

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

THE COURT OF BOSNIA AND HERZEGOVINA

Case No: S1 1 K 002995 10 Kri (X-KR-09/823-2)

Date of pronouncement: 3 October 2012

Written copy sent on: 25 December 2012

Trial Panel: Minka Kreho, Presiding Judge
Ljubomir Kitić, Judge
Željka Marenić, Judge

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

Dragan Nešković and
Zoran Ilić

VERDICT

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina: Erik Larson

Defense Counsel for the Accused:

Dragan Nešković: Vesna Tupajić Škiljević and Goran Nešković

Zoran Ilić: Miloš Perić and Petko Pavlović

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Judge Minka Kreho as the Presiding Judge, and Judges Ljubomir Kitić and Željka Marenčić as members of the Panel, with the participation of Legal Advisor Emil Pinkas, as the record-taker, in the criminal case of the Accused Dragan Nešković and Zoran Ilić, charged with the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in relation with sub-paragraphs a), d), e) and k), as read with Articles 29 and 180(1) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH), deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number T20 0 KTRZ 0000565 of 13 September 2010, which was amended on 22 June 2012, having held a main public hearing (partly closed to the public) in the presence of the Prosecutor of the Prosecutor's Office of BiH Erik Larson, the Accused Dragan Nešković and Zoran Ilić and their Defense Counsel Vesna Tupajić-Škiljević and Miloš Perić, rendered and on 3 October 2012 publicly announced the following:

VERDICT

I

The Accused:

DRAGAN NEŠKOVIĆ, son of Miloje and Savka maiden name Makera, born on 24 December 1973 in Sarajevo, Personal ID No: ..., ... by ethnicity, national of ..., place of residence in ..., completed secondary school, employed, a salesman, indigent, married, father of two underage children, served military service in ARS in ... in 1992, entered into military records in ..., no medals awarded, no prior convictions, there is no other pending criminal proceeding against him;

AND

ZORAN ILIĆ, a.k.a. Cindin, son of Jovica and Zorica, maiden name Kosanić, born on 6 August 1973 in Ljubovija, Republic of Serbia, Personal ID No: ..., national of ..., ... by ethnicity, place of residence in ..., completed secondary school of mechanical engineering, employed, a caterer, indigent, married, father of four underage children, served military

service in ARS in ... in 1992, entered into military records in ..., no medals awarded, no prior convictions, there is no other pending criminal proceeding against him;

Pursuant to Article 284(c) of the Criminal Procedure Code of Bosnia and Herzegovina

ARE ACQUITTED

OF THE CHARGES AS FOLLOWS:

In the period from 10 July to 19 July 1995, during the armed conflict in the Republic of Bosnia and Herzegovina in which members of the VRS and the Ministry of Interior of the Republika Srpska (RS MUP) carried out a widespread and systematic attack against the civilian Bosniak population of the UN Safe Area of Srebrenica pursuant to or in furtherance of a State or organizational policy, with up to 40,000 Bosniak civilians being forcibly transferred from the Srebrenica enclave and several thousand Bosniak men and boys summarily executed, buried and reburied at different locations; with knowledge of that attack, as members of the Jahorina Training Centre of the RS MUP Special Police Brigade (SBP), acting individually and in concert with others, they persecuted Bosniak civilians on political, national, ethnic, cultural and religious grounds, depriving other persons of their lives, forcibly transferring them, capturing them and committing other inhumane acts, inasmuch as:

Dragan Nešković, alone:

1. On 12 and 13 July 1995 in Potočari, at the time when Bosniak population was leaving their property and fleeing towards the UN Base in Potočari, armed with automatic rifle, he participated in the searches of Bosniak houses with the aim of rounding up and escorting the Bosniak population to the UN Base in Potočari, on which occasion a member of the Jahorina Training Centre activated a hand grenade and threw it inside a house where there was an elderly bed-ridden Bosniak; acting pursuant to the assignments previously received from his superiors to send the entire Bosniak population to the collection center in Potočari, he participated in the forcible transfer of the civilians from the UN Base in Potočari by buses and trucks to the area under the control of the Army of BiH in the manner that they only put women and children on the buses and trucks, while the Accused were aware that the Bosniak population would be transferred from Potočari to the

area under the control of the Army of RBiH against their will; in Potočari they separated male Bosniak civilians from their families, and, after they seized their personal belongings, they held the men detained in the *Bijela kuća /White House/* in Potočari, which was secured by members of the Jahorina Training Centre and from there they were transferred by buses first to Bratunac and then to the execution sites in the wider area of the Zvornik Municipality.

Dragan Nešković and Zoran Ilić, together:

2. On 13 and 14 July 1995, together with other members of the Jahorina Training Centre, while deployed along the Kravica – Konjević Polje road, they captured male Bosniaks whom they took in groups in the direction of the *Kravica ZZ /Farming Cooperative/* warehouse, where, together with members of their unit, they executed the captives; Dragan Nešković was in the firing squad which was ordered to execute the captured Bosniaks in the Kravica warehouse, he also ordered two members of the Jahorina Training Centre known to him to deprive two captured male Bosniaks of their lives, which they carried out, whereas Zoran Ilić, by firing single shots from automatic weapons into a pile of bodies of the captives who had been executed, “verified” that none of them survived.

Zoran Ilić, alone:

3. On 17 July 1995, during the first day of the search of the forest area above the Konjević Polje – Bratunac road, which was carried out with the aim of capturing several hundred male Bosniaks, including some children, he summarily executed a captured Bosniak man in the village of Jelah.

THEREFORE,

by the actions described in the Operative Part of the Indictment, during the armed conflict in the territory of the Republic of Bosnia and Herzegovina, within the widespread and systematic attack against the Bosniak civilian population, knowing of such an attack, with the intent to discriminate against a group of people, the Accused persons persecuted Bosniak civilians on political, national, ethnic, cultural and religious grounds by depriving the captured Bosniak men of their lives, forcibly transferring Bosniak civilians, capturing

Bosniak men and by committing other inhumane acts, whose commission they aided and abetted,

whereby

they would have committed the criminal offence of Crimes against Humanity – Persecution, in violation of Article 172(1)h) of the Criminal Code of Bosnia and Herzegovina (the CC BiH), in conjunction with paragraph (1)a), depriving another person of his life, subparagraph b), forcible transfer of population, subparagraph e), imprisonment or other severe deprivation of physical liberty, subparagraph k), other inhumane acts of a similar character, of the same Article, all as read with Article 29 of the CC BiH and Article 180(1) of the CC BiH.

II

Pursuant to Article 189(1) of the CPC of BiH, the costs of the criminal proceedings under Article 185(2)a) through f) of this law and remuneration and necessary expenses of defense attorney, shall be paid from the budget appropriations of the Court of BiH.

III

Pursuant to Article 198(3) of the CPC BiH, the aggrieved parties are hereby instructed to take civil action to pursue their potential claims under property law.

REASONING

II. BACKGROUND

A. COURSE OF THE PROCEEDINGS

1. On 13 September 2010, the Prosecutor's Office issued the Indictment against Dragan Nešković and Zoran Ilić charging them with the criminal offense of War Crimes against Humanity in violation of Article 172(1)h), in conjunction with paragraph 1) a), d), e) and k), all as read with Article 29 of the CC BiH and Article 180(1) of the CC BiH. The Preliminary Hearing Judge of this court confirmed the Indictment on 20 September 2010.
2. Once the preliminary motions were decided upon and the Accused Dragan Nešković and Zoran Ilić pleaded not guilty to the charges from the Indictment, the case file was forwarded to this Panel to schedule a main trial and issue a decision in a regular proceeding before the trial panel.
3. Having received the Indictment, the Panel held a status conference on 24 November 2010.
4. Given that the Prosecutor's Office of BiH issued the Indictment No. T20 0 KTRZ 0000698 against the Accused Dragan Crnogorac on 29 November 2010 in the case S1 1 K003625, which was confirmed on 2 December 2010, the Prosecutor's Office of BiH filed a motion on 24 December 2010 proposing to the Court to join the proceedings No. S1 1 K003499 10 and S1 1 K 002995 10 KRI, in line with the principle of expediency and judicial economy.
5. On 10 January 2011, the Court issued a Decision No. S1 1 K 002995 (ref. X-KR-09/823-2), joining the proceedings of the Accused Dragan Nešković, Zoran Ilić and Dragan Crnogorac in a joint proceeding No. S1 1 K 002995 10 Kri.
6. On 24 November 2010 a status conference was held for the Accused Dragan Nešković and Zoran Ilić, and on 18 January 2011 for the Accused Dragan Crnogorac.

7. The main trial in this case commenced on 25 January 2011 by reading the Indictments against Dragan Crnogorac and Dragan Nešković and Zoran Ilić.

8. On 19 April 2011, after the Prosecution submitted the Guilty Plea Agreement concluded between the Prosecutor's Office of BiH and the Accused Dragan Crnogorac, together with the Motion to separate the proceeding, the Court called upon the parties and the Defense Counsel to provide their written position about a potential separation of the proceeding against the Accused Dragan Crnogorac.

9. Attorney Miloš Perić, Defense Counsel for the Accused Zoran Ilić, filed a motion stating he did not oppose the severance of the proceeding against the Accused Dragan Crnogorac.

