excluded the public from the part of the trial in order to protect this witness's private life.

862. On 4 April 2011, the public was excluded while the witness for the Prosecution, M.T., was presenting his reasons for believing that the protective measures should be assigned to him. At that hearing, the witness explained as to why he believed that his testimony in this case would threaten his and the safety of his family. Following the defense's response, he was granted protective measures which consisted of pseudonym S-116 and of the banned transmission of the video recording or a photograph of the witness's image, while the content of his testimony would be available to the public.

863. The public was excluded for a short time at the trial of 18 April 2011, during which time the witness presented information on the protective measures he enjoyed in other proceedings, and it was thereafter decided that he would testify without the protective measures.

864. On 13 June 2011, upon hearing the parties and the Defense Counsel, the public was excluded from a part of the trial during which the witness Neđo Jovičić testified about the circumstance surrounding the events in front of the warehouse “Kravica”. Having examined the reasons within the meaning of Article 235 of the CPC of BiH, the Court found that the exclusion of the public was in the interest of protection of this witness’s private life.

865. The public was excluded for a short time at the hearing of 16 January 2012, during which Attorney Stojanović reasoned his motion for tendering the transcript of the testimony of a person who testified as an Accused before this Court in the case conducted against him, and also in *Vuković*, with the public excluded as well.

866. On 2 February 2012, the public was excluded while the Prosecutor was presenting his motion and requested a pseudonym to be assigned to the witness S-126 who testified on 21 October 2010. A decision on the protection of his name and family name was rendered on the same day, and so was a ban on the transmission of the witness’s image, that is, his photograph in the electronic or printed media. This was done in order for the witness to be addressed by the pseudonym in the closing arguments and the Verdict because, during his previous testimony, it was only decided for his name and family name not to be published in the media.

867. On 16 February 2012, a decision was rendered to protect the identity of the wife of the protected witness S-101, who was supposed to testify at the main trial as a Court witness about the circumstance surrounding the alleged threats her husband received from the SIPA Investigator, Bajro Kulovac, and the Investigator with the Prosecutor’s Office of BiH, Muris Brkić. To the same effect, the Court also allowed the confrontation of the referenced persons with the witness S-101 at the trial of 17 October 2011. The same measures as those enjoyed by her husband and aimed at protecting his identity were also assigned to the witness.

(j) Legal Counsel

868. Considering that a large number of persons participated in the perpetration of crimes in Srebrenica, it happened that, during the referenced proceedings, those in relation to whom it was found during the examination to be suspected of the same events with which the accused in this case have been charged, were summoned in their witness capacity.

869. This is the case with witness Radomir Pantić, who was supposed to testify at the main trial of 21 June 2010, when it was found during the examination that he was suspected of having committed the events covered by the Indictment in this case. The witness explained that he had a Defense Counsel, Attorney Ozrenka Jakšić, whom he had not informed of his arrival to the Court in his capacity as a witness. Having been instructed of his rights pursuant to Article 89 and 86 of the CPC of BiH, and particularly the right stipulated in Article 84 of the CPC of BiH which allows a witness to refuse to answer some questions with respect to which a truthful reply would result in the danger of bringing prosecution upon him, the witness nevertheless decided to testify.

870. At the trial held on 8 July 2010, following the testimony of Radomir Pantić, it was decided to refuse to tender his statement taken during the investigation into evidence, because he made it in his capacity as a suspect, which means his witness status was procedurally quite different and, in the context of testifying at the main trial, such a statement was inappropriate for presentation and tendering into the documentary evidence.

871. According to the quoted provisions, the Panel was mindful *ex officio* of the specific status of the witness, and the testimony was always interrupted whenever the witness began to present the circumstances which may be detrimental to him and he was instructed to appear at the next hearing accompanied by his legal counsel who will protect his interests during his testimony.

872. The hearing of the witness S-126a was also interrupted in the same way on 11 October 2010, so that the defense be provided with the audio recording and the Witness Examination Record made in his capacity as a suspect, for the purpose of cross examination which, according to the already taken position of the Panel, cannot be tendered into documentary evidence in this case.

873. Considering that Attorney Slavko Aščerić, counsel to the witness S-126, should have appeared at the main trial and that, in the previous phases of the proceedings he acted as the Defense Counsel for the Accused Duško Jević, and was therefore aware of the evidence in the case, the defense believed that there was a conflict of interest, therefore, being mindful of the referenced motion, on the same day the Panel appointed Attorney Dragan Međović as this witness's Legal Counsel.

874. At the main trial of 12 December 2011, the protected witness S-119, who was granted partial immunity, was also supposed to testify in the presence of the Legal Counsel. It was publically announced on that occasion that the Panel found the immunity decision to be imprecise and vague in terms of time, and the witness was granted immunity only with regard to his standing guard behind the warehouse, not with regard to the events in front of the warehouse of which he was supposed to testify. The Panel finds that such a decision does not provide room for a conclusion that, in the further course of examination, there will be no self-incrimination on the part of the witness who does not enjoy immunity concerning the search of the terrain and Potočari. In addition, there were some developments after the Kravica events, so that his examination could not proceed upon such a decision.

875. Having been granted immunity for all developments in the Srebrenica area at the relevant time, the witness testified in the presence of his legal counsel, Attorney Predrag Drinić, at the hearing held on 12 December and 22 December 2011 and on 16 January 2012.

## **2. Resumption of the trial after the expiry of the statutory 30 (thirty) days**

876. Throughout the proceedings, the composition of the Trial Panel remained unchanged, however, Article 251(2) of the CPC of BiH stipulates that „*The main trial that has been adjourned must recommence from the beginning if the composition of the*”<sup>254</sup>

*Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defense attorney, the Panel may decide that in such a case the witnesses and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene investigation and the testimony of the witnesses and experts given at the prior main trial be used instead.“*

877. At the main trial held on 8 July 2010, it was stated that the defense gave its consent for exceeding the 30 (thirty)-day deadline, and the resumption of the main trial was scheduled for 16 August 2010, after which the Defense Counsel for the Accused Mendeljev Đurić, Attorney Miodrag Stojanović moved the Court to adjourn the trial to 26 August 2010; the defense teams for other accused consented to the resumption of the main trial on that day, that is, they stated that the already presented evidence should not be presented again, and that they would not raise the exceeded deadline as an argument in their appeal.

878. Identically, the parties and the Defense Counsel gave their consent at the hearing held on 16 June 2011 so the trial in this case resumed on 21 August 2011, instead on 18 August 2011 when the resumption of the trial was initially scheduled. The Defense Counsel for the Accused Goran Marković, Attorney Veljko Čivša, pointed out on that occasion that those were also the objective reasons that prevented the main trial from being resumed within the statutory 30 days.

879. Therefore, the main trial in this case was held in compliance with the quoted provision of the Criminal Procedure Code, because the deadline was exceeded with the consent of the parties and the Defense Counsel.

### **3. Digression in the presentation of evidence**

880. Pursuant to Article 261 of the CPC of BiH, evidence shall be presented in a certain order, which may be departed from for the purpose of judicial economy. During the main trial, in compliance with his authorities under Article 240 of the CPC of BiH, the President of the Panel permitted the departure from the regular order of the presentation of evidence, considering the complexity and abundance of the evidentiary material and the number of those accused in the case.

881. Pursuant to the quoted provision of the CPC, the referenced procedural situations have been entered into the records from the main trials of 27 September 2010 and 25 October 2010.

882. At the hearing of 16 May 2011, the Panel announced that, in accordance with the provision of the relevant Article, the order of the presentation of evidence shall be changed at the main trial, so it was decided to examine witnesses for the Second-accused after hearing the defense expert witness Radoslav Radinović, because it would require a longer period of time to contact some of the witnesses and expert witnesses proposed by the defense for the Accused Duško Jević. The Panel concluded that, in this specific case, the requirements of Article 262(3) of the CPC of BiH have been satisfied, because this deviation was in the interest of justice and it would also result in the avoidance of

unnecessary presentation of evidence, to which the Accused and the Defense Counsel consented.

883. Considering that it was not possible for these witnesses whose statements the Court accepted and whom the defense intended to cross examine to appear, the President of the Panel made a digression in the evidence presentation order, while the Court would still attempt to contact these witnesses so as for them to appear before the Court. Meanwhile, the Prosecution evidence will be presented in rebuttal.

#### **4. Prohibition against contacts with witnesses for the Prosecution**

884. At the main trial held on 6 December 2010, a decision of the Panel was publicized prohibiting contacts with the prosecution witnesses prior to their testifying at the trial. This was justified by the fact that the Accused have been ordered into custody because of the existing threat that they would influence the witnesses. However, the foregoing does not prevent these witnesses from being subsequently summoned as defense witnesses.

#### **5. Trial Motion 2 – Motion for acceptance of established facts**

885. Applying Article 4 of the Law on the Transfer of Cases, by its decision of 1 July 2010, the Court accepted as adjudicated the facts established in the first-instance and second-instance Judgments in the ICTY *Prosecutor versus Krstić*, number: IT-98-33-T, and IT-98-33-A and *Prosecutor versus Blagojević*, number: IT-02-60-T, and IT-02-60-A to the extent and in the order as follows:

1. *“In March 1995, Radovan Karadžić, President of Republika Srpska (“RS”), reacting to pressure from the international community to end the war and ongoing efforts to negotiate a peace agreement, issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as “Directive 7”, specified that the VRS was to: complete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.”(T-33)*

2. *“Just as envisaged in this decree, by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic.” (T-34)*

3. *“On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladic. Directive 7.1 was issued “on the basis of Directive No. 7” and directed the Drina Corps to, inter alia, conduct “active combat operations...around the enclaves” (T-36)*

4. *“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 Bosniacs attacked the nearby Serb village of Višnjica, in the early morning of 26 June 1995.” (T-37)*

5. *“Following this, the then commander of the Drina Corps, General-Major Milenko Živanović signed two orders, on 2 July 1995, laying out the plans for the attack on the*



*enclave and ordering various units of the Drina Corps to ready themselves for combat. The operation was code-named "Krivaja 95". (T-39)*

**6.** *"The attack, carried out by the VRS and MUP was planned and defined in the "Krivaja 95" order". (T-4)*

**7.** *"The VRS offensive on Srebrenica began in earnest on 6 July 1995." (T-40)*

**8.** *"In the following days, the five UNPROFOR observation posts, in the southern part of the enclave, fell one by one in the face of the Bosnian Serb forces advance." (T-41)*

**9.** *"Some of the Dutch soldiers retreated into the enclave after their posts were attacked, but the crews of the other observation posts surrendered into Bosnian Serb custody." (T-42)*

**10.** *"Simultaneously, the defending ABiH forces came under heavy fire and were pushed back towards the town " (T-43)*

**11.** *"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." (T-44)*

**12.** *"By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometres deep into the enclave, halting just one kilometre short of Srebrenica town." (T-45)*

**13.** *Late on 9 July 1995,..... President Karadžić issued a new order authorising the VRS Drina Corps to capture the town of Srebrenica." (T-46)*

**14.** *"On the morning of 10 July 1995, the situation in Srebrenica town was tense. Residents, some armed, crowded the streets." (T-47)*

**15.** *"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." (T-48)*

**16.** *"NATO planes also attempted to bomb VRS artillery positions overlooking the town, but had to abort the operation due to poor visibility." (T-49)*

**17.** *"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 Potocari compound on the outside of the town, and surrounding areas, where 20,000 to 30,000 civilians had fled." (T-50)*

**18.** *"As the situation in Srebrenica escalated towards crisis on the evening of 10 July,*

*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.” (T-147)*

**19.** *“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.” (T-150)*

**20.** *“At around midnight of 11 July, the column started moving along the axis between Konjević Polje and Bratunac.” (T-151)*

**21.** *“Around one third of the men in the column were Bosnian Muslim soldiers from the 28th Division, about two-thirds were Bosnian Muslim civilian men from Srebrenica.” (T-153)*

**22.** *“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.” (T-54)*

**23.** *“At the Hotel Fontana meetings on 11 and 12 July 1995, General Mladic had attempted to secure the surrender of the ABiH forces in the area of the former enclave. He was, however, unsuccessful and, in the ensuing days, VRS units, including units of the Drina Corps that were not engaged in the Žepa campaign, were assigned to block the column.” (T-165)*

**24.** *“Late in the afternoon of 11 July 1995, General Mladic, accompanied by General Zivanovic (then Commander of the Drina Corps), General Krstic (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.” (T-51)*

**25.** *“Faced with the reality that Srebrenica had fallen under Bosnian Serb forces control, thousands of Bosnian Muslim residents from Srebrenica fled to Potocari seeking protection within the UN compound.” (T-66)*

**26.** *“By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potocari.” (T-65)*

**27.** *“Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighbouring factories and fields.” (T-67)*

**28.** *“On 12 and 13 July 1995, the women, children and elderly were bussed out of Potocari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj.” (T-90)*

**29.** *“From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potocari and holding them in separate locations.” (T-110)*

**30.** *“Drina Corps Command officers and units were present in Potocari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995.” (T-89)*

**31.** *“As the Bosnian Muslim refugees began boarding the buses, Bosnian Serb soldiers systematically separated out men of military age who were trying to clamour aboard.” (T-113)*

**32.** *“The VRS and MUP, walking among the Bosnian Muslim refugees, were separating all Bosnian Muslim men aged 16 to approximately 60 or 70 from their families.” (T-107)*

**33.** *“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.” (T-95)*

**34.** *“... the men and boys in Potocari were separated from the women, children and elderly and taken to the White House for interrogation.” (T-137)*

**35.** *“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 Potocari compound to detention sites in Bratunac.” (T-143)*

**36.** *“On 12 July 1995, Bosnian Serb forces launched an artillery attack against the column that was crossing an asphalt road between the area of Konjevic Polje and Nova Kasaba en route to Tuzla.” (T-157)*

**37.** *“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..” (T-162)*

**38.** *“In some places, ambushes were set up and, in others, the Bosnian Serbs shouted into the forest, urging the men to surrender and promising that the Geneva Conventions would be complied with.” (T-165)*

**39.** *“The Bosnian Muslim men who had been separated from the women, children and elderly in Potocari (numbering approximately 1,000) were transported to Bratunac and subsequently joined by Bosnian Muslim men captured from the column.” (T-118)*

**40.** *“Most of the Bosnian Muslim men separated at Potocari and captured from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites..” (T-146)*

- 41.** *“Beginning on 12 July, around 2,000-3,000 men were detained in Bratunac town at the Vuk Karadzic School and the buildings surrounding it, such as in the school gym, in a building called the hangar, and in a nearby secondary school for technical education called “Sloboda, ime ti je Tito.” (T-206)*
- 42.** *“Throughout the day, an estimated 1,500 to 3,000 Bosnian Muslim men captured from the column were held prisoner on the Nova Kasaba football field on 13 July.” (T-211)*
- 43.** *“The largest groups of Bosnian Muslim men from the column were captured on 13 July 1995 “ (T-168)*
- 44.** *“Between 1,000 and 1,500 Bosnian Muslim men from the column fleeing through the woods, who had been captured and detained in Sandici Meadow, were bussed or marched to the Kravica Warehouse on the afternoon of 13 July 1995.” (T-215)*
- 45.** *“The removal of the Bosnian Muslim civilian population from Potocari was completed on the evening of 13 July 1995 by 2000 hours.” (T-94)*
- 46.** *“By 19:00 or 20:00 that night all-in-all around 9,000 to 10,000 Bosnian Muslim men, women, children and elderly had left Potočari on buses and trucks.” (T-186)*
- 47.** *“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 Potocari compound, as well as the fuel needed to accomplish that task.” (T-96)*
- 48.** *“There was a number of other Serb forces in Potočari on 12 and 13 July 1995 that were not a part of Drina Corps“ (T-62)*
- 49.** *“The civilian police of the Republika Srpska was organised under the Ministry of Interior (“MUP”). In July 1995, Tomislav Kovač was the acting Minister of Interior. The civilian police was organised in two sections: the regular police force and the special police brigade.” (T-60)*
- 50.** *“The Special Police Brigade was a combat unit of the MUP. Colonel Goran Sarić was the commander and Colonel Ljubiša Borovčanin was the deputy commander.” (T-61)*
- 51.** *“Public Security Centres (“CJBs”) co-ordinated the activities of local Public Security Stations (“SJBs”), i.e. police stations, within their region. In the Srebrenica area, the SJBs were subordinated to the Zvornik CJB, of which Dragomir Vasić was the chief.” (T-62)*
- 52.** *“In addition to ordinary police duties relating to law and order, some members of the regular police force also had duties within special police forces or PJP companies..” (T-*

62)

**53.** *“A series of intercepted conversations show close co-operation and co-ordination between MUP units and Drina Corps units, particularly the Engineers Battalion, who were jointly engaged in action to block the Bosnian Muslim column.” (T-198)*

**54.** *“A conversation, intercepted on 13 July 1995 at 2040 hours, reveals that General Krstic spoke to Colonel Borovcanin, the Deputy Commander of the MUP unit, asked how things were going and stated that he would be in touch.” (T-200)*

**55.** *“In July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number is likely to be within the range of 7,000 -8,000 men.” (T-9)*

**56.** *“The attack continued after the fall of Srebrenica and affected the approximately 40,000 people who lived within the Srebrenica enclave at the time of the attack.” (T-5)*

**57.** *“On the evening of 13 July, at least 1,000 Bosnian Muslim men were killed in the Kravica Warehouse” (T-216)*

**58.** *“Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of Bratunac, within the zone of responsibility of the Zvornik Brigade.” (T-225)*

**59.** *“On the evening of 13 July, Colonel Beara, together with Miroslav Deronjić and others, began organising the burials of the Bosnian Muslim men killed at the Kravica Warehouse.” (T-220)*

**60.** *“It was decided that workers from the “asanacija” unit of the Rad Utilities Company and “work obligation unit” of the Bratunac Civilian Protection report in Kravica the next morning to load the bodies onto vehicles.” (T-222)*

**61.** *“On 14 July, Bosnian Muslim prisoners were taken by bus from Bratunac through Zvornik to Pilica, where they were detained in the sports hall of the Pilica School.” (T-249)*

**62.** *“Between 1,000 and 2,500 Bosnian Muslim men were detained from around noon on 14 July at the Grbavci School at Orahovac. Later that day the prisoners were brought to a nearby field and executed.” (T-232)*

**63.** *“On 14 July 1995, the UN Security Council expressed concern about the forced relocation of civilians from the Srebrenica “safe area” by the Bosnian Serbs, asserting it was a clear violation of their human rights.” (T-129)*

**64.** *“After one unsuccessful attempt to move forward to the Bosnian Muslim front lines on*

261

15 July 1995, the head of the column finally managed to break through to Bosnian Muslim-held territory on 16 July 1995 (T-182)

65. "ABiH forces attacking from the direction of Tuzla assisted by piercing a line of about one-and-a-half kilometres for the emerging column." (T-183)

66. "Between 14 and 16 July, the bodies of the Bosnian Muslim men were taken in trucks from the Kravica Warehouse to be buried at grave sites in Glogova and Ravnice." (T-224)

67. "The large-scale executions in the north took place between 14 and 17 July 1995." (T-226)

68. "A large scale execution and burial operation was carried out at Kozluk between 15 and 16 July. Extensive forensic evidence exists that around 500 men were executed at the edge of the Drina River." (T-258)

69. "The minimum number of individuals related to the executions in Kozluk is between 451 and 506 persons, of whom two were determined to have been between 8 and 12 years old, 47 were determined to have been between 13 and 24 years old and 457 were determined to have been older than 24 years." (T-260)

70. "On 16 July, approximately 500 Bosnian Muslim men were killed by VRS soldiers in the Pilica Cultural Centre. The men were crammed into the main room. Shots and detonations from grenades were heard across the road for about 20 minutes." (T-251)

71. "After a short drive, the trucks stopped next to the Petkovci dam. The Bosnian Muslim men were ordered to leave the trucks in groups of five and ten. They were lined up in rows and shot with automatic rifles. Those who were not immediately killed were then shot individually." (T-245)

72. "There is forensic evidence of a grave site at Petkovci Dam where at least 46 individuals were found. Most of the individuals died from gunshots and all of the bodies of which sex could be determined were male. Approximately 14 kilometres from the Dam, a secondary grave was discovered, which contained bodies that were first buried at the Dam. According to a forensic report, the minimum number of individuals found in the secondary grave have been 219 victims. Of those victims, one was determined to have been between 8 and 12 years old, 38 were determined to have been between 13 and 24 years old and 180 were determined to have been older than 25 years old." (T-247)

73. "On 16 July, the prisoners were told that everybody could leave for Tuzla. Their hands were tied behind their backs and they were taken to buses. The prisoners were taken to Branjevo Military farm, which is part of Pilica local commune. Members of the Drina Corps Military Police Battalion escorted the buses." (T-254)

**74.** „... on 16 July the prisoners were taken by bus from the school to the nearby Branjevo Military Farm where they were executed.“ (T-250)

**75.** “At least 132 male individuals, all wearing civilian clothes, were buried in a large cultivated field approximately 130 metres north from Branjevo Military Farm. Ligatures were recovered from 82 individuals and evidence of affiliation with the Muslim religion was found on five individuals.“ (T-256)

**76.** “In a secondary grave along the Čančari road, the remains of people initially buried at the Branjevo Farm were discovered. Another forensic expert calculated that the minimum number of individuals found in the secondary grave was 283 victims. Of those victims, three were determined to have been between 8 and 12 years old, 49 were determined to have been between 13 and 24 years old and 231 were determined to have been older than 24. At least 269 victims were male.“ (257)

**77.** “Over 7,000 Bosnian Muslim men from Srebrenica were massacred.“ (T-8)

**78.** “...the massacred men amounted to about one fifth of the overall.“ (T-22)

**79.** “In April 1996 they commenced forensic examinations of suspected execution points and exhumation of mass graves.“ (T-269)

**80.** “Forensic evidence showed that there were two types of mass graves, “primary graves”, in which individuals were placed soon after their deaths and “secondary graves”, into which the same individuals were later reburied.“ (T-270)

**81.** “the bodies in the primary graves in Glogova contained the bodies of victims from the Kravica Warehouse massacre and that the bodies of these victims were subsequently moved to graves in the area around Zeleni Jadar.“ (T-276)

**82.** “In July 1996, a team of forensic investigators exhumed four primary, undisturbed graves in the Nova Kasaba area.“ (T-215)

**83.** “the bodies in the graves at Branjevo Military Farm and Kozluk were taken to secondary graves along the Čančari road “ (T-277)

**84.** “the bodies from the graves near Orahovac were moved to smaller graves near the Hodzici road “ (T-278)

**85.** “the bodies in the grave at the Dam near Petkovci were reburied at a location near Lipje.“ (T-279)

**86.** “the reburial operation, which took place some time in September and October 1995, was ordered by the VRS Main Staff.“ (T-280)

886. In the remaining part, the Prosecutor's Motion has been dismissed as ungrounded.

887. On 26 April 2010, pursuant to Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Court of BiH (Law on the Transfer of Cases), the Court of BiH received a Motion by the Prosecutor's Office of BiH, number: KT-RZ-101/07 to admit the established facts proven in the ICTY first-instance and second-instance judgments in the cases *Prosecutor versus Krstić*, number: IT-98-33-T, and IT-98-33-A and *Prosecutor versus Blagojević*, number: IT-02-60-T, and IT-02-60-A.

888. The Prosecutor's Office grounds its Motion on the provisions of the Law on the Transfer of Cases which is meant to be a *lex specialis* relative to the CPC of BiH, with the aim at enabling evidence in the proceedings conducted before the ICTY to be used at the Courts in BiH. The legislative purpose of Article 4 of the Law on the Transfer of Cases refers to judicial economy and the right of the Accused to a trial within a reasonable period of time, due to which the Court should accept the "established facts" in order to promote judicial economy and speedy trials. It is also noted that any established fact accepted by the Trial Panel may be further challenged through the presentation of evidence contesting their accuracy, by which the right of the Accused to challenge any of the established facts shall be reserved and the presumption of innocence kept in effect. Finally, the Prosecutor's Office notes that the criteria applied by the Court in deciding on this matter secures that no proposed fact directly incriminates the Accused, that is, refers to the actions by the Accused, their conduct, knowledge or intent.

889. Defense teams for all of the Accused responded to the Prosecutor's Motion.

890. The Court has received a response from the Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić, to the Motion filed by the Prosecutor's Office. The defense for this Accused primarily objected to the acceptance of the proposed facts because some of them proved to be inaccurate, due to which the principle of direct presentation of evidence and proving of guilt of the Accused through the presentation of evidence at the main trial would be violated, considering that they are accepted as established facts in the proceedings in which the Accused did not have the opportunity to participate. Also, the Defense Counsel notes that the established facts refer to September or October 1995, the period of time with which the Accused have not been charged, while some of them refer to the zone of responsibility of the Bratunac Brigade during the time when members of the Jahorina Training Centre did not have any activities in its zone of combat activities. It is noted in the response that the Prosecutor's Office provides a too broad interpretation, and the acceptance of the factual findings pertaining to *actus reus* and *mens rea* would directly violate the presumption of innocence, because such facts must be established during the proceedings in which the Accused participates together with his legal representative and in which he has the opportunity to contest them directly. Otherwise, the Accused would already have been found guilty without having all pieces of evidence for the defense presented in that criminal case.



891. Defense Counsel for the Accused Mendeljev Đurić, Attorney Miodrag Stojanović, argues that the referenced motion by the Prosecution should be sent back for further supplement and revision, because the Prosecutor's Office marked only a few paragraphs, wherein the defense was forced to look for any of the proposed facts in the referenced Verdicts. Namely, the Defense Counsel notes that in order for any of the proposed facts to be accepted as established, it is necessary to compare each of the stated two Verdicts, which is not possible to do over a short period of time. If the Court grants the Prosecutor's Motion, the Defense for this Accused contests all of the proposed facts as being established, because the Court of BiH is not obliged to ground its Verdict on any of the facts established in the ICTY Judgments. The Defense Counsel further submits that the established facts must not be a "conclusion, opinion or oral testimony of witnesses", or grounded on a plea agreement or statements on facts. Following an analysis of a number of facts as established, it is evident that they are but quotes taken from the testimony of some witnesses entered in the ICTY first-instance Judgments in the respective cases of *Krstić and Blagojević*. The foregoing particularly refers to the description of the situation in Potočari, as well as to the specific events in Potočari, which is not a conclusion made by the Court, but by witnesses.

892. Defense Counsel for the Accused Goran Marković, Attorney Veljko Čivša, believes that the acceptance of the Prosecutor's motion would violate the right of the Accused to adversarial hearing and the presumption of innocence as well. Defense Counsel finds it intolerable to treat the Law on the Transfer of Cases as a *lex specialis* because, unlike the Rules of Procedure and Evidence, the CPC of BiH must be consistent with the European Convention. He noted that the Prosecutor's Office did not supply in its motion the information and evidence as to how the ICTY OTP managed to prove the existence of particular facts whose acceptance is proposed. In other words, the Accused, who was not a part of the Judgment in which the facts were established, should not be bound by these facts, particularly where there exists a reasonable ground to challenge those facts. Also, it is not known as to what was the manner in which the facts were contested in the former case and if they were contested at all, and the Defense Counsel submits that, by possible acceptance of the referenced facts, the Court would question the principle of presumption of innocence and violate the principle *in dubio pro reo*, and moved the Court to refuse the Motion as ungrounded.

893. The Court also received the response by the Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, who believes that the application of Article 4 of the Law on the Transfer of Cases is in contravention of the Constitution and Article 6(1) of the European Convention for the Protection of Human Rights. Namely, Article 4 of the Law on the Transfer of Cases foresees that "*the courts may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY*", while Article 94.B of the ICTY Rules stipulates that "*the courts may decide to take judicial notice of adjudicated facts relating to matters at issue in the current proceedings*". The foregoing indicates that the ICTY Chambers are not strictly bound to accept the facts to be proven if established in other cases – Judgments, the way it is binding on the Panels of the Court of BiH under the Law on the Transfer of Cases. Defense Counsel also finds it unacceptable to treat the Law on the Transfer of Cases as a *lex specialis*, relative to the

265

CPC of BiH, because it is not consistent with the European Convention which has precedence over the applicable national legislation. Furthermore, when deciding on the admissibility of the established facts in the ICTY judgments, the Court must initially set clear and safe criteria considering that they are not foreseen in the CPC of BiH and the Law on the Transfer of Cases, because the acceptance of established facts is a legal possibility and must be used restrictively under the strictly defined rules. It is also noted that, from the time of rendering the judgments from which the facts were taken there emerged a number of circumstances and findings, and the proposed facts are therefore insufficiently clear, specific and recognizable for any criteria for their establishment to be set. Finally, the Defense Counsel indicates that, out of the 288 proposed facts, most of them constitute conclusions, opinions and similar, and moves the Court to refuse the Prosecutor's motion as ungrounded.