10. Same as attorney Miloš Perić, attorney Vesna Tupajić-Škiljević, Defense Counsel for the Accused Dragan Nešković, filed a motion on 27 April 2011 stating she did not oppose the severance of the proceeding.

11. Having obtained the written submissions, the Court issued a Decision No. S1 1 K002995 10 Kri on 29 April 2011 separating the proceeding against the Accused Dragan Crnogorac.

12. Having accepted the Agreement concluded between the Accused Dragan Crnogorac and the Prosecutor's Office of BiH, the Court rendered a Verdict on 12 May 2011 finding the Accused Dragan Crnogorac guilty of the criminal offense of War Crimes against Humanity in violation of Article 172(1)h), in connection with sub-paragraph a) of the CC of BiH and sentenced him to a prison term of thirteen years.

13. The Verdict was not appealed.

14. Finally, the Court conducted a regular proceeding in the case of the Accused Dragan Nešković and Zoran Ilić under the amended Indictment filed by the Prosecution on 22 June 2012.

B. CLOSING ARGUMENTS

1. Prosecution

15. Following the completion of the evidentiary procedure on 20 July 2012, the Prosecution presented its Closing Argument on 20 August 2012.

16. Therefore, following the completion of the evidentiary procedure on 20 July 2012, the Prosecution presented its Closing Argument on 20 August 2012.

17. Prior to his oral presentation, the Prosecutor submitted his Closing Argument in the written form, together with the Prosecution's Final Trial Brief.

18. In its Closing Argument, the Prosecution analyzed the existence of the widespread and systematic attack targeted against the civilian population of Srebrenica and Eastern Bosnia; the status of the Srebrenica Safe Area; the existence of a criminal plan and elimination of the enclave; the role of the Special Police Brigade and the Jahorina Training Centre; the context and organization of the *squad of deserters*; Nešković's position of a superior; participation of the Jahorina Training Center Unit in Crimes against Humanity; legal provisions relevant to Crimes against Humanity (direct perpetration, aiding and abetting and joint criminal enterprise); participation of the Jahorina Training Center Unit and the two Accused in Crimes against Humanity; events in Potočari; events in and around Kravica warehouse on 13 and 14 July 1995; alibi of the Accused Zoran Ilić; subsequent mopping up of the terrain and killing of one Bosniak captive in the area of Jelah by the Accused Zoran Ilić on 17 July 1995; rewarding Dragan Nešković and Zoran Ilić for their support in the commission of crimes against humanity; status and support in the commission of crimes against humanity; status and character of victims and circumstances important for meting out the sentence.

19. When presenting his Closing Argument in respect of the Accused Dragan Nešković, the Prosecutor referred to the testimony of witnesses NI-104, S-115, NI-102, NI-101 and NI-121, arguing that it followed from their testimony that *deserters* were assigned to lower command positions, that is, as squad commanders, including the Accused Dragan Nešković, who was one of the squad commanders.

20. In the context of his position of a squad commander, the Prosecutor implicated the Accused Dragan Nešković in 23 acts of commission and 6 acts of omission in Potočari and Kravica, amounting to Crimes against Humanity. Specifically, the Accused personally searched Bosniak houses in order to round up and escort Bosniaks to the UN Base in Potočari; he personally separated men and boys from women and children in Potočari; he personally killed the captured Bosniak men in the Kravica warehouse and was part of the firing squad, and he gave orders to Witness NI-104 and Witness S-115 to kill two Bosniak male survivors in Kravica.

21. In his Closing Argument, the Prosecutor implicated the Accused Zoran Ilić in 8 acts of commission and 6 acts of omission amounting to Crimes against Humanity. Specifically, the Accused personally killed Bosniak male survivors, and “finished off” Bosniak men by firing at their bodies; he personally searched the forest above the Konjević Polje – Bratunac road in order to capture hundreds of Bosniak men, knowing that the captured men would be executed; he summarily executed one captured Bosniak man in the Jelah village and failed to prevent the crimes committed in the forest above the Konjević Polje – Bratunac road and in Jelah, which was his duty as an authorized RS MUP official.

22. Finally, the Prosecutor examined the alibi of the Accused Zoran Ilić, highlighting the fact that none of the defense witnesses expressly stated to have been with the Accused Zoran Ilić in the morning hours of 14 July 1995, when captives were being “finished off” in the Kravica warehouse. Also, according to the Prosecutor, the Accused Zoran Ilić could be found guilty of the murder of one Bosniak in Jelah on the grounds of testimony of witness NI-101, without the examination of witness Simo from Alipašino (Milivoje Batinica) and witness NI-119.

23. The Prosecutor concluded his Closing Argument by moving the court to find the Accused Dragan Nešković and Zoran Ilić guilty as charged on the basis of the presented facts, and to sentence the Accused Dragan Nešković to a prison term of seventeen years and the Accused Zoran Ilić to a prison term of fifteen years.

2. Defense for the Accused Dragan Nešković

24. Attorney Vesna Tupajić-Škiljević, Defense Counsel for the Accused Dragan Nešković, presented her Closing Argument on 29 August 2012, whose written copy was admitted in the case file.

25. In its Closing Argument, the Defense analyzed the application of substantive law, the mode of participation of the Accused Dragan Nešković in the commission of the criminal offense, and the nexus between command responsibility and joint criminal enterprise.

26. In its Closing Argument, the Defense for the Accused Dragan Nešković also analyzed the elements which the Prosecution must prove to allow finding the Accused

guilty of persecution, as well as the standard to be applied in reaching such a decision (*in dubio pro reo*).

27. When reasoning its position, the Defense objected to the amended Indictment by submitting that the charges were exceeded and that none of the witnesses supported those exceeded charges. Also, the Indictment was unlawfully amended, in the opinion of the Defense.

28. The Defense proceeded by examining Dragan Nešković's authority to issue orders, specifically if he was in the position to order the killings. The Defense argued that the Prosecution did not prove beyond any reasonable doubt that the Accused Dragan Nešković had ordered witnesses NI-104 and S-115 to kill the two Bosniak men.

29. Finally, the Defense invoked two fundamental principles laid down in the current Criminal Procedure Code – burden of proof lies with the prosecution and the *in dubio pro reo* principle – and moved the Court to render a verdict acquitting the Accused Dragan Nešković of all charges.

3. Accused Dragan Nešković

30. The Accused Dragan Nešković did not present his own closing argument, but supported the allegations of his Defense Counsel.

4. Defense for the Accused Zoran Ilić

31. The Defense for the Accused Zoran Ilić presented its Closing Argument on 5 September 2012, when the main trial resumed.

32. In its Closing Argument, the Defense for the Accused Zoran Ilić first analyzed the amended Indictment and particularly highlighted the fact that the Accused Zoran Ilić was charged with participating in the events relevant to the period from 10th to 19th July 1995, while the evidence relevant to the Accused concerns 13th, 14th and 17th July 1995.

33. In other words, the Defense argued that the Prosecution failed to present a single piece of evidence to support the participation of the Accused Zoran Ilić in the relevant incidents and for the days other than those stated above.

34. The Prosecution argued that there was a widespread and systematic attack targeted against Bosniak civilians in the area of Srebrenica. The Defense, on the other

hand, relied on the presented evidence in submitting that the column that moved towards Tuzla was actually the ABiH 28th Division, therefore a legitimate military target, so was the attack on the Srebrenica Enclave, whose objective was to prevent a spring offensive from the Enclave itself.

35. The Supreme Command Directive of 8 March 1995 was examined in the same context. The Directive was to create an unbearable situation of total insecurity with no further survival or life for the inhabitants of Srebrenica and Žepa (Exhibit T-52).

36. According to the Defense, civilians left the Enclave as a result of the decision made by the civilian and military authorities in Srebrenica, therefore, the VRS had nothing to do with this. More importantly, the Prosecution did not prove that the Accused Zoran Ilić was aware that his acts constituted or might constitute part of the attack on the civilian population of Srebrenica.

37. The Defense proceeded by analyzing the prosecution evidence relating to the presence of the Accused Zoran Ilić in front of the Kravica Farming Cooperative during the relevant incident, and his participation in mopping up the terrain in the vicinity of the Bratunac-Konjević Polje road.

38. The Defense paid special attention to the analysis of the testimony of witnesses NI-104, S-115, NI-102 and Zdravko Dačić, and responded to the Prosecution's Closing Argument.

39. The Defense concluded by moving the Court to acquit the Accused Zoran Ilić of the charges.

5. Accused Zoran Ilić

40. In his Closing Argument, the Accused Zoran Ilić supported his Defense Counsel and responded to one part of the Prosecution's Closing Argument. He apologized to all victims if he had done anything to demean them (as the Prosecutor argued).

III. PROCEDURAL DECISIONS

A. DECISION TO ACCEPT THE ESTABLISHED FACTS

41. On 23 November 2010, the Prosecutor's Office of BiH filed with the Court the Motion No. T20 0 KTRZ0000 565 10, moving the Court to act pursuant to Article 4 of the Law on the Transfer of Cases and accept the facts established under the ICTY final Judgments: *Prosecutor v. Krstić*, case No. IT-98-33-T of 2 August 2001, *Prosecutor v. Blagojević and Jokić*, case No. IT-02-60 of 17 January 2005.