894. Having considered the motion submitted by the Prosecutor's Office and the arguments of the defense for the accused, the Court rendered a decision as stated in the operative part of the decision for the following reasons.

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

896. Rule 94(B) of the Rules of Procedures and Evidence reads: "*At the request of a party or proprio motu, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings*".

897. First and foremost, by hearing the parties in the proceedings, that is, by providing the opportunity to comment on the Prosecution's motion in writing, the first formal requirement of the quoted regulation for deciding on the acceptance of established facts as proven has been satisfied.

898. In addition, when evaluating the proposed facts as established, the Panel was mindful of the hitherto understanding and jurisprudence of the ICTY in the cases it tried, applying them as objective, considering that the Law on the Transfer of Cases does not foresee the criteria based on which a certain fact would be considered to be "*adjudicated*". In that context, it evaluated the criteria which the ICTY defined in its decision of 28 February 2003 in *Prosecutor versus Momčilo Krajišnik*, and by which the rights of the Accused guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the CPC of BiH have been observed. In accordance with the referenced decision, upon proposal by one of the parties or *proprio motu*, the Panel, having heard the parties, may decide to take judicial notice of adjudicated facts if they satisfy the following criteria: that they are distinct, concrete and identifiable, relevant to the particular case, restricted to factual findings and do not include legal characterizations, contested at trial but form part of a judgment which has either not been

appealed or has been finally settled on appeal or contested at trial and now form part of a judgment which is under appeal, but fall within the issues which are not in dispute during the appeal. Also, they must not attest to the criminal responsibility of the Accused, be based on plea agreements in previous cases and impact on the right of the Accused to a fair trial.

899. These criteria supplement Rule 94(b) (Judicial Notice) of the ICTY Rules of Procedure and Evidence. In addition, the same criteria have already been accepted by the Court's Appellate Panel (Verdict in *Neđo Samardžić*, number: X-KRŽ-05/49 of 13 December 2006).

900. In their responses to the motion filed by the Prosecution, the defense for the Accused challenged the domination of the Law on the Transfer of Cases, which this Panel also treats as a *lex specialis*, finding that, in no way whatsoever, its provisions derogate the guaranteed rights and foreseen procedures stipulated by the CPC of BiH. Namely, the same *lex specialis* implies a more detailed approach to solving certain issues which are only "*partially*" resolved in the CPC of BiH, specifying the conditions and the manner of transfer of cases to the Prosecutor's Office of BiH by the ICTY, and the use of evidence obtained by the ICTY in the proceedings conducted before the courts in Bosnia and Herzegovina.

901. The basic aim of Article 4 of the Law on the Transfer of Cases is to secure efficiency and judicial economy, which is consistent with the right of the Accused to a speedy trial, as foreseen in Article 13 of the CPC of BiH and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. When applying this provision, the Court observed the principle of fairness in these specific proceedings by not accepting the facts that would directly or indirectly incriminate the Accused.

902. Also, the fact that, when accepting the facts as established, the principle of presumption of innocence must be observed was also taken into account; otherwise, the evidentiary procedure could be terminated to the detriment of the Accused even before all pieces of evidence in the case have been directly presented. Therefore, when exercising its discretion right under Article 4 of the Law on the Transfer of Cases and rendering a decision on this specific issue, the Panel was particularly mindful of the rights of the Accused relative to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Articles 3 and 13 of the CPC of BiH. In the context of the foregoing, the facts accepted as proven are the *presumption iuris et de iure* in nature and they may be contested during the criminal proceedings if the parties have valid and good reasons to do so. Besides, within the meaning of Article 15 of the CPC of BiH, the Court is not obligated to ground its Verdict on any fact which is accepted as proven, considering that, following the termination of the criminal proceedings, all of them will undergo individual evaluation as well as evaluation in the context of all presented evidence at the main trial.

903. Having considered the referenced criteria in the context of arguments presented by

the parties in the proceedings, the Panel is satisfied that the facts listed in the operative part of the decision satisfy the requirements of all criteria, and it accepts them as proven to the extent as stated above.

904. The facts which the Panel did not accept were considered to be irrelevant for this specific case, while some of them constituted the conclusions of the ICTY Chamber, or were directly related to the accused in this case.

(a) Motion related to established facts, filed by Attorney Vera Lazić

905. On 10 October 2011, the Court dismissed as ungrounded the motion by the Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić, of 24 June 2011, in which she moved the Court to accept as established the facts adjudicated in the ICTY case *Prosecutor versus Vujadin Popović and others*, number: IT-05-88-T.

906. First and foremost, by hearing the parties in the proceedings, that is, giving them the opportunity to comment on the referenced motion of the Defense Counsel, the first formal requirement of the quoted provision for deciding about the acceptance of established facts as proven has been satisfied. Namely, the Prosecutor on the case objected to the referenced motion at the main trial which was held on 19 September 2011, claiming that the motion contains some subjective positions of the ICTY Chamber, and that the proposed facts were not suitable for acceptance.

907. As already reasoned, the basic aim of Article 4 of the Law on the Transfer of Cases is to achieve efficiency and judicial economy, which is consistent with the right of the Accused to trial without delay, as stipulated in Article 13 of the CPC of BiH and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. When applying this provision, the Court observed the principle of fairness in this specific case and it therefore did not accept the facts that would directly or indirectly incriminate the Accused.

908. Furthermore, when evaluating the proposed facts as established, the Panel was mindful of the hitherto understanding and jurisprudence of the ICTY in the cases it tried, and applied them as objective, considering that the Law on the Transfer of Cases does not foresee the criteria based on which a certain fact would be considered to be “*adjudicated*”. In that context, the criteria which the ICTY defined in its Decision of 28 February 2003 in *Prosecutor versus Momčilo Krajišnik*, and by which the rights of the Accused guaranteed under the European Convention for the Protection of Human Rights and Freedoms (ECHR) and the CPC of BiH, were evaluated.

909. In accordance with the referenced decision, the Trial Panel, upon motion of a party or *proprio motu*, having heard the parties, may decide to take judicial notice of the adjudicated facts, if they satisfy the following criteria: that they are distinct, concrete and identifiable, relevant for the particular case, restricted to factual findings and do not include legal characterizations, contested at trial and form part of a judgment which has either not been appealed or has been finally settled on appeal or contested at trial and now form part of a judgment which is under appeal, but fall within issues which are not in dispute during the appeal. Also, they must not attest to the criminal responsibility of the Accused, be

268

based on plea agreements in previous cases and impact on the right of the Accused to a fair trial.

910. These criteria supplement Rule 94(b) (Judicial Notice) of the ICTY Rules of Procedure and Evidence. In addition, the same criteria have already been accepted by the Appellate Panel of the Court (Verdict in *Neđo Samardžić*, number: X-KRŽ-05/49 of 13 December 2006).

911. Having evaluated the referenced criteria in the context of arguments presented by the parties in the proceedings, the Panel finds that the facts proposed by the Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić, do not satisfy the foregoing criteria as they stem from the ICTY Judgment in *Vujadin Popović and others*, which is still not final and binding. Therefore, one of the criteria for admissibility of the established facts has not been satisfied.

912. In reasoning her motion, the Defense Counsel argues that those facts concerned the Accused Ljubomir Borovčanin, and refers to the specific paragraphs of the first-instance Judgment. Having reviewed the Judgment, the Court found that, apart from the Accused Lj. Borovčanin, the referenced Judgment also referred to Vujadin Popović and other persons. It is therefore unclear exactly which criteria the Defense Counsel applied to abstract from the Judgment the final and binding parts related to only one accused, thus proclaiming the Judgment to be final in part, in the absence of any decision of the ICTY Appeals Chamber to that effect. Besides, a version of the referenced Judgment translated to B/C/S languages is still not unavailable. Therefore, an unauthorized translation of the paragraphs as stated in the motion could certainly not be accepted as authentic, which rendered it inappropriate for evaluation of the acceptability of the proposed facts.

(b) Motion for acceptance of established facts, filed by Attorney Miodrag Stojanović

On the same grounds on which the motion by the Defense Counsel Lazić was refused, the Court rendered a decision of 15 February 2012 to refuse as ungrounded the Motion by the Defense Counsel for the Accused Mendeljev Đurić, Attorney Miodrag Stojanović, dated 8 February 2012, by which it moved the Court to accept as established the facts adjudicated in the ICTY case *Prosecutor versus Vujadin Popović and others*, number: IT-05-88-T.

**6. Introduction of previous statements of witnesses and mandatory disclosure of evidence**

913. Prior to reasoning the referenced procedural decisions, the Panel notes that, at the main trial of 10 June 2010, it was made known that the statements the witnesses made to various non-governmental organizations or associations would not be tendered into evidence in this case, considering that they were not made in compliance with the CPC of BiH, that is, before making their statements the witnesses were not properly advised.

914. However, the Panel adhered to its position that the parties and the Defense Counsel may use the findings in the referenced statements to *support their own arguments*

or in order to undermine the credibility of witnesses.

915. At the hearing of 17 February 2011, it was also decided to accept tendering into evidence the statements the witnesses made in other cases related to the events in Srebrenica, considering the existing factual and legal identity amongst these cases, that is, all investigations in that case are to be considered as a whole from the factual point of view.

916. During the hearing of 24 February 2011, following numerous motions and petitions of the defense to have the evidentiary material disclosed, the Presiding Judge pointed at the legal obligation of the Prosecutor to provide the Defense with all pieces of evidence he holds, either in favor or to the detriment of the Accused. In the process, there remain the restrictions considering the documents in the cases in which investigations are still ongoing, which is consistent with Article 47(1) of the CPC of BiH.

917. Also, the defense was asked on this occasion to review the Prosecution's file and copy everything it considers to be relevant or exculpatory for the accused, and it was also noted that there was an unobstructed opportunity for the defense to contact witnesses it finds to be important for the preparation of defense. In other words, the Prosecutor is obligated to provide only those pieces of evidence it holds, while the Defense may also conduct its own investigation by examining the witnesses and collecting documentary evidence.

## **7. Tendering into evidence the statements given before the ICTY**

### **(a) Trial motion by Prosecution, No. 4**

918. On 26 August 2010, pursuant to Articles 3, 5, 6 and 7 of the 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 Court of BiH (The Law on the Transfer of Cases) the Panel accepted and tendered into the case file the transcripts of the ICTY testimony by Momir Nikolić, Dragan Obrenović, Joseph Kingori, Paul Groenwegen, Robert A. Franken, Leendert Cornelis van Duijn, Vicentius Egbers, Martijn Anne Mulder, witness S-112, PW-100, Dean Manning, statements made by deceased witnesses Miroslav Deronjić, Čamila Omanović and Luka Marković. Then, acting upon the Trial Motion by the Prosecutor's Office, No. 7, the Panel also accepted to tender into evidence the transcript of testimony by Johannes Rutten.

919. On 15 February 2011, the Court rendered a decision of the same kind by which, pursuant to Article 5 of the Law on the Transfer of Cases, it decided to tender into the case file the transcript of Johannes Rutten's testimony made before the ICTY in the case against Radislav Krstić.

920. The Law on the Transfer of Cases also notes that the Accused has the right to request cross-examination of witnesses whose testimony the Court decided to use pursuant to Article 5. It is necessary though for the defense to corroborate such a request by filing a written reasoned submission, in which to refer to the specific parts of the witness testimony that are to be subjected to cross examination.

921. After the Defense filed with the Court its motions in which it thoroughly reasoned the circumstances about which these witnesses would be examined, the Panel rendered a decision to allow the cross examination of all witnesses whose testimony/transcripts of testimony the Panel accepted pursuant to the Law on the Transfer of Cases.

922. Also, the Panel noted that the Court would make an effort to contact the referenced persons, some of whom enjoy diplomatic immunity, while permanent or temporary place of residence of some of them is unknown, referring to the provision of Article 3(2) of the Law on the Transfer of Cases which seriously restricts the use of evidence that was not a subject of cross examination, which is consistent with the European Convention jurisprudence.

923. Besides, the Court decided on the quality of these witnesses' testimony applying the principle of free evaluation of evidence, that is, by evaluating them in the context of the other presented evidence.

(b) Decision granting cross examination of witnesses whose testimony was accepted by the 26 August 2010 Decision

924. The Defense filed a written request for the attendance of witnesses Momir Nikolić, witness PWS-110, Joseph Kingori, Alexander Franken Robert, Paul Groenwegen and Dragan Obrenović, to be cross examined. In her written submissions, the Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić, reasoned the individual grounds for summoning the referenced witnesses and thoroughly noted the circumstances which are to be the subject of cross examination.

925. Defense Counsel particularly pointed at the need to summon the protected witness PWS-100 whose identity had never been disclosed to the defense, so the acceptance of his testimony without cross examination would violate the right to a fair trial, which the accused enjoys in the referenced proceedings.

926. Defense Counsel for the Accused Mendeljev Đurić, Attorney Dragoslav Perić, also filed a motion, reasoned in writing, to summon and cross examine all witnesses whose testimony was accepted by the Decision of this Court and tendered into the documentary material. Defense Counsel thoroughly commented on the circumstances in relation to which he suggested the cross examination of these witnesses.

927. By his letter of 26 April 2011, the Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, supported the motions by the Defense Counsel for the Accused Duško Jević and Mendeljev Đurić, to have the witnesses summoned for cross examination. The Defense Counsel for the Accused Goran Marković, Attorney Veljko Čivša, did the same by his letter of 4 May 2011.

928. The Court adopted the referenced motion and rendered a 10 May 2011 Decision to allow summoning the witnesses whose testimony had been accepted, for cross examination.

929. The right to cross examination of witnesses before the Court of BiH is stipulated in

Article 6(1) and Article 6(3)(d) of the European Convention on Human Rights, and in Article 262(1) of the CPC of BiH. However, with regard to evidence gathered and used before the ICTY, the Law on the Transfer of Cases has precedence over the application of the provisions of the CPC of BiH, which should be treated as a *lex specialis* in that context.

930. Article 4 and Article 5(1) of the Law on the Transfer of Cases elaborate on the admissibility of the ICTY evidence without needing to summon witnesses to make their oral testimony. However, the Law on the Transfer of Cases does not exclude the possibility for the defense to request that such a witness be cross-examined (Article 5(3) of the Law on the Transfer of Cases), wherein the Court has a discretionary right to either grant or refuse such a request.

931. Applying its discretionary right, this Court could justifiably refuse the defense submissions for cross examination if there were no considerable disagreements with such evidence, or if the cross examination of this witness would “prolong the proceedings but does not serve to clarify the matter” (Article 239(2) of the CPC of BiH). In that case, the statements and reports admitted in compliance with the Law on the Transfer of Cases could not be used as the only or decisive ground for a Verdict.

932. As evident in the provided submissions, the Defense Counsel believe that if the discretionary right were assigned to the Court in such cases, that would mean the violation of the right to a fair trial as foreseen in Article 6 of the European Convention. However, this Panel finds that such a conclusion is unacceptable, considering that the right to cross examination as foreseen in Article 6(3) is not absolute, that is, unconditional.<sup>402</sup>

933. Besides, to the extent to which Article 3(2) of the Law on the Transfer of Cases seriously restricts the use of evidence that was not the subject of cross examination, the referenced acting by the Court is consistent with the European Convention jurisprudence.

934. Applying its discretionary right, the Court evaluated all submissions in this specific case and concluded that they justify the need to summon the referenced witnesses to be cross examined and challenged by the defense.

935. While evaluating the importance of the need for cross examination, the Court was mindful of the lapse of time and costs of such sequence of activities and possible delay of the proceedings as a result of the foregoing. However, the Court concludes that the defense stated specific reasons which (for the most part) justify summoning the witnesses stated in the operative part of the Decision.

936. Considering that the Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić, subsequently gave up on summoning the protected witness S-112, whose testimony

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<sup>402</sup> Unterpertinger v. Austria (1991) 13 ECHR, Para 31, Lucá vs. Italy (2003) 36 ECHR 46. Para 39, Doorson vs. Netherlands (1996) 22 EHRR 330, Para 79-80.



was not proposed by either the Defense Counsel for the Accused Mendeljev Đurić or the Defense Counsel for other accused persons, the Court acted accordingly and did not summon that witness.

937. With regard to witnesses whose testimony has been admitted and tendered into the case file, and who could possibly be prevented from appearing before the Court to be cross examined, the Panel finds it useful to point at the general principle under Article 3(2) of the Law on the Transfer of Cases which foresees that a conviction of a person shall not be based solely or to a decisive extent on such statements.

938. Concerning the presentation of witness statements accepted by the Court, on 24 March 2011 the Prosecutor's Office was obligated to make a summary of the essential parts of the witness statements to be read out at the main trial and become available to the public. The defense consented to the referenced manner of entering the witness statements into the evidentiary material.

(c) Inability of a witness to appear before the Court

939. The same Decision foresees the summoning of certain individuals to the Court to be cross-examined. However, with regard to the witness Momir Nikolić, the Court was informed that this person had been serving his prison sentence in Finland. By way of international legal assistance, a petition for interviewing this witness was forwarded to the Ministry of Justice of Finland, and the relevant Finish authorities responded that the Hague Tribunal had jurisdiction thereof, so the same petition was also sent to the ICTY. For the sake of comparison, in the case of *Pelemiš and Perić*, which was conducted before this Court, the Panel on the case was notified by both of these authorities that they had no competence to forward a petition for witness examination to the witness.

940. Witness Momir Nikolić was also summoned through the Ministry of Justice, but the summons was returned containing a note that it should be forwarded through the ICTY.

941. A petition for witness Dragan Obrenović who has been serving his prison sentence in Norway was also forwarded through international legal assistance and to the ICTY as well. For the sake of comparison, the Panel noted that, in the case of *Pelemiš and Perić*, the ICTY responded that it has no jurisdiction over the petition. Through the Ministry of Justice, a summons for examination was also forwarded to witness Obrenović in person.

942. With regard to members of the Dutch Battalion whose testimony was admitted by the Court Decision and who were not cross examined before this Panel, a request has been forwarded to the UN to lift their immunity, and was eventually granted. Through international legal assistance, a request was forwarded to the Dutch Ministry of Justice for the examination of these witnesses.

943. In other cases tried before this Court, there exist the statements of Franken and Van Duijn indicating that they do not want to testify because of stress and mental problems, while in this particular case the Panel was provided with the testimony of witness Rutten who does not want to testify, and a request was therefore forwarded to the

Dutch Ministry of Justice asking for urgent action, to which no response has been received.

944. Finally, concerning witness PW-100, an official ICTY decision was received refusing the request for disclosure of this witness' identity and it was therefore not possible to summon him to the Court, whereas the defense gave up on the cross-examination of witness S-112, whose testimony was also accepted.

945. Parties and the Defense Counsel were notified accordingly at the hearing of 30 May 2011 and 22 August 2011, and it was furthermore stated that the defense's motion for summoning Ljubomir Borovčanin as a witness was also refused. By the ICTY letter, the Court was informed that the referenced motion was dismissed because Attorney Miodrag Stojanović was a co-counsel in that case and a Defense Counsel for the Accused Mendeljev Đurić in this case, and is therefore in the conflict of interest. At the hearing of 19 September 2011, the Presiding Judge announced that it was not possible to contact some of the witnesses, that is, it would not be possible to secure their appearance before the Court so as to be cross examined.

946. When rendering a final evaluation of these witnesses' testimony, the Panel was mindful of the restrictions under Article 3(2) of the Law on the Transfer of Cases according to which a conviction of a person cannot be based on such statements solely or to a decisive extent.

#### **8. Statements made by the Accused in their capacity as suspects**

947. On 12 December 2011, the Court rendered a Decision to admit into evidence the statements the Accused Duško Jević and Mendeljev Đurić made to the ICTY investigators and the statement Goran Marković made to the Prosecutor's Office of BiH in his capacity as a suspect.

948. Thus, pursuant to Articles 1, 3 and 7 of the Law on the Transfer of Cases from the ICTY, and Articles 6 and 10 of the CPC of BiH, it was accepted that the Suspect Interview Record for Duško Jević and the transcript of the Suspect's statement produced by the ICTY OTP on 18 October 2000, and the Suspect Interview Record for Đurić Mendeljev along with the transcript of the Suspect's statement, produced by the ICTY OTP on 18 October 2000, be tendered into evidence. Pursuant to Article 273(3) of the CPC of BiH, it was accepted that the Suspect Interview Record for Goran Marković, produced by the Prosecutor's Office of BiH on 19 December 2009, and the transcript of audio recording of the Suspect's interview be tendered into evidence.

949. On 1 November 2011, the Prosecutor's Office of BiH filed a Motion for the admission into evidence of the Suspect Interview Records for Jević Duško and Đurić Mendeljev, submitting that they were acceptable under Article 3 of the Law on the Transfer of Cases from the ICTY, while the statement of the Accused Goran Marković, which he made to the Prosecutor of the Prosecutor's Office of BiH in his capacity as a Suspect, is acceptable pursuant to Article 6 and Article 273(23) of the CPC of BiH. In the reasoning part of its Motion, the Prosecutor's Office refers to the hitherto jurisprudence of the ICTY

and the Court of BiH concerning the admissibility of the referenced statements into evidence.

950. In her written response, the Defense Counsel for the Accused Duško Jević, Attorney Vera Lazić, objected to tendering into evidence the testimony the Accused made before the ICTY, because the referenced examinations were not conducted in compliance with the provisions of Rules 42 and 43 of the Rules of Procedure and Evidence. The Defense Counsel submits that the proposed statements were not taken in compliance with Article 10(2) and Article 78 of the CPC of BiH and are therefore inadmissible as evidence. One of the basic reasons for the inadmissibility of the statements is the fact that no Defense Counsel were present during the interview of the Accused Jević and Đurić, although they have been charged with the most serious criminal offense carrying a long-term prison sentence. The Defense Counsel believes that the Interview Record for Goran Marković was made under the applicable provisions of the CPC of BiH and the defense therefore leaves it to the Court's discretion to evaluate the admissibility of the referenced Record.

951. The Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, submitted his written response to the Court, contesting the Motion by the Prosecutor's Office in its entirety. The Defense Counsel submits that, in this particular case, the provisions of Articles 5 and 7 of the Law on the Transfer of Cases refer to the admissibility of statements made before the ICTY by those who testified in their capacity as witnesses, not as Suspects. It is also the fact that the Suspects Jević and Đurić testified on 18 October 2000, that is, before the amendments to the CPC of BiH stipulating the use of the Suspects' statements at the main trial came into force. The retroactive application of CPC provisions would in this specific case be detrimental to the Accused, so according to the defense counsel, it is, as such, unacceptable.

952. At the hearing held on 14 November 2011, the Defense Counsel for the Accused commented orally on the Motion filed by the Prosecutor's Office.

953. On that occasion, the Defense Counsel for the Accused Duško Jević contested the lawfulness of the proposed statements, because it is not clear from them as to whether they were made by a witness or a suspect, considering that the Accused was only served a summons in which his status was not specified, nor was he granted the right to a Defense Counsel, although even at that time he was charged with the criminal offense of genocide.

954. Contesting the referenced Motion, the Defense Counsel for the Accused Mendeljev Đurić, Attorney Miodrag Stojanović, noted that the acceptance of the referenced statements would be in contravention of Article 273(2) of the CPC of BiH and Article 78 of the same Code, because the Accused did not have their Defense Counsel when interviewed. Finally, the Defense Counsel referred to this Court's jurisprudence in the cases *Mitrović* and *Trbić*.

955. Defense Counsel for the Accused Goran Marković, Attorney Veljko Čivša, submits that the Prosecutor's motion is premature, whereas, in addition to supporting the

275

arguments of the other Defense Counsel, the Defense Counsel for the Accused Neđo Ikonić, Attorney Nenad Rubež, moves the Court to allow cross examination should the proposed statements be accepted.

956. The Court found the Motion filed by the Prosecutor's Office to be well-founded.

957. Article 1 of the Law on the Transfer of Cases stipulates the following:

(1) *The provisions set forth in this Law shall regulate the transfer of cases by the International Criminal Tribunal for the former Yugoslavia (hereinafter: the ICTY) to the Prosecutor's Office of BiH and the admissibility of evidence collected by the ICTY in proceedings before the courts in BiH.*

(2) *In case the provisions set forth in this Law do not provide for special provisions for the matters referred to in paragraph 1 of this article, other relevant provisions of the BiH Criminal Procedure Code (hereinafter: the BiH CPC), the criminal procedure codes of the Republika Srpska and the Federation of Bosnia and Herzegovina and the District of Brcko shall apply.*

958. Article 3(1) of the Law on the Transfer of Cases includes a general principle according to which "evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH".

959. It clearly follows from the foregoing that the Law on the Transfer of Cases is a *lex specialis* in relation to the CPC of BiH.

960. When evaluating the statements the ICTY OTP took from the Accused, the first element to be defined in terms of the provisions of Article 3(1) of the Law on the Transfer of Cases refers to whether the referenced evidence has been obtained in accordance with the ICTY Statute and Rules of Procedure and Evidence.

961. Thus, Rule 42 of the ICTY Rules of Procedure and Evidence – *Rights of Suspects during Investigation* foresees the rights guaranteed, along with one more guarantee - the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.

(A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect speaks and understands:

(i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;

(ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and

(iii) the right to remain silent, and to be cautioned that any statement the suspect

276

makes shall be recorded and may be used in evidence.

(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

962. Rule 43 of the ICTY Rules of Procedure and Evidence – *Recording Questioning of Suspects* foresees that whenever the Prosecutor questions a suspect, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

(i) the suspect shall be informed in a language the suspect speaks and understands that the questioning is being audio-recorded or video-recorded;

(ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;

(iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;

(iv) a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes shall be supplied to the suspect;

(v) after a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and

(vi) the tape shall then be transcribed once a suspect becomes an accused person.

963. Whenever the ICTY OTP questioned them, Duško Jević and Mendeljev Đurić were properly advised of their rights and obligations in compliance with the quoted provisions.

964. Specifically, with regard to every individual statement, the Panel thoroughly analyzed whether the requirements of the ICTY Rules of Procedure and Evidence were satisfied so that the referenced evidence could be used in this specific case based on the Law on the Transfer of Cases.

965. Thus, the lawfulness of the referenced statements in the context of Rule 42 - *Rights of Suspects during Investigation* and Rule 43 - *Recording Questioning of Suspects* was evaluated.

966. The requirement set forth in Rule 42 has been satisfied in relation to ICTY OTP's questioning of both Duško Jević and Mendeljev Đurić, considering that during each

277

questioning the Prosecutor instructed them of their rights under Rule 42, in a language they speak and understand.

967. They were also informed about their right to have free assistance of an interpreter if they cannot understand or speak the language used for questioning, and about the right to remain silent, and were cautioned that any statement they make shall be recorded and may be used as evidence.

968. Finally, according to Rule 42, the suspects were then informed that the questioning shall not proceed without the presence of counsel unless they have voluntarily waived the right to counsel. In case of waiver, if the suspects subsequently express a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspects have obtained or have been assigned counsel. As a result, all requirements of Rule 42 of the ICTY Rules of Procedure and Evidence were satisfied whenever the Accused Duško Jević and Mendeljev Đurić were questioned by the ICTY OTP.

969. Rule 43 of the ICTY Rules of Procedure and Evidence is the second rule to be satisfied when the ICTY OTP questions a suspect. The questioning of Duško Jević and Mendeljev Đurić by the ICTY OTP was audio-recorded, of which they were properly informed. In all events of a break in the course of the questioning, the fact and the time of the break were recorded before audio-recording ends and the time of resumption of the questioning was also recorded. Also, at the conclusion of the questioning the suspects were offered the opportunity to clarify anything they have said, and to add anything they may wish, and the time of conclusion was recorded as well.

970. This questioning, including the accused persons' waiver of the right to the counsel was audio-recorded in accordance with the procedure stipulated in Rule 43, as stated above. At the beginning of any questioning, the Prosecutor cautioned the Suspects as referred to in Rule 42 (A)(iii), that is, he informed them of the right to remain silent and cautioned them that any statement they make would be recorded and may be used as evidence.