42. The Prosecution moved for the adoption of two hundred and twenty three (223) facts in total, concerning *inter alia* the existence of the armed conflict from 11 July to 1 November 1995 in Eastern Bosnia; the widespread and systematic attack launched by the Republika Srpska Army and MUP forces; the structure of the RS MUP; the events in Potočari from 11 July to 14 July 1995; forcible transfer from Potočari; the imprisonment and execution of captured Bosnian Muslims from 12 to 15 July 1995; the imprisonment and execution in the Vuk Karadžić school from 12 to 14 July 1995; executions in the Kravica warehouse on 13 July 1995; and the burial of dead bodies in the area of Glogova and Ravnice.

43. Together with the Motion, the Prosecution filed with the Court the Reasoning thereof on 23 November 2010. According to the Prosecution, by accepting the "established facts", the Court would achieve two objectives - judicial economy and the right of the accused to a trial within a reasonable time and/or to a trial "without delay" guaranteed under Article 13 of the CPC of BiH and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Prosecutor was aware that these objectives also had to be examined in the context of presumption of innocence, the right to a fair trial and direct presentation of evidence.

44. According to the Prosecutor, the acceptance of the established facts would decrease the number of witnesses who must be summoned to testify and who had already testified to the same facts in other criminal proceeding. This would also reduce the number of transcripts of testimony given before the ICTY, sought to be admitted into evidence by the Prosecution.

45. Responding to the Prosecution Motion, attorney Vesna Tupajić-Škiljević, Defense Counsel for the Accused Dragan Nešković, reaffirmed the obligation of the Court to give primacy to the CPC of BiH, including its Article 15 (*free evaluation of evidence*), notwithstanding that the Prosecution based its motion on Article 4 of the Law on the Transfer of Cases.

46. The Defense argued that the CPC of BiH did not impose obligation on the Court to accept the facts established under the ICTY judgments, so that the acceptance of the facts proposed by the Prosecution would violate the CPC of BiH, which had to be applied as a *lex specialis* in this proceeding.

47. Attorney Miloš Perić, Defense Counsel for the Accused Zoran Ilić, responded by submitting that Article 4 of the Law on the Transfer of Cases was unconstitutional since it contravened Article 6(1) of the ECHR, whose direct application in BiH followed from Article II/2 of the Constitution of BiH and had priority over national regulations.

48. Article 4 of the Law on the Transfer of Cases provides that: “*the court may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings before the ICTY*”, while Article 95.B of the ICTY Rules of Procedure prescribes that: “*the court may decide to take judicial notice of adjudicated facts.*” This does not impose any firm legal obligation on the ICTY Trial Chambers to accept as proven the facts established by judgments rendered by the same Court in any other proceedings, as it is prescribed under Article 4 of the Law on the Transfer of Cases for Trial Panels of the Court of BiH. Therefore, the provisions of this law are more rigid than the provisions of Article 95.B of the ICTY Rules of Procedure.

49. In view of the Prosecution and Defense allegations, the Court applied 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 the ICTY in Proceedings before the Courts in BiH (Law on Transfer), in conjunction with Article 15 of the CPC of BiH, and considered taking judicial notice of the facts established by the ICTY in order to achieve judicial economy of the proceeding.

50. In so doing, the Court also observed the right of the Accused to have a trial without delay guaranteed under Article 6(1) of the ECHR.

51. While seeking to achieve judicial economy, the Court was mindful of its obligation to adhere to the *in dubio pro reo* principle and to respect the right of the Accused to a fair trial guaranteed under Article 6 of the ECHR, by avoiding any violation or limitation of the right of the Accused to a fair trial.

52. As a result, on 30 March 2011, the Court rendered the decision to accept as proven the following facts:

1. "... There was an armed conflict between 11 July and 1 November 1995 in eastern Bosnia." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 549)
2. "The attack, carried out by the VRS and MUP was planned and defined in the "Krivaja 95" order." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 551)
3. "The Bosnian Serb forces separated the able-bodied men in Potočari, and captured those in the column heading to Tuzla, regardless of their military or civilian status." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 674)
4. "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." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 28)
5. "In early July 1995, a series of reports issued by the 28th Division reflected the urgent pleas of the ABiH forces in the enclave for the humanitarian corridor to be deblocked" (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 28).
6. "On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladić. Directive 7.1 was issued "on the basis of Directive No. 7" and directed the Drina Corps to, *inter alia*, conduct "active combat operations...around the enclaves." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 29)
7. "...The 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"." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 30)
8. "The VRS offensive on Srebrenica began in earnest on 6 July 1995." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 31)
9. "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." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 31)
10. "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." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 31)

11. "Simultaneously, the defending ABiH forces came under heavy fire and were pushed back towards the town.." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 31)
12. "By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometers deep into the enclave, halting just one kilometer short of Srebrenica town." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 33)
13. "Late on 9 July 1995, emboldened by this military success and the surprising lack of resistance from the Bosnian Muslims as well as the absence of any significant reaction from the international community, President Karadžić issued a new order authorizing the VRS Drina Corps to capture the town of Srebrenica ." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 33)
14. "On the morning of 10 July 1995, the situation in Srebrenica town was tense. Residents, some armed, crowded the streets." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 34.)
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." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 34)
16. "NATO planes also attempted to bomb VRS artillery positions overlooking the town, but had to abort the operation due to poor visibility." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 34)
17. "Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 36)
18. "The Drina Corps plan for Krivaja 95 was aimed at reducing the "safe area" of Srebrenica to its urban core and was a step towards the larger VRS goal of plunging the Bosnian Muslim population into humanitarian crisis and, ultimately, eliminating the enclave (par. 121)." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 429)
19. "On 10 and 11 July 1995, the shelling of Srebrenica, carried out by the Drina Corps, was calculated to terrify the Bosnian Muslim population and to drive them out of Srebrenica town and, thereby, the area (para. 125)." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 430)
20. "Most of the mass executions followed a well-established pattern. The men were first taken to empty schools or warehouses. After being detained there for some hours, they were loaded onto buses or trucks and taken to another site for execution. Usually, the execution fields were in isolated locations. The prisoners were unarmed and, in many cases, steps had been taken to minimize resistance, such as blindfolding them, binding their wrists behind their backs with ligatures or removing their shoes." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 68)
21. "The operation to capture and detain the Bosnian Muslim men was well organized and comprehensive." (*Prosecutor v. Krstić No. IT-98-33-T*, paragraph 85.)
22. "The civilian police of the Republika Srpska was organized under the Ministry of Interior ("MUP"). In July 1995, Tomislav Kovač was the acting Minister of Interior. The civilian police was organized in two sections: the regular police force and the special police brigade." (*Prosecutor v. Blagojević and Jokić No. IT-02-60-T*, paragraph 71)

23. "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." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 75)
24. "The Special Police Brigade consisted of approximately eight detachments, including a Training Centre at Jahorina, commanded by Duško Jević." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 75)
25. "Faced with the reality that Srebrenica had fallen under Bosnian Serb forces control, thousands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within the UN compound." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 37)
26. "Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighboring factories and fields." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 37)
27. "There was very little food or water available and the July heat was stifling." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 38)
28. "Drina Corps Command officers and units were present in Potočari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995 (para. 144)." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 432)
29. "On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 48)
30. "Some soldiers were hitting and abusing the refugees as they boarded the buses." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 48)
31. "Witnesses said the buses were overcrowded and unbearably hot." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 49)
32. "Dutch Bat soldiers attempted to escort the buses carrying the Bosnian Muslim civilians out of Potočari. They succeeded in accompanying the first convoy of refugees on 12 July 1995" (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 50)
33. "The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 2000 hours." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 51)
34. "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." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 56)
35. "The Drina Corps was instrumental in procuring the buses and other vehicles that, on 12 and 13 July 1995, were used to transport the Bosnian Muslim women, children and elderly out of the Potočari compound, as well as the fuel needed to accomplish that task (para. 142)." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 431)
36. "General Krstić was in Potočari for between an hour and two hours in the early afternoon of 12 July 1995, and he was present with other VRS officers, including General Mladić, overseeing the bussing of the Bosnian Muslim women, children and elderly." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 465)

37. "Drina Corps Command officers and units were present in Potočari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995 (para. 144)." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 432)
38. "On 12 and 13 July 1995, the Bosnian Muslim civilians of Srebrenica who were bussed out of Potočari were not exercising a free choice to leave the area of the former enclave. (para. 149)." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 433)
39. "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." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 168)
40. "The separations continued throughout 12 and 13 July." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 168)
41. "From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potočari and holding them in separate locations." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 53)
42. "The Bosnian Muslim men were directed to various locations, but most were sent to the *White House* near the UNPROFOR headquarters. ... Shouts, and sometimes shots, were heard from the *White House*." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 169)
43. "The Bosnian Muslim men were forced to leave passports and identity cards in front of the *White House*" (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 170)
44. "On 13 July 1995, the Dutch Bat troops witnessed definite signs that the Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 58)
45. "Beginning on the afternoon of 12 July 1995 and continuing throughout 13 July 1995, men detained in the *White House* were placed on separate buses to the women, children and elderly and were taken out of the Potočari compound to detention sites in Bratunac." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 59)
46. "The VRS soldiers prevented women and children from following their separated husbands and male relatives." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 174)
47. "The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari were transported to Bratunac and subsequently joined by Bosnian Muslim men captured from the column." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 66)
48. "No discernible effort was made to keep the prisoners from Potočari and the men captured from the column in woods separate." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 66)
49. "These men were held in various locations, such as an abandoned warehouse, an old school and even in the buses and trucks that had brought them there." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 66)
50. "There was also an array of non-Drina Corps Serb forces present in Potočari on 12 and 13 July 1995. There were VRS Main Staff officers reporting directly to General Mladić." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 151)