971. Therefore, the analysis and consideration of all of them indicate that the statements of the Accused Jević and Đurić made before the ICTY OTP were obtained lawfully, because the procedural requirements of Rules 42, 43 and others of the ICTY Rules of Procedure and Evidence have been satisfied, that is, they have not been violated.

972. Within the meaning of Article 1(2) of the Law on the Transfer of Cases, it is also necessary to apply the basic principle of legality of evidence as referred to in Article 10 of the CPC of BiH which foresees that "it shall be forbidden to extort a confession or any other statement from the suspect, the accused or any other participant in the proceedings". Therefore, Article 10(1) of the CPC of BiH referring to the extortion of a confession or any other statement implies a confession or a statement obtained by using force, threat, deception, coercion, promises, delusions or some other prohibited actions against persons being the parties to proceedings. The defense did not file any evidence on any prohibited action so the Panel found that Article 10(1) of the CPC of BiH prohibiting the extortion of a

confession or any other statement had not been violated.

973. Furthermore, paragraph 2 of the same Article foresees that “the Court shall not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, or on evidence obtained through essential violation of this Code”, and it is therefore clear that, within the meaning of Article 10(2) of the CPC of BiH, invalid evidence was obtained through violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

974. In order to evaluate as to whether the referenced statements were obtained in accordance with the quoted provisions of the ECHR, the Court applied the criteria adopted by the European Court of Human Rights (ECtHR), when deciding which measure of judicial reconsideration was sufficient to secure fairness in using the statements previously made by the Accused.

975. Thus, in *Brennan v. United Kingdom*, the ECtHR allowed that, in order to decide on the guilt, the statements which the Accused made in their capacity as Suspects be used against the Accused if the Trial Panel:

1. has heard the testimony of police officers and others who were present during the taking of statements;
2. has heard the testimony of a neuropsychiatrist about the mental capacity of the accused whose mental state was questioned;
3. has reviewed the statements and the circumstances under which they were made;
4. has heard the arguments of the Defense Counsel for the Accused;
5. has given the accused the opportunity to explain the circumstances under which the statements were obtained.<sup>403</sup>

976. The ECtHR concluded that, considering that the Court evaluated the facts in the manner as described above, it was acceptable for the statements the accused previously made in their capacity as suspects to be used at the main trial against the accused, regardless of whether the accused appear at the main trial as witnesses or not.

977. In the present case, the Panel evaluated if the referenced criteria were satisfied in this case; therefore:

978. The first criterion will be satisfied through the examination of Jean Gagnon, ICTY Investigator, under Article 7 of the Law on the Transfer of Cases, which foresees that the

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<sup>403</sup> *Brennan v United Kingdom*, No. 39846/98, ECtHR 2001.

relevant investigator of the ICTY may be examined with regard to the circumstances of the conducted investigative activities and information obtained during those activities.<sup>404</sup>

979. Considering that it is assumed that the accused are fit to stand trial, and that during the hitherto proceedings the defense has not contested the medical expert evaluation, the Court finds this criterion to also be satisfied.

980. As reasoned in the Decision, the review of legality of the statements was evaluated within the meaning of the provisions of the Law on the Transfer of Cases / ICTY Rules of Procedure and Evidence and the provisions of the CPC of BiH and it was concluded that there were no irregularities in the process of taking those statements.

981. With regard to the admissibility of the proposed statements, the Defense Counsel for the accused orally commented on that at the hearing held on 14 November 2011, while some of them provided the Court with their written responses thereto. Furthermore, in case the Investigator appears before the Court, the Defense Counsel and the accused will have the opportunity to examine him about the circumstance surrounding the legality of taking the statements.

982. During the main trial, the Panel allowed the accused to comment on the form and substance of the statements they had made, pursuant to Article 6 of the CPC of BiH.

983. Apart from the Court's conclusion about the legality of every obtained statement, it was necessary to find out if the lawfully obtained statements could be used as evidence against the accused, if the accused remains silent during the trial, as was the case with the accused Duško Jević and Mendeljev Đurić.

984. The right to a defense by remaining silent is not explicitly stated in the ECHR, instead, the ECtHR reached such a conclusion pursuant to Article 6(1) – *the right to a fair trial*, and Article 6(3)(d) - *the right to the presumption of innocence*. The right to a defense by remaining silent is not absolute. The right of the accused to remain silent as referred to in the ECHR is nothing more than his right guaranteed by Rule 42 of the ICTY or Article 6 of the CPC of BiH. The ECtHR actually made a step further by permitting that the statements made during the investigation by the Accused who waived his right to a defense by remaining silent are tendered into evidence at the main trial. The ECtHR found it acceptable that the national courts render conclusions on guilt when the accused refers to his right to remain silent during the investigative phase and subsequently, during the defense case, relies on a fact he could have disclosed during the investigation.<sup>405</sup> The ECtHR also approved rendering the sentencing verdicts which are based exclusively on

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<sup>404</sup> In the present case, the Court will endeavour to secure the examination of the ICTY Investigator who interviewed the Suspects. If his presence is ensured, the referenced statements shall not be taken into account during final evaluation of evidence.

<sup>405</sup> *Averill v. G.B.*, br. 36408/97, § 51-52, ECtHR 2000.



the previous statements of the Accused who invoked his right to a defense by remaining silent at the main trial.<sup>406</sup>

985. Therefore, if the Accused was given the opportunity to explain or deny his statement at any phase of the proceedings, the ECtHR did not react to any judgment that was anyhow based on the previous statements obtained lawfully, regardless of whether the Accused invoked his right to remain silent at the main trial or not.<sup>407</sup>

986. In that context the Panel finds that, when making their statements, the Accused voluntarily waived their right to remain silent, and such a waiver was documented and reasoned. Therefore, in addition to accepting the fact that the Accused exercised their right at this point in time, their previous statements which they made conscientiously and voluntarily have been considered to be part of the Prosecution evidence and their existence cannot be disregarded.

987. Pursuant to the foregoing, the Panel is not of the view that the acceptance of the referenced statements would violate the right of the Accused in this case and, pursuant to the quoted provisions of the Law on the Transfer of Cases and the CPC of BiH, it rendered the decision as stated above.

988. At the hearing of 15 December 2011, the Defense Counsel for the Accused Mendeljev Đurić, Attorney Miodrag Stojanović, objected to tendering the referenced statements into evidence, primarily because he did not have the opportunity to cross examine the accused about the circumstance surrounding the statements made, and insisted on examining the Investigator who took the statements from the Accused Duško Jević and Mendeljev Đurić, submitting that the admissibility of the statements was conditioned by the referenced circumstance.

989. With regard to the circumstance surrounding the taking of statements from the accused, Jean Gagnon, Investigator, was examined at the hearing of 23 February 2012 in his capacity as a witness for the Court. On that occasion, the witness explained that the Suspects' statements were taken in compliance with all of the rights guaranteed by the ICTY Rules of Procedure and Evidence.

990. Anyhow, the Court finds it worth noting that the statements the accused made as suspects were not used as the only piece of evidence for establishing the relevant facts, but were used very restrictively as corroborative pieces of evidence.

(a) Admission of the Accused Goran Marković's statements pursuant to Article 273(3) of the CPC of BiH

991. When deciding on whether a statement the Accused Goran Marković gave as a suspect would be used at the main trial, the Court evaluated its admissibility in the context of Article 273(3) of the CPC of BiH.

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<sup>406</sup> *Brennan v. G.B.*, No. 39846/98, ECtHR 2001.

<sup>407</sup> *See Luca v. Italy*, No. 33354/96, § 40, ECtHR 2001.

992. Article 273(3) of the CPC of BiH reads: *“If the accused during the main trial exercises his right not to present his defense or answer the questions asked, records of testimonies given during the investigation may, upon decision of the judge or the presiding judge, be read out and used as evidence in the main trial...”*

993. However, the use of the Accused’s statement made during the investigation is conditioned by a formal rule pertaining to the instruction given to the Suspect during the investigation. Thus, the second part of the quoted paragraph of Article 273 of the CPC of BiH explicitly states that such a statement may be used *....” only if during his questioning in the investigation, the accused was instructed pursuant to Article 78(2)(c) of this Code.”*<sup>408</sup>

994. Pursuant to the foregoing, when considering the admissibility of the Accused’s statement made during the investigation, the Trial Panel was mindful of the following:

a) was the Suspect instructed on the possibility to comment on the offense he has been charged with;

b) was the Suspect instructed that, if he wanted to make his statement, that is, to present his defense, he must do that in the presence of a Defense Counsel in the case of compulsory defense;<sup>409</sup>

c) was the Suspect instructed that, if he made his statement in the presence of a Defense Counsel, his statement could be used as evidence at the main trial;

d) was the Suspect instructed that, if he made his statement in the presence of a Defense Counsel, his statement could be read and used at the main trial even without his consent;

995. In the present case, having reviewed the Record, the Court found that the interviewing of the Accused Goran Marković as a Suspect was conducted in compliance with the quoted Article of the CPC of BiH in its entirety and, considering that the defense did not contest the authenticity and lawfulness of the Record in any way whatsoever, the Panel decided to admit it into the documentary evidence in this case, and provided its final evaluation of its probative value in the Verdict, within the context of all presented evidence.

### **9. Admitting evidence under the Law on the Transfer of Cases**

996. At the 7 February 2011 hearing, pursuant to the Law on the Transfer of Cases, documentary evidence was admitted. On that occasion, the defense objected, submitting that the referenced documents, that is, reports were not produced in compliance with the provisions of the CPC of BiH, and were therefore inadmissible as evidence. Dean Manning’s reports were particularly contested because, in the defense’s view, he was not an expert, that is, expert witness.

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<sup>408</sup> See Article 78(2)(c) of the CPC of BiH.

<sup>409</sup> In cases where defense is not compulsory, the Suspect may waive his right to the presence of Defense Counsel during the questioning, while, in case of compulsory defense, the Suspect may not waive the right to the presence of Defense Counsel.

997. Pursuant to Article 3 of the Law on the Transfer of Cases, the Panel decided to admit the proposed evidence, considering that the evidence was obtained in compliance with the ICTY Statute and the Rules of Procedure and Evidence which, based on this provision, may be used in proceedings before the courts of BiH. Therefore, all material documentation, certified and signed reports and other pieces of evidence obtained lawfully and used in proceedings before the ICTY, may be subsumed under the quoted provision, that is, tendered into evidence in this case. However, the Panel will make the final assessment of their probative value in the context of the other presented evidence.

998. Considering that the quoted provision also foresees that the conviction of a person cannot be based to a decisive extent on the prior statements of witnesses who did not give oral evidence at trial, witness Dean Manning, whose reports were tendered into evidence based on this Law and whose probative value was already referred to in the Verdict, was summoned for cross examination. On 11 October 2011, through video-link, the Court enabled the defense to cross examine witness Manning, thus giving them the opportunity to examine him thoroughly about the circumstances surrounding the reports produced.

**XX. ANNEX II**

**A. PRESENTED EVIDENCE**

**1. Examined witnesses for the Prosecution**

	<b>Name and Family Name of Witnesses</b>	<b>Date of testimony</b>
1.	Ljuban Popržen	17/05/2010
2.	Witness A-1	20/05/2010
3.	Witness A-2	20/05/2010
4.	Sabaheta Bećirović	24/05/2010
5.	Abida Huremović	27/05/2010
6.	Halid Heremović	27/05/2010 10/06/2010
7.	Miladin Mlađenović	31/05/2010
8.	Witness S-113	10/06/2010
9.	Mile Janjić	14/06/2010
10.	Radomir Pantić	21/06/2010 08/07/2010
11.	Tomislav Kovač (video-link )	24/06/2010
12.	Milenko Pepić (not examined)	28/06/2010 23/08/2010
13.	Goran Sarić	05/07/2010
15.	Dragomir Vasić	26/08/2010
16.	Petar Mitrović (while serving his prison sentence)	30/08/2010
17.	Miladin Stevanović	30/08/2010
18.	Jovan Nikolić	13/09/2010
19.	Velomir Gajić	13/09/2010 20/09/2010
20.	Jevto Doder	20/09/2010
21.	Ilija Nikolić	23/09/2010
22.	Nenad Milovanović	23/09/2010 27/09/2010
23.	Dragan Bešić (video-link)	27/09/2010
24.	Radovan Sladoje	30/09/2010
25.	Stanislav Vukajlović	04/10/2010
26.	Enver Husić (with Z-6, video and image not disclosed to the media )	07/10/2010
27.	Zoran Erić	14/10/2010
28.	S-126 (content of the statements, image and voice not disclosed to the media)	21/10/2010 25/10/2010
29.	Witness S-100 (protected image, prohibited issuance of audio and video recordings)	01/11/2010 08/11/2010

30	Mile Simanić	04/11/2010
31	Witness S-110 (prohibited issuance of video and photo-recordings)	11/11/2010 29/11/2010
32	Witness S-105 (prohibited image, prohibited issuance of audio and video recordings)	15/11/2010
33	Haso Hasanović	18/11/2010
34	Milorad Sarić	02/12/2010
35	Tomislav Krstović	06/12/2010 13/12/2010 16/12/2010
36	Siniša Renovica (video-link)	20/12/2010
37	Koster Eelco (video-link)	22/12/2010
38	Witness S-104 (protected image, prohibited issuance of audio and video recordings)	10/01/2011
39	Krsto Simić	12/01/2011
40.	Ostoja Stanojević	12/01/2011
41.	Miće Gavrić	24/01/2011
42	Nebojša Aleksić	27/01/2011
43.	Dragomir Mirković	03/02/2011
44	Witness S-111 (from the link-room)	10/02/2011
45	Miladin Mihajlović (video-link from Belgrade) with legal counsel	17/02/2011
46	Živorad Lakić	24/02/2011
47	Witness S-102 (protected image, prohibited issuance of audio and video recordings)	28/02/2011 03/03/2011
48	Witness S-101 (protected image, prohibited issuance of audio and video recordings)	14/03/2011 17/03/2011 21/03/2001 17/10/2011
49.	Richard Butler / video link /	14/03/2011
50.	Vedo Tuco – expert witness	21/03/2011
51	Witness S -116 (prohibited issuance of audio and video recordings)	04/04/2011
52	Jelenko Kljajić (additional)	26/09/2011 10/10/2011
53.	Slobodan Vasković (additional )	26/09/2011
54	Željko Šehovac (additional)	10/10/2011
55	Dean Manning (cross examination) Video-link	11/10/2011
56	Bajro Kulovac (additional) Confrontation with Witness S101	17/10/2011
57	Muris Brkić (additional)	24/10/2011
58	Witness S-117 (additional)	24/10/2011 03/11/2011