51. "At the Hotel Fontana meeting on 12 July 1995, General Mladić had said that military-aged men in the crowd at Potočari would be screened for war crimes." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 156)
52. "Plans to transport the Bosnian Muslim civilians out of the enclave crystallized at this second meeting." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 129)
53. "...the Bosnian Muslim refugees were not consulted or given a choice about their final destination." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 147)
54. "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." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 148)
55. "The presence of armed soldiers from the 2nd and 3rd Battalion in uniform and the armed members of the Bratunac Brigade Military Police, among other members of the VRS and MUP present in Potočari, frightened and intimidated the Bosnian Muslim population." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 214)
56. "... elements of the Bratunac Brigade participated in the transfer of women, children and elderly from Potočari the Bratunac Brigade contributed vehicles and fuel to the transfer operation." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 216)
57. "Later, after all of the Bosnian Muslim civilians had gone from Potočari, the piles of personal effects, including identity cards, that had been taken from the Bosnian Muslim men and boys were set on fire." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 160)
58. "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." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 218)
59. "The young men were afraid they would be killed if they fell into Bosnian Serb hands in Potočari and believed that they stood a better chance of surviving by trying to escape through the woods to Tuzla." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 60)
60. "At the Hotel Fontana meetings on 11 and 12 July 1995, General Mladić had attempted to secure the surrender of the ABiH forces in the area of the former enclave." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 162)
61. "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." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 63)
62. "The largest groups of Bosnian Muslim men from the column were captured on 13 July 1995." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 64)
63. "The vast majority of prisoners were seized along the road between Bratunac and Konjević Polje on 13 July 1995." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 171)
64. "... the transport out of Potočari of the Bosnian Muslim men started in the afternoon on 12 July" (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 266)

65. "... it is clear that, upon the withdrawal of the 28th Division from the enclave following the take-over of Srebrenica, MUP forces were incorporated into the "follow-up" operation. MUP units were present in Potočari and they were also placed along the Bratunac-Konjević Polje road, where they engaged in blocking and capturing large numbers of men from the Bosnian Muslim column on 13 July 1995." (*Prosecutor v. Krstić* No. IT-98-33-T, paragraph 286)

66. "... they were taken to the Kravica Warehouse by foot or by bus from a meadow near Sandići, where they had been detained since their capture earlier that day." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 296)

67. "... the doors of the warehouse were guarded by Bosnian Serb soldiers"; (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 296)

68. "The soldiers were not only firing with infantry weapons and machine-guns into the warehouse through the doors and the windows, but also threw hand grenades into the warehouse." (*Prosecutor v. Blagojević and Jokić* No. IT-02-60-T, paragraph 297).

B. APPLICABLE LAW

53. With regard to the issue of applicable law, it has to be explained why the CC of SFRY, which was in force at the time when relevant incidents took place, was not applied.

54. The principle of legality is guaranteed under Article 3 of the CC of BiH, which stipulates that criminal offences and criminal sanctions shall be prescribed only by law. Also, no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law.

55. According to Article 4 of the CC of BiH, the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence. If the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

56. The principle of legality is guaranteed under Article 7(1) of the European Convention. Pursuant to Article 2(2) of the Constitution of BiH, the European Convention shall have priority over all other law.

57. This ECHR provision contains a general principle which prohibits imposing a heavier penalty than the one that was applicable at the time the criminal offence was committed, but it does not prescribe the application of a most lenient law.

58. Article 4(a) of the CC of BiH, on the other hand, stipulates that Articles 3 and 4 of this Code 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*”.

59. Article 7(2) of the European Convention goes in the same direction by specifying that Article 7(1) “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 law recognized by civilized nations.”¹

60. This allows departing from the principles set forth under Articles 3 and 4 of the CC of BiH (and Article 7(1) of the European Convention) under the prescribed conditions, thus departing from the application of the criminal law which was applicable at the time the crime was committed and application of the more lenient law in the proceedings involving the offenses considered to be criminal under international law.

61. With regard to the criminal offense of Crimes against Humanity in violation of Article 172 of the CC of BiH charged against the Accused Dragan Nešković and Zoran Ilić, it should be noted that this criminal offense as such was not codified under the CC of SFRY.

62. The Court notes that the criminal offenses charged against the Accused also constitute criminal offenses under customary international law, therefore they are subsumed under “the general principles of international law” as prescribed in Article 4(a) of the Law on Amendments to the CC of BiH, and “*general principles of law recognized by civilized nations*”, stipulated by Article 7(2) of the European Convention. Therefore, based on these provisions, the CC of BiH can be applied in this case.

63. The status of Crimes against Humanity in international customary law at the time relevant to the Indictment is examined *inter alia* in the Report of the UN Secretary-General in accordance with paragraph 2 of Security Council Resolution 808 of 3 May 1993, International Law Commission, Commentary on the Draft Code of Crimes against the Peace and Security of Mankind (1996), and ICTY and ICTR jurisprudence.

64. According to these institutions, culpability for Crimes against Humanity or *jus cogens* is a peremptory norm of international law (International Law Commission,

Commentary on the Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 26).

65. Therefore, Crimes against Humanity appear to be undeniably incorporated in customary international law in 1995.

66. The criminal offenses codified in Article 172 of the CC of BiH were also codified in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC of SFRY which was in force at the relevant period – at the time the offenses were committed, meaning that the criminal offenses were punishable under the then applicable law as well. This fact additionally substantiates the conclusion of the Court about the principle of legality.

67. The application of the CC of BiH is also justified by the fact that the criminal sanction foreseen in the CC of BiH is in any event more lenient than the sanction applicable at the time the criminal offense was committed. This satisfies the principle relevant to time constraints regarding applicability, that is, the application of the law that is more lenient to the perpetrator.

68. In reaching this conclusion, the Court relied on the position taken in Verdict No. KPŽ 32/05 rendered by Section I of the Appellate Division of the Court of BiH on 4 April 2006 in the case of Abduladhim Maktouf, and Verdict No. KPŽ 05/16 rendered on 27 October 2006 in the case of Dragoje Paunović. This position was upheld by the Constitutional Court of Bosnia and Herzegovina in their Decision No. AP-1785/06 issued on 30 March 2007.

69. Finally, in discussing the application of the CC of BiH, in particular its Article 172 (criminal offense of Crimes against Humanity) one should refer to the European Court of Human Rights Decision in the case No. 51552/10 (*Boban Šimšić v. Bosnia and Herzegovina*) which states that [having in mind the flagrantly unlawful nature ...] [of his acts which included murders and torture of Bosniaks within the context of a widespread and systematic attack against the Bosniak civilian population...] [even the most cursory reflection...] [would have indicated that they risked constituting a crime against

¹ See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights which contains similar provisions. Bosnia and Herzegovina, as one of the successor states to Yugoslavia, ratified the Covenant.

humanity...], the appeal filed by the convicted Boban Šimšić is therefore **manifestly** ill-founded and must be dismissed.

C. DECISIONS GRANTING PROTECTION MEASURES TO WITNESSES

70. Pursuant to the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, some witnesses requested protective measures.

71. Those requests resulted in a number of decisions granting protective measures to witnesses.

72. However, it is important to note that not all witnesses who were granted protective measures eventually testified in this proceeding. The following witnesses did testify: Witness S-117, Witness S-116, Witness NI-100, Witness S-115, Witness NI-104, Witness NI-102, Witness NI-110, Witness NI-118, Witness NI-101 and Witness NI-121.

73. Finally, it should be noted that the witnesses who testified when they were granted protective measures were Prosecution witnesses, whose protective measures were granted under relevant decisions.

D. DECISION TO CLOSE THE SESSIONS

74. Pursuant to Article 235 of the CPC of BiH, the Panel closed its sessions to the public on several occasions during the proceeding, when it was in the interest of protected witnesses.

75. The main trial was closed to the public whenever personal data of witnesses who were earlier granted protective measures were checked, or when witnesses were examined about the circumstances for which protective measures were sought, and in all other situations when it was deemed necessary to protect the interests of other witnesses who were granted protective measures.

76. The main trial was closed to the public also during testimony of a witness who was granted protective measures in a proceeding before the ICTY, which, *mutatis mutandis*, had to be enforced in this proceeding.

77. Therefore, in each and every case and in accordance with the circumstances, the Panel has examined the necessity and justification of closing the main trial to the public, and cautioned the persons who were present at the main trial closed to the public that they

must keep secret everything they hear at the main trial, warning them that it was a criminal offense to disclose such information. Once a decision was made to exclude the public, the Panel explained to the public the reasons thereof and the decisions made.

E. REFUSAL TO PRESENT CERTAIN EVIDENCE

78. Adhering to the provisions of Articles 239(2) and 263(2) of the CPC of BiH during the proceeding, the Court was guided by its obligation to allow presenting only the evidence relevant to this case and to avoid unnecessary prolongation of the proceeding.

79. Consequently, the Prosecution and the Defense were requested to focus on the proceeding conducted against the Accused Dragan Nešković and Zoran Ilić, and to refrain from any unnecessary proving and/or refuting the factual background with regard to the period from 10th to 19th July 1995.

80. On 24 February 2011, the Prosecutor's Office of BiH filed a Motion proposing to the Court to admit into evidence the Transcript of the testimony of witness Johannes Rutten given on 5 April 2000 before the ICTY in *Radoslav Krstić*, instead of his direct examination.

81. Deciding upon the Motion, the Court issued a decision on 22 March 2011 and allowed admitting into evidence the Transcript of the testimony of witness Johannes Rutten, on condition that the Defense for the Accused Dragan Nešković and Zoran Ilić have the opportunity to cross-examine the witness.

82. The Prosecution filed another Motion on 23 November 2012, proposing to the Court to accept and admit into evidence the statements given by witnesses before the ICTY, witness statements given under investigations in the ICTY and Prosecutor's Office of BiH cases, and transcripts of witnesses' testimony given before the ICTY and under the BiH Prosecution investigation in the following cases: *Krstić, Blagojević and Popović*. In this respect, the Court issued Decision No: S1 1 K 002996 10 Kri on 31 March 2012.

83. Under the Decision, the Court dismissed the part of the BiH Prosecution Motion relevant to the acceptance of the *statements of facts and admission of guilt of the Accused Momir Nikolić (of 6 May 2003) and Dragan Obrenović*, since they gave those statements as suspects. The Court took into account that those facts relied on the account of events from the perspective of the Accused. Moreover, when the Accused gave those statements,

they were not under the oath and were not obligated to tell the truth, so that they could incriminate other people in order to protect themselves.

84. More precisely, having applied the appropriate standards, the Court partly granted the Prosecution Motion in its Decision as follows:

- Transcripts of testimony of witness Momir Nikolić (*transcripts in Blagojević case of 19 September, 22 September, 23 September, 25 September, 26 September, 29 September, 30 September and 1 October 2003*), and witness statements given to ICTY investigators (*23 June 2003, 15 December 1999 and 28 May 2005*);
- Transcripts of testimony of witness Dragan Obrenović (*transcripts in Blagojević case of 1 October, 2 October, 6 October, 7 October, 8 October, 9 October and 10 October 2003*), and witness statements given to ICTY investigators (*2 April 2000, 4 June 2003 and 5 February 2004*);
- Transcripts of testimony of witnesses: Joseph Kingori (*Krstić – transcripts of 31 March and 3 April 2000*), Paul Groenwegen (*Blagojević - transcript of 10 July 2003 and transcript in Popović et al. of 25 October 2006*), Robert A. Franken (*transcript in Krstić of 4 April 2000*), Leendert Cornelis van Duijn (*transcript in Popović et al. of 27 September, 28 September and 29 September 2006*), Vicentius Egbers (*transcript in Popović et al. of 18, 19 and 20 October 2006*), Mulder Martijn Anne (*statements given to ICTY investigators of 24 and 25 October 1995 and 5 December 2000*), witness PW-K (*transcript in Krstić of 10 April 2000*) and witness PW-100 (*transcript in Popović et al. of 5 September 2007*);
- Transcripts of testimony of witness Dean Manning in *Blagojević* (*of 5 February and 6 February 2004*);
- Transcripts of testimony of deceased witness Miroslav Deronjić (*Momir Nikolić of 28 October 2003*) and Čamila Omanović (*Krstić - 22 and 23 March 2000*), statements given by deceased Luka Marković to SIPA (*No: 14-04/2-290/05 of 20 September 2005*) and RS MUP of 20 June 2005, and On-site Investigation and Reconstruction Rreport (*drafted by BiH Prosecution on 29 September 2005*).

85. On 10 May 2012, the Prosecution filed with the Court the Motion for Presentation of BiH Prosecution evidence in order to refute Defense allegations (rejoinder).

86. In the Motion, the Prosecution proposed the examination of witnesses Ljubiša Milivojac, NI-120, Milivoje Batinica, NI-119, and presentation of Exhibits 1 through 17 listed in the Motion.

87. In deciding upon the Motion, the Court applied relevant standards and issued a Decision (in writing, No: S1 1 K 002995 10 Kri of 1 June 2012) to partly uphold the Prosecution Motion, in the part relating to the examination of witness Ljubiša Milivojac and Witness NI-120 about the circumstances relevant to the defense allegations that deserters were not assigned to command positions in the Jahorina Training Center. The Court also allowed admitting the following rejoinder exhibits: Law on Internal Affairs of Republika Srpska of 23 March 1992, Rule Book on Internal Organization and Job Classification in

MUP of 5 October 1994, Rule Book on Internal Organization of MUP-a during an Imminent Threat of War or a State of War of September 1992, Rec. No. 10-3/93, Documents issued by the VRS Main Staff of 18 June 1995 – No. 09/31/12-3/115 and ERN 04257904-05, RS MUP Personnel records for Dragan Nešković and Zoran Ilić.

88. Finally, on 5 June 2012, the Prosecution filed a Motion attaching the proposed evidence and, when the trial resumed on 13 June 2012, the Court issued the procedural decision as follows:

- **Milivoje Batinica "Simo from Alipašino"** – Earlier proposed as a rejoinder witness – motion dismissed since this is the evidence in rejoinder to the Prosecutor's rebutting evidence given by the witness in direct examination. Basically, the Prosecutor wanted to reply to himself, but according to the CPC of BiH, rejoinder evidence is used exclusively to respond to the evidence presented by defense;

- **NI-119** – Dismissed earlier because the Prosecution failed to specify which defense allegation would be refuted by examining this witness, and/or to state specifically which defense evidence asserted that Bosniak men had been killed by members of the unit to which the Accused Zoran Ilić belonged, and/or that this Accused participated in the search of the terrain;

- **Photograph of Bratunac** used in the cross-examination of Žarko Marić – Earlier dismissed because it was not precisely stated what would be proved by this photograph;

- **NI-120 – Granted** under the Decision of 1 June 2012 in the part relevant to the examination about the facts that deserters were not assigned to command positions in the Jahorina Training Center;

- **Ljubiša Milivojac – Granted** under the Decision of 1 June 2012 in the part relevant to the examination about the facts that deserters were not assigned to command positions in the Jahorina Training Center;

Motion to supplement the evidentiary proceedings dismissed:

- **Milivoje Batinica** – dismissed since he basically goes along the same lines as witness NI-101, that is, the part of witness NI-101 testimony about the killing in Jelah given at the main trial was not true. Therefore, since the Prosecutor replies to the earlier presented evidence, this evidence does not satisfy the requirements to be considered as supplement to the evidentiary procedure in terms of Article 276 of the CPC of BiH, notwithstanding when it became available.

- **NI-119** – In his Motion, the Prosecutor states exactly when this witness was examined, noting that he was examined under a different case. However, the fact that the witness was examined after the Indictment had been issued, does not mean that he was unavailable, more precisely, the Prosecutor did not explain why he was unaware of this witness before the Indictment was issued.

- **Photograph of Bratunac** - dismissed since it is merely an unnecessary commutation of evidence. A number of questions were asked both in the direct and cross-examination about the distance between Bratunac and the Kravica Farming Cooperative and the time it takes to travel the distance;

- **NI-120 and Ljubiša Milivojac** – In his Motion, the Prosecutor states exactly when this witness was examined, noting that he was examined under a different case. However, the fact that

the witness was examined after the Indictment had been issued, does not mean that he was unavailable; more precisely, the Prosecutor did not explain why he was unaware of this witness before the Indictment was issued. Also, the Court earlier approved the examination of these witnesses in rejoinder.

89. In view of the above, it should be noted that evidence was discussed at a status conference held earlier in this case, which is when the Prosecution said they would not propose any evidence that could be considered supplemental to the evidentiary procedure.

90. The fact that the Prosecution was dissatisfied with the decision of the Court regarding the proposed rejoinder evidence did not provide the grounds for the Prosecution to propose supplements to the evidentiary procedure, nor did it additionally strengthen their position in that respect, since those are two completely different grounds with clear and different criteria relevant to admissibility.

91. Finally, as regards the Motion of 5 June 2012, in particular the part thereof which addresses the standard of (un)availability of evidence within the meaning of Article 276 of the CPC of BiH, it should be noted that it remains completely unclear how certain witness/evidence can be considered to be unavailable when it was adduced even before the confirmation of the Indictment. Thus, the fact that a witness was examined in another case conducted by the same Prosecution, when he was obviously available, casts doubt on the credibility of Prosecutor's allegations as to the unavailability of the witness (in particular because the Prosecutor did not present to the court a single piece of evidence to support his averment that the witness was unavailable up to the moment he was proposed as a rejoinder witness), and on the unavailability of evidence in general.

92. Therefore, taking into account the above, when the main trial resumed, the Court issued a decision on 13 June 2012 dismissing the Prosecution Motion for presentation of evidence filed on 5 June 2012.