59	Witness Joseph Kingori (cross examination)	31/10/2011
60	Witness S-123 (additional) prohibited issuance of video and photo-recordings	03/11/2011 10/11/2011
61	Witness S -124 (additional) prohibited issuance of video and photo-recordings	14/11/2011
62	Witness S – 121 (additional) prohibited issuance of video and photo-recordings	24/11/2011
63	Witness S – 125 (additional) prohibited issuance of video and photo-recordings	28/11/2011
64	Witness S – 118 (additional) prohibited issuance of video and photo-recordings)	05/12/2011
65	Witness S – 119 (additional) prohibited issuance of video and photo-recordings (with a legal counsel)	12/12/2011 22/12/2011 16/01/2012
66	Witness Ljubodrag Gajić (video-link with Belgrade)	19/01/2012

## **2. Examined witnesses for the defense**

	<b>Name and Family Name of Witnesses</b>	<b>Date of testimony</b>
1.	D.S: ( I )	18/04/2011
2.	Nedeljko Sekula ( I )	21/04/2011
3.	Nenad Andrić ( I )	21/04/2011
4.	Mladenko Borovčanin ( I )	28/04/2011
5.	Suljo Šabanović ( I )	12/05/2011
6.	Ljubisav Simić ( I )	12/05/2011
7.	Jovica Gligić ( II )	23/05/2011
8.	Milan Stojčinović ( II )	23/05/2011
9	Radovan Radinović ( I ) expert witness	26/05/2011 30/05/2011
10.	Mile Matijević ( II ) expert witness	06/06/2011
11.	Ljubiša Simić ( II ) expert witness	09/06/2011
12.	Neđo Jovičić (II)	13/06/2011
13.	Radenko Radivojević ( III )	16/06/2011
14.	Slavko Bojanić ( III )	16/06/2011
15.	Stefan Karganović ( II ) expert witness	30/06/2011
16	Duško Kusmuk ( IV )	04/07/2011
17	Vojislav Tokanović ( IV )	04/07/2011
18	Jovan Todorović ( IV )	07/07/2011
19.	Aleksandar Pržulj ( IV )	22/08/2011
20	Richard Butler ( II ) expert witness	19/09/2011
21.	Kos Franc ( II )	26/01/2012
22.	Smilja Popović Vidović ( II )	30/01/2012
23.	Huso Salihović ( II )	02/02/2012

24	Ibran Mustafić ( II )	05/03/2012
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### 3. Examined Court witnesses

1.	Jean Gagnon	23/02/2012
2.	Protected witness S-127	27/02/2012

### 4. Documentary evidence for the Prosecutor's Office

#### **Prosecution evidence tendered on 10 May 2010**

**T-1** Compiled video recording on Srebrenica by Zoran Petrović, as well as the transcript of the aforementioned recording

#### **Prosecution evidence tendered on 20 May 2010**

**T-2 ( a, b and c )** photos presented to the witness under the pseudonym A-1, three photos marked and signed by the witness A-1,

#### **Prosecution evidence tendered on 31 May 2010**

**T-3** photos presented to the witness Miladin Mlađenović, photos of the house from which the witness transported men to the primary school gym.

#### **Prosecution evidence tendered on 10 June 2010**

**T – 4** Witness S – 113 examination record dated 20 June 2010 with two photos, witness statement dated 15 March 2007 - **confidential**

#### **Prosecution evidence tendered on 14 June 2010**

**T – 5** Photo recording of Potočari with the UN base marks and the factory in Potočari

#### **Prosecution evidence tendered on 24 June 2010**

**T – 6** Order issued by RS MUP dated 10 July 1995

**T – 7** Transcript in the Petar Mitrović case and testimony of witness Tomislav Kovač dated 15 November 2007

#### **Prosecution evidence tendered on 5 July 2010**

**T – 8** dispatch of Zvornik PSC number 12-6/08-534/95. dated 19 July 1995

**T – 9** dispatch of Zvornik PSC number 01-16-02/1-205/95 dated 15 July 1995

**T - 10** dispatch of Zvornik PSC number 01-16-02/1-206/95 dated 17 July 1995

**T- 11** order of the Special Police Brigade, Semizovac forward command post, number 61/95 dated 17 July 1995, issued by Goran Sarić, commander

**T-12** - dispatch of Zvornik PSC number 01-16-024-206/95 dated 17 July 1995, signed by the chief Dragomir Vasić

**T-13** – dispatch of Zvornik PSC number 01-16-02/1-221/95 dated 22 July 1995

**T-14** report of special police brigade dated 5 September 1995 on combat engagement of the Special Police Brigade forces and other police forces in the operation “Srebrenica 95” in the period between 11 July to 21 July 1995,

**T-15** dispatch of the Special Police Brigade, Deputy Commander Ljubiša Borovčanin, number 284/95 dated 13 July 1995

**Prosecution evidence tendered on 8 July 2010**

**T-16** Sketch by witness Radomir Pantić drawing a site at which his unit was standing guard

**T-17** Photo of the site at which Radomir Pantić's unit was standing guard

**Prosecution evidence tendered on 26 August 2010**

**T – 18** Dispatch issued by Zvornik PSC dated 12 July 1995

**T – 19** Dispatch issued by Zvornik PSC dated 13 July 1995

**T – 20** Dispatch issued by Zvornik PSC dated 14 July 1995

**T – 21** Dispatch issued by Zvornik PSC dated 13 July 1995

**T – 22** Dispatch issued by Zvornik PSC dated 28 July 1995

**T – 23** Dispatch issued by Zvornik PSC dated 18 July 1995

**T – 24** Dispatch issued by Zvornik PSC dated 12 July 1995

**Prosecution evidence tendered on 30 August 2010**

**T-25** Photo of the Kravica warehouse, marked and signed by witness Petar Mitrović.

**T-26** Photo of the Kravica warehouse, marked and signed by witness Miladin Stevanović.

**Prosecution evidence tendered on 13 September 2010**

**T-27** Photo of the Kravica warehouse, marked and signed by witness Jovan Nikolić.

**Prosecution evidence tendered on 20 September 2010**

**T-28.** Record of examination of witness Velomir Gajić taken by the State Investigation and Protection Agency, number 17-04/2-6-04-2-129/08 dated 7 February 2008

**T-29.** Record of examination of witness Velomir Gajić taken by the State Investigation and Protection Agency number 17-04/2-6-04-2-789/09 dated 15 October 2009

**T-30.** Record of examination of witness Velomir Gajić taken by the Prosecutor's Office of Bosnia and Herzegovina, number KT-RZ-101/07 dated 24 August 2010

**Prosecution evidence tendered on 23 September 2010**

**T-31** Photo of the Kravica warehouse, marked and signed by witness Ilija Nikolić

**Prosecution evidence tendered on 27 September 2010**

**T-32** Record of examination of witness Nenad Milanović taken by the State Investigation and Protection Agency, number 17-04-/2-6-04-2-784/09 dated 6 October 2009, together with copies attached to this Record

**Prosecution evidence tendered on 30 September 2010**

**T-33** Record of examination of witness Radovan Sladoje taken by the Prosecutor's Office of Bosnia and Herzegovina, number KT-RZ-101/07 dated 11 March 2010, and witness examination transcript



**Prosecution evidence tendered on 4 October 2010**

**T-34** Record of examination of witness Stanislav Vukajlović taken by the State Investigation and Protection Agency number 14-04/2-346/05 dated 18 October 2005

**Prosecution evidence tendered on 7 October 2010**

**T-35** a photo presented to witness Enver Husić

**Prosecution evidence tendered on 14 October 2010**

**T-36** a photo presented to witness Zoran Erić during the examination at the Prosecutor's Office on 21 April 2009, presented to the witness during direct examination.

**Prosecution evidence tendered on 21 October 2010**

**T-37** photos (5 photos) presented to a witness S-126u during the examination at the Prosecutor's Office on 6 February 2009, presented to the witness during direct examination.

**Prosecution evidence tendered on 1 November 2010**

**T-38** a photo presented to witness S-100, marked and signed by this witness

**Prosecution evidence tendered on 4 November 2010**

**T-39a** Regular combat report number 38-56 dated 14 July 1995

**T-39b** Regular combat report number 38-58 dated 17 July 1995

**Prosecution evidence tendered on 15 November 2010**

**T-40** ( a, b, c, d ) photos presented to witness S-105 on 15 November 2010, marked as

- 40 a ERN:0216-4734
- 40 b ERN:0216-4763
- 40 c ERN:0216-4762
- 40 d ERN:0216-4761

**T-41** excerpt from the Bratunac Health Center protocol book for witness under pseudonym S-105

**Prosecution evidence tendered on 18 November 2010**

**T-42** ( a ) a map presented to witness Haso Hasanović on 28 November 2010, marked by the witness

**T-42** ( b ) a photo presented to witness Haso Hasanović on 28 November 2010, marked by the witness

**Prosecution evidence tendered on 2 December 2010**

**T-43** Record on examination of witness Milorad Sarić taken by the State Investigation and Protection Agency number 17-04/2-6-04-2-423/09 dated 30 April 2009

**T-44** Record on examination of witness Milorad Sarić taken by the State Investigation and Protection Agency number 17-04/2-6-04-2-467/06 dated 24 August 2006

**T-45** informative report of 25 July 2006

### **Prosecution evidence tendered on 13 December 2010**

**T-46** a photo presented to witness Tomislav Krstović during direct examination, signed by the witness

**T-47** a photo presented to witness Tomislav Krstović during direct examination, signed by the witness

**T-48** a photo presented to witness Tomislav Krstović during direct examination, signed by the witness

**T-49** a photo presented to witness Tomislav Krstović during direct examination, signed by the witness

**T-50** a photo presented to witness Tomislav Krstović during the direct examination, signed by the witness

**T-51** record on examination of witness Tomislav Krstović, taken by the Prosecutor's Office of Bosnia and Herzegovina on 14 January 2010

### **Prosecution evidence tendered on 20 December 2010**

**T-52** record on examination of witness Siniša Renovica, taken by the State Investigation and Protection Agency (SIPA) on 13 March 2008, as well as the transcript of this examination

**T-53** a photo presented to witness Siniša Renovica, marked by the witness during the investigation.

**T- 54** photo presented to witness Siniša Renovica, marked by the witness during the investigation

### **Prosecution evidence tendered on 22.12.2010**

**T- 55** video recordings – two video clips (parts of video recording that have already been tendered as evidence for the Prosecutor's Office under number T-1)

**T- 56** a photo presented to witness Eelco Koster, marked by the witness during the investigation

### **Prosecution evidence tendered on 10 January 2011**

**T- 57** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 58** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 59** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 60** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 61** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 62** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 63** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 64** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 65** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 66** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

**T- 67** a photo presented to witness S – 104, during direct examination, marked and signed by the witness

#### **Prosecution evidence tendered on 12 January 2011**

**T- 68** a photo presented to witness Krsto Simić during direct examination, marked and signed by the witness

**T- 69** a photo presented to witness Krsto Simić during direct examination, marked and signed by the witness

**T- 70** a photo presented to witness Ostoja Stanović during direct examination, marked and signed by the witness

#### **Prosecution evidence tendered on 24 January 2011**

**T- 71** Kravica-Konjević Polje road communication map presented to witness Mićo Gavrić during direct examination, marked and signed by the witness

**T- 72** a photo of Konjević Polje crossroads presented to witness Mićo Krstić during direct examination

#### **Prosecution evidence tendered on 27 January 2011**

**T-73** record of examination of witness Nebojša Aleksić taken by the State Investigation and Protection Agency on 11 December 2007

**T-74** record of examination of witness Nebojša Aleksić taken by the Prosecutor's Office of Bosnia and Herzegovina dated 25 February 2009 / video recording of witness examination tendered on 20 February 2012

#### **Prosecution evidence tendered on 7 February 2011**

**T-75** ICTY reports (summary of forensic evidentiary materials – execution site and mass graves) Dean Manning, ICTY Investigator, 16 May 2000

**T-75a** (summary of forensic evidentiary materials related to the mass grave exhumed in 2000) Dean Manning, ICTY Investigator, February 2001.

**T-75b** (International Criminal Tribunal of the United Nations for the former Yugoslavia) investigation on Srebrenica

**T-75-c** (Summary of forensic evidentiary materials – exhumation of human remains from mass graves) 2007

**T-75d** (Summary of forensic evidentiary materials – exhumation of human remains from mass graves) 2007

**T-76** Laboratory report

**T-77** Ministry of Justice of the Netherlands, criminal technician's report

**T-78** (Assessment of a minimum number of persons exhumed by the International Criminal Tribunal for the former Yugoslavia from 1996 to 2001)

- T-79** (Report on excavations and exhumations of mass grave Glogova 1 in 2000)
- T-80** (Crime-investigation and technical processing of graves at Cerska excavation: 7 to 18 July 1996)
- T-81** (Report on military events in Srebrenica – operation “Krivaja 95”)
- T-82** (Report on command responsibility of the VRS brigade)
- T-83** (Report on investigation, the American Naval Criminal Investigative Service)
- T-84** (Annex to report on the number of missing and dead persons from Srebrenica)
- T-85** (Report on the number of deceased, missing and dead persons from Srebrenica, made by Helge Brunborg and Henrik Urdal)
- T-86** (Report on examining and taking evidentiary material from the warehouse in Kravica, BiH September/October 2000)
- T-87** (Human blood detected in samples taken in the school in Grbavci, in Bosnia and Herzegovina, 1996)
- T-88** (Report on excavation at the Glogova 2 location, Bosnia and Herzegovina 1999-2001)
- T-89** (Activities of the International Tribunal in Bosnia and Herzegovina during 1999, Report of the chief pathologist for Srebrenica graves)
- T-90 and T-90 a** (Missing persons on the territory of Bosnia and Herzegovina)

**Prosecution evidence tendered on 17 February 2011**

**T-91** Record of examination of witness Miladin Mihajlović, taken by the State Investigation and Protection Agency (SIPA) on 9 April 2009.