C. OBJECTIONS TO EVIDENCE

1. Objections to Prosecution evidence

93. A total of 121 Prosecution Exhibits was admitted in the case file during the proceeding.

94. Responding to the Prosecution Exhibits T-37 and T-38 (organizational chart of the Special Police Brigade), the Defense objected to the authenticity, since the origin and

method of drafting were unknown, same as the source of information taken to make the charts which were marked as those exhibits.

95. This Defense objection was dismissed since these exhibits were admitted as graphic charts showing the structure whose members were the Accused, and they were weighed up together with other presented evidence.

96. The Defense objected to the lawfulness of the following Exhibits: T-41 (Witness Examination Record for NI-101, No: 17-04/2-6-04-2-322/09 of 26 March 2009 with transcript), T-42 (Witness Examination Record for NI-101, No: 17-04/2-6-04-2-323/09 of 27 March 2009 with transcript) and T-43 (Witness Examination Record for NI-101, No: KT-RZ-101/07 of 10 November 2009 with transcript) since the testimony of these witnesses was forcibly obtained.

97. This Defense objection was dismissed because not all relevant circumstances that would make these exhibits unlawful were proved.

98. Nevertheless, while evaluating the testimony of witness NI-101 given at the main trial and the documentary evidence admitted during his testimony, the Court took into account what the witnesses said about the circumstances in which the statements were taken, how the minutes were composed, and the explanations given thereof.

99. The Defense also objected to the lawfulness of Exhibit T-44 (Expert witness Report – Finding and Opinion of Dr. Vedo Tuco of 15 February 2011 and 14 May 2010, 16 April 2010, CDs and additional expert evaluation) and T-47 (up-to-date chart by Dr. Vedo Tuco).

100. According to the Defense, when drafting his reports, the expert witness exceeded the scope of order for expert evaluation.

101. This Defense objection was dismissed given that the report and the supplement thereto were made pursuant to the Prosecution order, they pertain to the facts, that is, they comprise all relevant facts that together make up a whole. Besides, admission of the report which only partly analyzes relevant facts would be in contravention of Article 239(2) of the CPC of BiH.

102. Finally, the Defense objected to the authenticity and lawfulness of the following Prosecution Exhibits: T-61 (Dispatch sent by Dragomir Vasić, Zvornik PSC, No. 277/95 of

12 July 1995), T-62 (Zeleni Jadar – gravesite, disturbed earth, dated 20 October 1995 and 23 October 1995, ICTY R041-0658), T-63 (Two versions of the Order issued by the Drina Corps Command to prevent Muslim groups from passing towards Kladanj and Tuzla No. 03/156-12 of 13 July 1995 drafted by Milenko Živanović), T-64 (Regular Combat Report of 13 July 1995, drafted by Radislav Krstić), T-65 (Supply of information to Deputy Minister dated 14 July 1995, drafted by Dragan Kijac), T-66 (Regular Combat Report No. 38-56 of 14 July 1995, drafted by Mile Simanić, Deputy Commander of the 5th Engineering Battalion), T-67 (Dispatch sent by VRS Bratunac Brigade, strictly confidential, No. 03/253-108/1 of 17 July 1995), T-78 (Photograph of the Sandići valley of 13 July 1995), T-79 (Enlarged photograph of the Sandići valley), T-81 (Photograph of the back of the warehouse with remains of a corn field), T-82 (Photograph of the ceiling on the west side with traces of blood), T-83 (Photograph of the internal west part of the warehouse with blood stains on the wall), T-76 (Map showing movement of the column and the position of the Serb forces, ICTY), T-77 (Map showing movement of the column).

103. However, this objection raised by the Defense was dismissed since these documents were made in the usual manner, and a number of witnesses testified about the circumstances surrounding the making of these exhibits.

104. The Defense also objected to the relevance and lawfulness of the following evidence: T-95 (four Summaries of the forensic evidentiary material by Dean Manning, May 2000, February 2001, August 2003, November 2007), T-96 (Laboratory finding-automatic ballistic comparison of 24 February 2000 by Forensic Science Laboratory – Bureau of Alcohol, Tobacco and Firearms), T-97 (Forensic explosives analysis on samples from different locations in Srebrenica, Netherlands Forensic Institute), T-98 (Evaluation of the minimum number of persons exhumed by the ICTY from 1996 to 2001, January 2004, author Jose Pablo Barayarbar), T-99 (Report on Excavations and Exhumations at the Glogova 1 Mass Grave in 2000, Richard Wright, 9 February 2001), T-100 (Report on Forensic Investigation of the Cerska Grave Site, 15 June 1998, Dr. William Haglund), T-101 (Report of Chief Pathologist, Srebrenica-related grave sites, ICTY, John Clark, 1999), T-102 (Report on Excavations and Exhumations at the Glogova 2 Mass Grave in 1999-2001, forensic anthropologist Jose Pablo Barayarbar), T-103 (Report on Military Events in Srebrenica and Krivaja 95 Operation), T-104 (Report on command responsibility of VRS Brigade, Richard Butler), T-105 (Report of the American Naval Investigation Service on examination and finding of evidence at a warehouse in Kravica), T-106 (Report on the number of missing persons and dead persons in Srebrenica by H. Brunborg and H. Urdal)

and T-107 (Additional Report on the number of missing persons and dead persons in Srebrenica, by Helga Brunborg, Oslo, 12 April 2003).

105. However, having in mind the applicable legal provisions, primarily the provisions of the Law on the Transfer of Cases, and the fact that the Accused are charged with the criminal offense whose essential element is the general context (a widespread or systematic attack), the objections raised by the Defense are dismissed as unfounded.

2. Objections to the Defense evidence for the Accused Zoran Ilić

106. The Prosecutor objected to the Defense Exhibit O2-24 (Statement by witness Hendrik Nicolai Cornelis), arguing that the Prosecution did not have an opportunity to cross-examine this witness.

107. However, this objection raised by the Prosecution is dismissed since the Statement was admitted into evidence in accordance with the Law on the Transfer of Cases.

IV. GENERAL EVALUATION OF EVIDENCE IN THE PROCEEDING

A. COURT FINDINGS

1. General considerations concerning evaluation of evidence

108. The Court evaluated the evidence in this case in accordance with the applicable procedural law – the Criminal Procedure Code of Bosnia and Herzegovina.

109. The Court has applied to the Accused the presumption of innocence stated in Article 3 of the CPC BiH, which embodies a general principle of law, so that the Prosecution bears the burden of establishing the guilt of the Accused and the Prosecution must do so beyond a reasonable doubt.

110. When evaluating the testimony of witnesses who testified before the court, the Court examined their demeanor, conduct and character to the maximum possible extent.

111. Also, the fact that the Defense did not dispute certain allegations and/or facts contained in the Indictment does not mean that the Court accepted them as proven.

112. Thus, it should be noted once again that the burden of proof lies with the prosecutor, who has to prove each and every charge throughout the trial.

113. Accordingly, in establishing whether the Prosecutor proved the case beyond any reasonable doubt, the Court carefully examined if there was any other reasonable interpretation of the admitted evidence, apart from the one accepted by this Panel, when it concluded, by applying the *in dubio pro reo* principle, that the commission of the criminal offense charged against the Accused was not proved.

114. Pursuant to Article 15 of the CPC of BiH, the Court is entitled to free evaluation of evidence. Therefore, the charges against the Accused were carefully examined, including all admitted evidence.

115. When evaluating the evidence presented at the main trial, the Court duly examined all individual circumstances of the witnesses, the time elapsed, the state of shock, their age, their mutual participation in the events, the risk of self-incrimination and their relationship with the Accused.

116. The Court also examined the consistency of every witness' testimony during direct and/or cross-examination and compared it with their statements given during the investigation.

117. The Court took into account the fact that questions of different nature can be asked at the main trial, those which can make the statement more precise, so that it could be expected that a witness might remember additional details.

118. Besides, the Court was aware all the time that the credibility of witnesses depended on their knowledge of the facts they testified about (for instance, the organization of platoons and squads and chain of command), their personal integrity, credibility and their obligation to tell the truth arising from their oath.

119. With regard to indirect evidence, the Court notes that it is well established in practice and in the case law of this Court that indirect evidence is admissible.

120. Moreover, according to Article 15 of the CPC of BiH, the Court is entitled to a free evaluation of evidence.

121. In the opinion of the Court, the evidence should be such so as to convince the Court that it is credible, which means that it was given voluntarily, that it is truthful and reliable.

122. The probative value of an indirect statement would depend on the context and nature of the relevant evidence, and/or whether that piece of evidence is corroborated by other evidence.

123. In the opinion of the Court, indirect evidence is the evidence which relates to the circumstances surrounding the incident or the criminal offense and which can be taken to reach a reasonable conclusion about the relevant fact.

124. Apparently, the crime was committed at the time when many witnesses did not survive the incident at the crime scene, therefore, it is unlikely that the charges of the Indictment can be proved by direct and affirmative testimony of eye witnesses or on the grounds of indisputable documentary evidence. In such a situation, indirect evidence may become a key factor not only for the Prosecution, but also for the Accused.

125. Individual elements of such evidence *per se* can be insufficient to establish the facts, but when taken together, their collective and cumulative effect can sometimes be crucial and help in resolving the matter.

126. Naturally, when evaluating the evidence, the Court took into account a number of exhibits presented by the Prosecution, as well as the evidence presented to the Court by the Defense, and viewed them also in the context of the objections thereto raised by the Defense, in order to decide about their probative value.

127. The Court very carefully examined the weight which should be attributed to such evidence in view of certain inconsistencies and imprecisions in various witnesses' testimony, which represented a relevant factor in evaluating their weight, making sure that the inconsistencies about certain facts presented in the testimony did not discredit the entire testimony of the witness.

128. The reasons for admitting certain testimony and for the evaluation of its credibility are detailed below.

129. In order to properly understand the evaluation of evidence, more precisely, how the Court evaluated the evidence presented during the main trial, the positions of the Prosecution and Defense should be explained.

130. As it follows from the Indictment, the Accused Dragan Nešković and Zoran Ilić are charged with some acts taken within a widespread and systematic attack targeted against Bosniak civilians in Srebrenica, which amount or can amount to part of the attack.

131. However, notwithstanding that the Defense did not dispute the commission of those acts to a certain extent, the focus of their evidentiary procedure was to refute the allegations of the Indictment that directly implicate the Accused, rather than to dispute the background of events.

132. More precisely, the Defense for the Accused Dragan Nešković focused on discrediting those Prosecution witnesses whose testimony implicated the Accused in certain acts of perpetration.

133. In addition, the Defense for the Accused Dragan Nešković provided an exhaustive analysis of the situation of the Accused himself, but also of the general status of the *deserters* at the Jahorina Training Center.

134. Consequently, when evaluating the presented evidence, the Court focused on those pieces of evidence relevant directly to the Accused, while taking into account other relevant evidence which could be taken as corroborative evidence when deciding about the credibility of crucial evidence.

135. Also, observing the principle of judicial economy, the Court did not extensively examine the evidence and facts relating to the background of events, which by themselves did not corroborate or refute the acts of perpetration of the offenses charged against the Accused.

136. As already stated, the Panel examined the culpability of the Accused Dragan Nešković and Zoran Ilić.

137. The Court proceeded in an identical manner with regard to the Accused Zoran Ilić.

138. During the proceeding, the Defense for the Accused Zoran Ilić focused on his alibi and on discrediting the Prosecution witnesses.

139. The Defense presented abundant evidence in relation to the alibi of the Accused, primarily witnesses who were consistent in stating that the Accused Zoran Ilić was at his family house in Bratunac at the relevant time, where he assisted in organizing a military farewell party for his brother Miroslav.

140. Having in mind that the Prosecution accepted the alibi of the Accused to a certain extent and that it was vitally important here to establish the credibility of Prosecution witnesses, when the Court examined the evidence it focused on the evidence relevant to the acts of perpetration of the Accused Zoran Ilić.

141. Therefore, taking into account that the general factual background was not essentially disputed, notwithstanding different interpretations thereof, the Court primarily examined the evidence which corroborated/disputed the acts of perpetration charged against the Accused Dragan Nešković and Zoran Ilić.

142. Finally, in deciding about the Indictment, the Court examined the entire body of the presented evidence, both documentary evidence and witnesses' testimony, and evaluated them individually and in correlation. In the written reasoning, the Court put a special emphasis on the evidence of particular importance and quality, which required special explanation and analysis.

2. General elements of the criminal offense of Crimes against Humanity

143. The Accused are charged with the criminal offense of Crimes against Humanity – persecution, in violation of Article 172(1)(h) of the Criminal Code of BiH (CC of BiH), in conjunction with paragraph (1)(a), depriving another person of his life, sub-paragraph b), forcible transfer of population, sub-paragraph e), imprisonment or other severe deprivation of physical liberty, sub-paragraph k), other inhumane acts of a similar character, codified under the same Article, all in conjunction with Articles 29 and 180(1) of the CC of BiH.

144. According to the law, in order to characterize an offense as a “crime against humanity”, in addition to specific underlying acts, the Prosecution must prove that all general elements of the criminal offense of Crimes against Humanity have been satisfied, which include:

- The attack must be widespread or systematic and directed against any civilian population;
- The accused must know of the attack; and

- The accused must know that his acts are part of the attack and that his acts constitute or can constitute part of the attack.

145. As it follows from the earlier mentioned Reasoning of the Decision to accept established facts of 26 March 2007, the Court reached a firm conclusion and considered as established the fact that, at the time relevant to the Indictment, there was a widespread and systematic attack in the territory of the UN Safe area Srebrenica carried out by the Army and Police forces of the so called Serb Republic of Bosnia and Herzegovina and Serb paramilitary formations, targeted against Bosniak civilians, where such an attack, in the context of Crimes against Humanity, according to customary international law, was not restricted only to the existence of the “armed conflict”.

146. As for the other essential elements of the criminal offense of Crimes against Humanity, the Court evaluated the entire body of presented evidence individually and in correlation, and established beyond any reasonable doubt that the Accused Dragan Nešković was in the area of Potočari at the relevant period and that he was a member of the Jahorina Training Centre Unit of the Serb Republic Bosnia and Herzegovina MUP Special Police Brigade.

147. However, the entire body of presented evidence suggests that the Accused Dragan Nešković and Zoran Ilić were unaware of the existence of the widespread and systematic attack targeted against Bosniak civilians in the UN Safe Area of Srebrenica and its wider surroundings. Nevertheless, objectively looking, the offenses charged under Counts 1, 2 and 3 of the Indictment constituted part of the widespread and systematic attack.

148. Thus, the Prosecution failed to prove beyond a reasonable doubt that the Accused Dragan Nešković and Zoran Ilić perpetrated the offenses; furthermore, they did not prove that the Accused were aware of them.

149. The mere fact that they were members of the Jahorina Training Centre Special Police Brigade, whose members participated in the commission of the crime, same as the fact that the Accused were in the wider vicinity of the crime scene, cannot *a priori* be taken as grounds for culpability of the Accused Dragan Nešković and Zoran Ilić.

V. FACTS ESTABLISHED ON THE BASIS OF EXAMINED EVIDENCE

A. FACTUAL BACKGROUND OF THE CASE

150. Under the Indictment, the Accused Dragan Nešković and Zoran Ilić are charged in as much as, during the widespread and systematic attack against Bosniak civilian population, knowing of such an attack, as members of the RS MUP Special Police Brigade of the Jahorina Training Centre, they participated in the events linked to the period from 10 to 19 July 1995 and to the crimes targeted against Bosniak civilians in the UN Safe Area of Srebrenica.

151. Specifically, the Accused are charged that they, by the actions described under individual counts of the Indictment, participated in the persecution of Bosniak civilians in the UN Safe Area of Srebrenica by killing (depriving another person of his life), forcible transfer, capture and other inhumane acts.

152. According to the Indictment, the principal perpetrators of this crime were members of the VRS and the Republika Srpska Ministry of Internal Affairs. The attack resulted in the forcible transfer of 40,000 Bosniak civilians and the killing of thousands of Bosniak men and boys who were summarily executed, buried and then reburied at other locations.

153. Witnesses Jevto Doder, Mile Janjić, Haso Hasanović, Ilija Nikolić, Dragomir Vasić, Jovan Nikolić, Witness S-117, Witness S-116, Živorad Lakić, Witness NI-100, Eco Koster, Joseph Kingori, Vicentius Egbers and Richard Butler testified as prosecution witnesses to the circumstances relevant to the general factual background outlined in the Indictment. A number of additional exhibits were admitted in the case file.

154. With regard to the factual background, and/or the context in which the Accused Dragan Nešković and Zoran Ilić committed the offenses charged against them, it should be noted that the Panel, responding to a Prosecution's Motion, on 30 March 2011 issued a

Decision No: S1 1 K 002995 10 Kri accepting as proven the facts established in the Judgments rendered by the ICTY Trial and Appeals Chambers in *Krstić* and *Blagojević*².

155. Particularly relevant are the facts listed under numbers 19 through 68 in the Decision of 30 March 2011.

156. It follows from these facts and from the testimony of the above mentioned witnesses that the events outlined in the introductory part of the Operative Part of the Verdict did indeed happen as they were described.

157. In this specific case, there is no doubt that these facts have been established in a number of court proceedings and they were subject both to proof and refutation. However, when deciding about the culpability of the Accused Dragan Nešković and Zoran Ilić, it was important to establish a nexus between the acts of the Accused and their state of mind with regard to the relevant events, that is, whether the Accused were aware of the entire context of events and whether they undertook the acts which constituted or could constitute part of the attack on civilians.

158. Based on the evidence presented during the main trial, the Court was not satisfied beyond any reasonable doubt that the Accused were aware of the attack on civilians and that they, accepting the risk that their acts could constitute part of the attack, perpetrated the criminal offenses described under Counts 1, 2 and 3 of the Indictment/Operative Part of the Verdict.