**Prosecution evidence tendered on 24 February 2011**

**T-92** Record of examination of witness Živorad Lakić, taken by the State Investigation and Protection Agency (SIPA) on 28 July 2009

**T-93** Record of examination of witness Živorad Lakić, taken by the State Investigation and Protection Agency (SIPA) on 14 October 2009

**Prosecution evidence tendered on 3 March 2011**

**T-94** a photo presented to witness S-102 during direct examination, marked and signed by the witness

**T-95** Data obtained from the Health Center in Bratunac

**T-96** A photo presented to witness S-102 during direct examination, marked and signed by the witness

**T-97** Record of examination of witness S-102, taken by the Prosecutor’s Office of BiH on 7 April 2011

**T-98** Record of examination of witness S-102, taken by the Prosecutor’s Office of BiH on 17 November 2009 and transcript dated 17 November 2009

**Prosecution evidence tendered on 21 March 2011**

**T-99** A photo presented to witness S-101 during direct examination

**T-100** A photo (of the White House) presented to witness S-101 during direct examination

- T-101** – A photo ( luggage) presented to witness S-101 during direct examination
- T-102-** A photo (of Kravica warehouse) presented to witness S-101 during direct examination
- T-103** Record of examination of witness S-101 dated 26 March 2009, as well as the transcript of the witness examination
- T -104** Record of examination of witness S-101 dated 27 March 2009 as well as the transcript of the witness examination
- T- 105** Record of examination of witness S-101 dated 10 November 2009 as well as the transcript of the witness examination
- T- 106** Record of examination of witness S-101 dated 26 May 2010
- T- 107** Report of 12 February 2007; Supplementary forensic expertise, “Kravica” case number KT-RZ 143/07, 16 April 2009; Supplementary forensic expertise of 15 February 2011
- T-108** Documents on exhumation at the Sandići location

**Prosecution evidence tendered on 4 April 2011**

- T-109** Structure of the RS MUP police special brigade,
- T-110** Structure of RS police on 12 July 1995
- T-111** List of members of the command of the antiterrorist police brigade
- T-112** List of the Jahorina Training Center (233 persons on the list)
- T-113** Specialized list of the Jahorina Training Center
- T-114** Decoration of Duško Jević, Order of the Karađorđe’s Star of the II rank, on 21 November 1993
- T-115** Decision on withdrawal of Duško Jević’s travel document, upon order by the High Representative on 11 July 2007
- T-116** Decision prohibiting Duško Jević from using ID card to cross the border, dated 11 July 2007
- T -117** Decoration of Mendeljev Đurić with the Order of the Karađorđe’s Star of the II rank, by the RS President, Radovan Karadžić on 21 November 1993
- T -118** Certificate of the RS MUP SPB confirming that Mendeljev Đurić, in the period between 4 April 1992 and 30 June 1996, was a member of the RS MUP, number 01/1-1-2081/07 dated 20 November 1997
- T -119** RS MUP Decision assigning Mendeljev Đurić to a position of an assistant commander of the Special Police Brigade for operations and training, number 09/3-120-1130 dated 17 March 1996
- T -120** RS MUP Decision assigning Mendeljev Đurić to a position of a commander of the 5<sup>th</sup> Special Police Detachment of Doboj, number 08/1-120-3794 dated 13 November 1995
- T -121** RS MUP Decision on exceptional promotion into a higher rank – a rank of a major for Mendeljev Đurić, number 08/1-134-587 dated 20 October 1995
- T -122** RS MUP Decision assigning Mendeljev Đurić to a position of a mines and explosives instructor in the Special Police Brigade, number 09-6529 dated 24 February 1994
- T -123** RS MUP Decision assigning Mendeljev Đurić to a position of a commander of the Bijeljina police detachment in the Special Police Brigade, number 09-3229 dated 20

November 1992

**T -124** Decision by the MUP of the Serb Republic of BiH to assign Mendeljev Đurić to a position of a commander of the 2<sup>nd</sup> platoon of the Special Assignment Company, number 10-86 dated 1 April 1992

**T -125** Decoration of Goran Marković with the Order of Miloš Obilić, by the President of Republika Srpska, Radovan Karadžić, on 21 November 1993

**T -126** RS MUP SPB Certificate confirming that, in the period between 4 April 1992 and 30 June 1996, Goran Marković was a member of the RS MUP, number 04-2156 dated 20 October 1999

**T -127** RS MUP Decision assigning Goran Marković to a position of a diving instructor in the Special Police Brigade, number 08/1-120-137 dated 20 January 1996

**T -128** RS MUP Decision assigning Goran Marković to a position of an assistant commander of the within SSC police detachment in Sarajevo, number 3261-A dated 11 January 1993

**T -129** 1992 Guidelines for setting the prosecution criteria, issued by the Military Prosecutor's Office

**T -130** Order on the implementation of rules of international law of war in the Army of the Serb Republic of BiH, Official Gazette of the Serb People, dated 13 June 1992, decided upon by Radovan Karadžić

**T -131** Directive number 4 of the Main Staff of Republika Srpska dated 19 November 1992, author: Ratko Mladić

**T -132** Directive for further activities, operations number 7, number Dt 2/2-11 dated 8 March 1995, Supreme Command of AF of Republika Srpska, author: Commander-in-Chief Radovan Karadžić

**T -133** Directive of the Main Staff for further activities, operations number 7/1, number: Dt 2/2-15 dated 31 March 1995, Main Staff of the Army of Republika Srpska, commander Ratko Mladić

**T -134** Extraordinary combat report of 1<sup>st</sup> Bratunac Brigade Command, strictly confidential number 03/253-54-1 dated 25 May 1995, author: Colonel Vidoje Blagojević

**T -135** Order of Radovan Karadžić for introduction of the highest measures of combat readiness, dated 16 June 1995

**T – 136** Order of Milenko Živanović, Drina Corps commander, dated 2 February 1995, number 04/156-2

**T – 137** Report of the UN observers in the period between 6 July and 18 July 1995

**T - 138** Order for mobilization of all men liable to military service dated 10 July 1995, signed by Vidoje Blagojević

**T- 139** Report on safety of events, issue 200, dated 12 July 1995, MUP Bijeljina

**T – 140** Order for securing the evacuation bus, dated 12 July 1995, signed by Milenko Živanović

**T – 141** Order for preventing Muslim groups from passage through to Kladanj and Tuzla, dated 13 July 1995, signed by Milenko Živanović

**T – 142** Regular combat report dated 13 July 1995, signed by Radislav Krstić

**T – 143** Report of MUP Special Police Brigade, number: 284/95 dated 13 July 1995, deputy commander of SPB, Ljubiša Borovčanin

**T – 144** Dispatch – information provided to the deputy minister dated 14 July 1995,

author: Dragan Kijac

**T – 145** Dispatch of Dragomir Vasić, PSC Zvornik, number 01-16-02/1-205/95 dated 15 July 1995

**T – 146** Dispatch of the VRS Bratunac Brigade Command, strictly confidential, number 03/253-108/1 dated 17 July 1995, signed by Vidoje Blagojević

**T – 147** Regular combat report of the Drina Corps Command, strictly confidential, number 03/2-219 dated 17 July 1995, author: Major General Radislav Krstić

**T – 148** Interim combat report of the Drina Corps Command on the situation in the area of responsibility of the 1<sup>st</sup> Zvornik Brigade, strictly confidential number. 03/2-221 dated 18 July 1995, author Major General Radislav Krstić

**T – 149** Dispatch by Dragomir Vasić, Zvornik PSC, number 12-6/08-534/95 dated 19 July 1995

**T – 150** Regular combat report of the Drina Corps Command, strictly confidential, number 03/2-223 dated 19 July 1995, author, Major General Radislav Krstić

**T – 151** Dispatch - Dragomir Vasić, Zvornik PSC, number 01-16-02/1-221/95 dated 22 July 1995

**T – 152** Order for the manner in which to treat prisoners of war, signed by Colonel Milomir Savčić

**T – 153** Regular combat report of the Drina Corps Command, strictly confidential, number 03/2-222 dated 18 July 1995, author: General Major Radislav Krstić

**T -154** Resolution 819 of the United Nations Council dated 16 April 1993

**T – 155** Drawing of the FC Kravica, number: 14-13/1-7-243/05 dated 4 October 2005

**T – 156** On-site investigation and reconstruction report with the suspect Petar Mitrović, number KT-RZ-10/05 dated 4 October 2005

**T – 157** On-site investigation and reconstruction report with witness Ilija Nikolić, number KT-RZ-10/05 dated 4 October 2005

**T – 158** Photo of Srebrenica and Žepa, July 1995

**T – 159** Photo of the White House – ICTY photo

**T – 160 a and 160 b** Aerial photos of Potočari, taken on 13 July 1995, with notes

**T – 161** Photo of burned items in Potočari (taken by Johannes Rutten)

**T – 162a, 162b and 162c** Maps/three maps showing the movement of the column and positions of the Bosnian Serb forces

**T – 163** Aerial photos taken – Nova Kasaba, football field, dated 13 July 1995 at 14:00 hrs.

**T – 164a 164b and 164c** Aerial photos (three photos) of the Sandići valley

**T – 165** Photo taken from the Bratunac direction, with the area between Kravica and Sandići, with the warehouse marked

**T – 166a and 166b** Panorama of the Kravica warehouse, two photos

**T – 167** Photo of bodies in front of the Kravica warehouse.

**T – 168a and 168b** Photo of inside west part of the warehouse with traces of blood

**T – 169a and 169b** Photo of a shoe print on the wall under the warehouse window and enlarged photo of a shoe print under the window

**T – 170** Map (scheme) of primary and secondary graves

**T – 171** Photo of Konjević Polje dated 14 August 1995

**T – 172a and 172b** Aerial photo (two photos) of Glogova dated 5 July and 17 July 1995

- T – 173 (in Annex, number 116)** Photo on an ID card in the name of Dahmo Kadrić, found in the mass grave in Glogova
- T – 174** Aerial photo dated 27 July 1995, Tatar -Bratunac,
- T – 175a and 175b** Photos of Glogova dated 30 October 1995 and 9 November 1995
- T – 176** Map – with marked Zeleni Jadar graves, 1 - 6
- T – 177a , 177b, 177c and 177d** Aerial photos (4 photos) Zeleni Jadar
- T – 178** Photo of ligatures found in the Cerska grave
- T – 179** Map of Kravica, Sandići, Konjević Polje area with mass graves marked
- T – 180** Graves – primary and secondary, map and graph
- T – 181** Brochure – Photos taken from a video recording of the Srebrenica trial
- T – 182** Brochure – Bosnian Muslims identification book
- T – 183 (a Decision of the Court dated 26 August 2010)** Transcripts of Momir Nikolić's testimony in *Blagojević*, that is, transcripts dated 19 September, 22 September, 23 September, 25 September, 26 September, 29 September, 30 September and 1 October 2003, and statements Momir Nikolić made to the ICTY investigators as a witness dated 15 December 1999 and 28 May 2003.
- T – 184 (a Decision of the Court of 26 August 2010)** Transcripts of Dragan Obrenović's testimony in *Blagojević*, that is, transcripts dated 1 October, 2 October, 6 October, 7 October, 8 October, 9 October and 10 October 2003, and statements provided by Dragan Obrenović to the ICTY Investigators as a witness dated 2 April 2000, 4 June 2003 and 5 February 2004
- T – 185 (a Decision of the Court dated 15 February 2011)** Transcript of Rutten Johannes's testimony dated 5 April 2000 provided in the ICTY case number IT-98/33-T Prosecutor versus Radislav Krstić
- T- 186 (a Decision of Court dated 26 August 2010)** Transcript of witness Joseph Kigorij's testimony in *Krstić* dated 31 March and 3 April 2000
- T- 187 (a Decision of the Court dated 26 August 2010)** transcripts of witness Paul Groenweg's testimony in *Blagojević*, dated 10 July 2003 and in *Popović*, dated 25 October 2006
- T- 188 (a Decision of the Court dated 26 August 2010)** transcripts of witness Robert A. Franken's testimony in *Krstić*, dated 4 April 2000
- T- 189 (a Decision of the Court dated 26 August 2010)** transcripts of witness Leendert Cornelis Van Duijn's testimony in *Popović*, dated 27 September, 28 September and 29 September 2006
- T- 190 (a Decision of the Court dated 26 August 2010)** transcripts of witness Vincentius Egbers's testimony in *Popović*, dated 18 October, 19 October and 20 October 2006
- T- 191 (a Decision of the Court dated 26 August 2010)** statements of witness Mulder Martijn Anne made to the ICTY Investigators on 24 and 25 October 1995 and 12 May 2000
- T – 192 (a Decision of the Court dated 26 August 2010)** transcript of witness S-112 in *Krstić*, dated 10 April 2000
- T – 193 (a Decision of the Court dated 26 August 2010)** transcript of witness PW-100 in *Popović*, dated 5 September 2007
- T - 194 (a Decision of the Court dated 26 August 2010)** transcripts of witness Dean



Manning's testimony in *Blagojević* dated 5 February and 6 February 2004

**T – 195 (a Decision of the Court dated 26 August 2010)** transcript of (deceased) witness Miroslav Deronjić's testimony in *Momir Nikolić* dated 28 October 2003

**T – 196 (a Decision of the Court dated 26 August 2010)** transcript of (deceased) witness Čamila Omanović's testimony in *Krstić*, dated 22 March and 23 March 2000

**T – 197 (a Decision of the Court dated 26 August 2010)** statements of witness Luka Marković (deceased), that is – a statement made to SIPA, number 14-04/2-290/05 of 20 September 2005 and a statement made to the RS MUP, number 12/02/4 of 20 June 2005 and the on-site investigation and reconstruction record dated 29 September 2005

**T – 198** Decree on decorations by the Republika Srpska President

**T – 199** A list of identified persons, dated 13 January 2010

#### **Prosecution evidence tendered on 14 April 2011**

**T-200** A list presented during examination of witness Robert A. Franken in *Krstić*, the same list is mentioned in the tendered transcript (T- 188 )

#### **Prosecution evidence tendered on 30 June 2011**

**T- 201** Publication titled: " How does the Hague Tribunal Produce Evidence"

#### **Prosecution evidence tendered on 26 September 2011**

**T- 202** Record on examination of witness Jelenko Kljajić, by the Prosecutor's Office of BiH on 18 August 2010

**T- 203** Record on examination of witness Jelenko Kljajić, by the Prosecutor's Office of BiH on 24 January 2011

**T- 204** Record on examination of witness Jelenko Kljajić, by the Prosecutor's Office of BiH on 12 September 2011

**T- 205** A sketch made by witness Jelenko Kljajić during direct examination

#### **Prosecution evidence tendered on 10 October 2011**

**T- 206** Audio recording on examination of witness Jelenko Kljajić dated 24 January 2011

**T- 207** Record on examination of witness Željka Šehovac, by the Prosecutor's Office of Bosnia and Herzegovina dated 9 November 2010

#### **Prosecution evidence tendered on 24 October 2011**

**T- 208** Official Note of Muris Brkić, Investigator, number KT-RZ-101/07 dated 24 February 2011 regarding interviewing the witness S-101

#### **Prosecution evidence tendered on 3 November 2011**

**T- 209** Record on examination of witness S-117, by the State Investigation and Protection Agency dated 26 August 2010

**T -210** Record on examination of witness S-117, by the Prosecutor's Office of Bosnia and Herzegovina dated 13 September 2011

#### **Prosecution evidence tendered on 10 November 2011**

**T- 211** Record on examination of witness S-123, by the State Investigation and

Protection Agency dated 3 March 2010

**T -212** – Record on examination of witness S-123, by the Prosecutor’s Office of Bosnia and Herzegovina dated 24 March 2010 (with transcript)

**T -213** – Record on examination of witness S-123, by the Prosecutor’s Office of Bosnia and Herzegovina dated 14 September 2011 (with audio recording)

**T- 214** - 4 photos presented to witness S 123

**Prosecution evidence tendered on 14 November 2011**

**T- 215** Record on examination of witness S-124, by the Prosecutor’s Office of Bosnia and Herzegovina dated 29 March 2010

**T- 216** Record on examination of witness S-124, by the Prosecutor’s Office of Bosnia and Herzegovina dated 14 September 2011 (with audio recording)

**Prosecution evidence tendered on 24 November 2011**

**T- 217** Record on examination of witness S-121, by the Prosecutor’s Office of Bosnia and Herzegovina dated 9 July 2010

**T-218** Record on examination of witness S-121, by the Prosecutor’s Office of Bosnia and Herzegovina dated 13 September 2011

**Prosecution evidence tendered on 5 December 2011**

**T- 219-1** Record on examination of witness S-118, by the Prosecutor’s Office of Bosnia and Herzegovina dated 24 December 2010 (with transcript)

**T-219-2** Record on examination of witness S-118, by the Prosecutor’s Office of Bosnia and Herzegovina dated 28 January 2011 (with transcript)

**T-219-3** Record on examination of witness S-118, by the Prosecutor’s Office of Bosnia and Herzegovina dated 15 September 2011 (with transcript)

**T-219-4** Photo presented to witness S-118, marked and signed by the witness

**Prosecution evidence tendered on 12 December 2011**

**T- 220** A Decision of the Prosecutor’s Office of BiH, number A-521/11, dated 7 October 2011 on immunity from prosecution for witness S-119

**Prosecution tendered on 15 December 2011**

**T- 221** Transcript of interview of Duško Jević by Jean Gagnon, dated 18 October 2000

**T- 222** Transcript of interview of Mendeljev Đurić by Gagnon, dated 18 October 2000

**T- 223** Record of questioning the suspect Goran Marković by the Prosecutor’s Office of Bosnia and Herzegovina, number KT-RZ- 101/07 of 19 December 2009

**T-224** Document number 08/1-6 dated 18 January 1996, assigning Jević to the position of Deputy Commander of Special Police Brigade signed by Minister Dragan Kijac

**T- 225** Document of RS MUP Sarajevo Department, number 03-2003/95 dated 13 July 1995 – Police command staff in Pale.

**T- 226** Regular combat report of the Bratunac Brigade number 03-253-103 dated 13 July 1995, addressed to the Drina Corps Command on communication safety and events in the Cerska region, signed by Vidoje Blagojević

**T-227** Document of the Drina Corps Command, number 08-444-10 dated 13 July 1995,

signed by Radoslav Janković

**T 228** Order on mobilization of all available buses and trucks, number 02-79 dated 12 July

**T 229** International Commission list of those identified in Cerska, Munib Cvrk (recorded on a CD because of its length)

**T 230** Regular combat report number 03/2-214 dated 13 July 1995

**T 231** ICMP list – identified and buried victims dated 31 May 2011 (recorded on a CD because of its length)

**T 232** Video recording from Srebrenica (one part submitted as defense evidence for Mendeljev Đurić, marked as OII-7 )

**T – 233** Report based on debriefing on Srebrenica, dated 4 October 1995, reporter D. Van der Wind

**T 234** Report of the Security Council President of the 3554 meeting of the Security Council held on 14 July 1995

**T-235** Report of the Dutch Battalion Commander Karremans dated 12 July 1995

### **Prosecution evidence tendered on 16 January 2012**

**T-236** A Decision of the Prosecutor's Office of BiH, number A-521/11 dated 21 December 2011 on the immunity from prosecution for witness S-119

**T-237** Photo of the White House presented to witness S-119, signed by the witness

**T-238** Photo of FC Kravica presented to witness S-119, signed by the witness

### **Prosecution evidence tendered on 19 January 2012**

**T-239 do T-243** Set of photographs presented to witness Ljubodrag Gajić.

## **1. Documentary evidence for the defense**

### **(a) Defense evidence for Duško Jević ( O-I )**

**O – 1 – 1** Transcript of witness S-110 testimony in *Petar Mitrović and others* ( X-KR-05/24 ) on 11 June 2008

**O – 1 – 2** expert evaluation by General Radovan Radinović "The role and leadership responsibility of Duško Jević in the operation "Krivaja 95", an integral part of this evidence is also an order for expert evaluation issued by the attorney Vera Lazić

**O – 1 – 3** Document of the Supreme Command Staff of AF of the Republic of BiH, number 02/520-2 dated 20 April 1993 – ( the Kravica case )

**O – 1 – 4** Document of the BiH Army, of the 8<sup>th</sup> Command OG "Srebrenica", number 01-18/95

**O – 1 – 5** Document of the Supreme Command Staff of AF number 14/75-156/93 dated 1 January 1994 (Popović case - certified)

**O – 1 – 6** Document of the 28 Division command number 03-183-231 dated 1 July 1995, report on recruitment R/J of 28 Division (Popović case - certified)

**O – 1 – 7** Document of the Command of the 8<sup>th</sup> OG "Srebrenica, number 01-45/95 dated 22 February 1995 (Popović case - certified)

- – 1 – 8** Document of the 28<sup>th</sup> Division Command, number 02/10-002/4 dated 24 April 1995 (Popović case - certified)
- – 1 – 9** Document of the Army General Staff number 1-1-/676-1- dated 27 April 1995 (Popović case - certified)
- – 1 – 10** Document of the 28<sup>th</sup> Division Command number dated 27 April 1995 (Popović case -certified)
- – 1 – 11** Document of the 28<sup>th</sup> Division Command number 02-08-10/95 dated 25 April 1995 (Popović case - certified)
- – 1 – 12** Document of the Army General Staff number 1/825-84 dated 17 June 1995 (Kravica case)
- – 1 – 13** Document of the 28<sup>th</sup> Division Command number 01-137/95 dated 22 June 1995 (Popović case – certified)
- – 1 – 14** Document of the 2<sup>nd</sup> Corps Command of Army of BiH number 02/1-670/4 dated 28 June 1995 (Popović case - verified)
- – 1 – 15** Document of the 28<sup>th</sup> Division Command, number 04-114/95 dated 30 June 1995 (Popović case – certified)
- – 1 – 16** Document of the 28<sup>th</sup> Division Command, number 13-05-105 dated 7 July 1995 (Popović case - certified)
- – 1 – 17** Document of the 2<sup>nd</sup> Corps Command of Army of BiH number 04/1-105-603 dated 8 July 1995 (Kravica case)
- - 1 – 18** Document of the 28<sup>th</sup> Division Command number 13-05-78/95 dated 2 June 1995 (Popović case - certified)
- – 1 – 19** Document of Visoko LCP number 2945-7/95 dated 9 July 1995
- – 1 – 20** Document of the 28<sup>th</sup> Division Command number 02-06/95 dated 29 June 1995 (Kravica case)
- – 1 – 21** Document of the 28<sup>th</sup> Division Command number 04-113/95 dated 30 June 1995 (Popović case - certified)
- – 1 – 22** Notification of the Srebrenica Municipality dated 9 July 1995 (Kravica case)
- – 1 – 23** Document of the General Staff Army of R BiH, number 1/825-174 dated 28 July 1995
- – 1 – 24** A List of war criminals, known to the command, who committed war crimes in the territory of the municipalities of Bratunac, Srebrenica, Milići, Vlasenica and Skelani. The List dated 12 July 1995 and included 287 persons (Popović case - certified)
- – 1 – 25** The 2<sup>nd</sup> Corps Command, Department of the Military Safety Service, number 06-101-197-7/95 dated 11 September 1995 (Kravica case )
- – 1 – 26** General Staff of RBiH Army number 1/1-941 dated 30 July 1996, RBiH Assembly, issues to be discussed (Kravica case)
- – 1 – 27** Document of the 28<sup>th</sup> Division Command, number 01-165/95 dated 7 July 1995 (Popović case - certified)
- – 1 – 28** Document of the 1<sup>st</sup> Bratunac Light Infantry Brigade Command number 453-2 dated 14 July 1995 (Blagojević case - certified)
- – 1 – 29** Report of Colonel Ignjat Milanović, number 03-253-103-3 dated 15 July 1995 (Blagojević case - certified)
- – 1 – 30** Regular combat report of the 1<sup>st</sup> Bratunac Light Infantry Brigade Command number 03-253-105- dated 15 July 1995 (Blagojević case - certified)

- O – 1 – 31** Regular combat report of 1<sup>st</sup> Bratunac Light Infantry Brigade Command number 03-253-106- dated 16 July 1995 (Blagojević case - certified)
- O – 1 – 32** Order by the Head Staff of the Army of Republika Srpska, number 03/4-1670 dated 17 July 1995 – joint operations to crush Muslim forces
- O – 1 – 33** Bijeljina CPS Record on handover of personal documents, number 10-04/1-27-8-3/11 dated 7 March 2011
- O – 1 – 34** Transcript of witness examination for Momir Nikolić, in the Milorad Trbić case, of 1 September 2008
- O – 1 – 35** Excerpts from transcript of examination of witness Momir Nikolić in the Popović case (ICTY) dated 21 April 2009

**(b) Defense evidence of Mendeljev Đurić ( O-II )**

- O-2-1** Document of Bratunac Command sent to the Head Staff of the Republika Srpska Army dated 12 July 1995
- O-2-2** Map of Konjević Polje, presented to witness Mila Simanić during examination on 4 November 2010, the witness signed the map
- O-2-3** Record on examination of citizen Haso Hasanović by the Agency for Investigations and Documentation of Bosnia and Herzegovina, AID Sector Tuzla, dated 5 June 1997, number S-8/02-932/97
- O-2-4** Statement of Haso Hasanović dated 18 August 1996, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia from 1991
- O-2-5** Statement of witness Miladin Mihajlović, made to the investigators of the State Investigations and Protection Agency (SIPA) on 28 May 2008 on the premises of Šehovići Police Station
- O-2-6** Decision number 01-1350/95 dated 11 July 1995, signed by Radovan Karadžić, PhD
- O-2-7** Video presented to witness Ljubislav Simić at the hearing on 12 May 2011
- O-2-8** Copy of Mendeljev Đurić's index, Police Academy
- O-2-9** Findings and opinion of prof. dr. Mile Matijević, May 2011
- O-2-10** Report on forensic findings related to mass graves Glogova, Zeleni Jadar and Ravnice, dr. Ljubiša Simić
- O-2-11** Report of expert witness Stefan Karganović: "Analysis of losses in the Muslim column caused by minefields, combat activities and other causes" and CD containing all segments mentioned in the report.
- O-2-12** A part of Huso Salihović's book: "Why did We Experience Genocide", pgs. 263, 264 i 265.
- O-2-13** A book of Ibran Mustafić: "A Planned Chaos", pgs. 386 through 388.

(c) **Defense evidence for Goran Marković ( O-III )**

**O-3-1** Transcript of examination of witness S-126 of 13 July 2007. Examination conducted before the ICTY Investigator, Erin Galagher (the defense for the IV-accused tendered it into evidence as well)

**O-3-2** – Witness Examination Record for S-126, made to the Prosecutor's Office of BiH on 6 February 2009, number: KT-RZ-101/07 (the defense for the IV-accused tendered it into evidence as well)

**O-3-3** Witness Examination Record for S-100, made to the Prosecutor's Office of BiH, number: KT-RZ-101/07

**O-3-4** Transcript of witness S-110's testimony in *Mitrović Petar and others.* ( X-KR-05/24 ), on 29 May 2008

**O-3-5** Witness Examination Record for Tomislav Krstović, by the State Investigations and Protection Agency, number: 17-04/2-6-04-2-519/09 of 27 May 2009

**O-3-6** Statement of witness PW -100 of 14., 15., 16., 17. and 18 December 1995.

(d) **Defense evidence for Neđo Ikonić ( O-IV )**

**O-4-1** Copies of photos of 4 persons presented to witness Dragan Bešić, on which the witness under number 1 recognized a person by the name of Neđo Mesar

**O-4-2** Witness Examination Record for Stanislav Vukajlović, made on the premises of the Prosecutor's Office of Bosnia and Herzegovina, number: KT-RZ-101/07 of 16 December 2009

**O-4-3** Photograph presented and marked by witness Mićo Gavrić, on 24 January 2011,

**O-4-4** Photograph presented and marked by witness S-102 on 3 March 2011

**O-4-5** A Decision of the Republika Srpska Ministry of the Interior, number: 08/1-120-123 of 20 January 1996, deploying Neđo Ikonić to compulsory work service

**O-4-6** A Decision of the Ministry of the Interior, number: 09-6528 of 24 February 1994

**O-4-7** Witness Examination Record for Željko Šehovac of 13 September 2011, taken by the Prosecutor's Office of Bosnia and Herzegovina.

**O-4-8** Witness Examination Record for S -125 of 10 December 2010 and 14 September 2011, taken by the Prosecutor's Office of Bosnia and Herzegovina, including transcript of 10 December 2010.

**2. Documentary evidence of the Court**

**S- 1** Site Visit Record on (video recording is an integral part of the Record)