159. This conclusion will be explained in more detail below.

B. COUNT 1

160. Under Count 1 of the Indictment, the Accused Dragan Nešković is charged as follows: (1) armed with an automatic rifle, he participated in the searches of Bosniak houses with the aim of rounding up and escorting the Bosniak population to the UN Base in Potočari; (2) participated in the forcible transfer of the civilians from the UN Base in Potočari by buses and trucks to the area under the control of the Army of BiH in the manner that he put women and children on the buses and trucks; (3) separated male

² *Prosecutor v. Krstić* No. IT-98-33-T Judgment of 2 August 2001 and Judgment IT-98-33-A of 19 April 2004, and *Prosecutor v. Blagojević and Jokić*, No. IT-02-60-T, Judgment of 17 January 2005 and Judgment No. IT-02-60-A of 9 May 2007.

Bosniak civilians from their families, and, together with others, he held the men detained in the *White House*, from where those men were eventually transferred to execution sites in the wider area of the Zvornik Municipality.

161. Therefore, as follows from the above, the Accused Dragan Nešković was charged that, as a member of the RS MUP, together with other members of his unit, he participated in the search of the terrain with the aim of finding and then escorting the people to Potočari, where the men were separated from women and children, the women and children were forcibly transferred, while the men were first detained in the *Bijela kuća*, and then transferred to execution sites in the wider area of the Zvornik Municipality.

162. Both the Prosecution and the Defense for the Accused Dragan Nešković presented evidence in respect of the above stated circumstances.³

163. Among the witnesses proposed by the Prosecution who testified to the actions of the Accused Dragan Nešković, particularly relevant are: Jevto Doder, Mile Janjić, Dragomir Vasić, Jovan Nikolić, Witness S-117, Mićo Gavrić, Witness NI-100, Witness S-115, Witness NI-104, Witness NI-102, Elco Koster, Witness NI-101, Joseph Kingori, Dean Manning, Vincentius Egbers.

164. These witnesses consistently testified to the facts in connection with the gathering of a huge number of civilians in Potočari, the search of the terrain in the Potočari surroundings (including the Budak area), the separation of the men from women and children and their confinement in the *White House*, the forcible transfer of women and children and the transport of the men from the *White House* to the execution sites in the broader area of the Zvornik Municipality.

165. Also, in addition to the testimony of these witnesses, a number of Exhibits were admitted in the case file, and these events were corroborated by the facts which the Court accepted under the Decision No. S1 1 K 002995 10 Kri of 30 March 2011.

166. However, it should be noted that the Court here specifically examined the presented evidence relevant to the Accused Dragan Nešković and was not satisfied

³ The Defense for the Accused Zoran Ilić presented indirect evidence (alibi) relevant to Count 1 of the Indictment No. T20 0 KTRZ 000565 10 issued by the Prosecution of BiH on 13 September 2010. However, since the Prosecutor excluded the Accused Zoran Ilić from Count 1 of the amended Indictment No: T20 0

beyond any reasonable doubt that the Accused Dragan Nešković had the required intent when he undertook any of the acts described under Count 1 of the Indictment.

167. Among the witnesses who testified to the specific actions taken by the Accused Dragan Nešković, special attention should be attributed to Witness NI-101, Witness NI-102 and Witness NI-104.

168. According to witness NI-101, who was deployed near Potočari together with other members of the unit, buses arrived there to transport the people from Srebrenica to the territory of the Federation or to the line of separation.⁴

169. The witness explained how soldiers lined up in two rows in order to separate the men. Allegedly, the witness enabled a certain number of men to get on the vehicles intended for women and children.⁵

170. Finally, responding to a question asked by the President of the Panel about the person who he was not sure was the Accused Dragan Nešković, Witness NI-101 stated that that person was actively involved in separating the men from women and children in Potočari, but he did not know if that person participated in the search of the terrain.⁶

171. As opposed to witness NI-101, who was firm in stating that members of his unit separated the men from women and children, witness NI-102 testified that he and his colleagues were assigned to help the people who were in Potočari to board the vehicles.

172. He explained that there was a number of elderly and weak people who could not get on the trucks and tractor-trailers by themselves, and their duty was to help those elderly and weak people to find *quality* accommodation in there.

173. Responding to the questions asked, witness NI-102 confirmed that the UN Base in Potočari was taken by VRS members, and that a number of soldiers from various units entered the base, including members of the witness' unit.

KTRZ 000565 10 of 22 June 2012, after accepting his alibi, the evidence relevant to these charges against the Accused Ilić will not be specifically examined.

⁴ Transcript of 6 September 2011, pages 24 and 25.

⁵ Transcript of 6 September 2011, page 26.

⁶ Transcript of 6 September 2011, page 49.

174. Responding to an additional question, the witness stated he thought that the Accused Dragan Nešković too entered the base on the relevant occasion.

175. Finally, when giving his opinion about his own actions and everything that happened on the relevant occasion in Potočari, witness NI-102 said it was ethnic cleansing.⁷ However, responding to a question asked by the President of the Panel, the witness explained that, looking from the present perspective, the events in Potočari in his opinion amounted to ethnic cleansing, but he did not have the same opinion about them in July 1995.⁸

176. One portion of the testimony given by Witness NI-104 is particularly relevant as evidence about direct participation of the Accused Dragan Nešković in the search of the terrain, separation the men from women and children and their forcible transfer, and their confinement in the *White House*.

177. According to this witness, on his way to Potočari, he participated in the search of the terrain near the road, and upon arriving in Potočari he was deployed behind the UN Base.

178. The witness confirmed that the men were separated from women and children, then the women and children boarded the vehicles, while the men were kept in the *White House*.

179. The witness stated that **some** people from his unit, whose names he did not mention, participated in the separation of the men.

180. Finally, when testifying about the events in Potočari, responding to a specific question about Dragan Nešković, the witness confirmed to have seen the Accused in Potočari, but he did not say precisely what were the duties and assignments of the Accused.⁹

181. The Prosecution relied on the testimony of three witnesses who testified to the presence of the Accused Dragan Nešković in Potočari when they charged the Accused under Count 1 of the Indictment. However, since they were not consistent about the

⁷ Transcript of 21 June 2011, pages 9-11.

⁸ Transcript of 21 June 2011, page 45.

⁹ Transcript of 31 May 2011, pages 19-22.

important facts, the Court was not satisfied that the Accused participated in the search of the terrain and the separation of men from women and children, as the Prosecution argued.

182. With respect to the above, the Court points out that it was the obligation of the Prosecution to present evidence to prove that the Accused Dragan Nešković undertook those actions and that he had the required *mens rea* of knowing that the people found in the search would be transferred against their will, imprisoned and/or deprived of their physical liberty.

183. The Prosecution presented the testimony of three witnesses, but the Court did not find them credible. Furthermore, even if their testimony were accepted as correct and credible, they would still not support the allegations of the Indictment, in particular because the witnesses were inconsistent about the important facts.

184. The Court also took into account the testimony of witnesses Ljubisav Simić and Milan Stojčinović who were called by the Defense for the Accused Dragan Nešković. According to these witnesses, they were unaware of the events in Srebrenica; everything they knew, they learned from the media, and/or from the meetings held by military and civilian leadership on 11 July 1995 and the days to follow.

185. According to witness Milan Stojčinović, “deserters” were not assigned as platoon commanders and he was not sure if the Accused Dragan Nešković had a more favorable treatment in the Jahorina Training Center.

186. Therefore, the above mentioned discrepancies in the testimony of these witnesses and the resulting uncertainties justify reasonable doubt as to the “subjective identity” (the accused) of the Indictment.

187. Taking into account that the mere presence of the Accused Dragan Nešković in Potočari was not sufficient to find him guilty of the forcible transfer of population, imprisonment or severe deprivation of physical liberty in violation of Article 172(1)d) and e) of the CC of BiH, given that such a conclusion could be based only on some portions of testimony of witnesses who were not found credible by the Court, by applying the provisions of Article 3, as read with Article 284(c) of the CPC of BiH, the Court acquitted the Accused Dragan Nešković of the charges under Count 1 of the Indictment.

188. Finally, the Court will provide a detailed explanation in the Reasoning as to why the testimony of Witnesses NI-101, NI-102 and NI-104 was not found credible, and evaluate each piece of evidence individually and collectively.

C. COUNT 2

189. According to Count 1 of the Indictment, while the Accused Dragan Nešković and Zoran Ilić were deployed along the Kravica – Konjević Polje road on 14 and 15 July 1995, they captured male Bosniaks whom they brought to the *Kravica Farming Cooperative*, and executed the Bosniak men.

190. With regard to the executions, the Accused Dragan Nešković is charged that he was in the firing squad that was ordered to execute the captured Bosniaks at the Kravica warehouse, and he also ordered two members of the Jahorina Training Centre known to him to deprive two captured male Bosniaks of their lives.

191. The Accused Zoran Ilić is charged that he, by firing single shots from automatic weapons into a pile of bodies of the captives who had been executed in front of the Kravica warehouse, “verified” that none of them had survived.

192. Among the Prosecution witnesses who testified to the events of 13 and 14 July 1995 which took place on the Kravica-Konjević Polje road and at the Kravica Farming Cooperative, the following were found relevant: Jevto Doder, Zoran Erić, Haso Hasanović, Jovan Nikolić, Witness S-117, Witness S-116, Živorad Lakić, Witness NI-110, Ilija Nikolić, Witness NI-102, Witness NI-118, Witness S-115 and Witness NI-104.

193. In addition, the Court took into account the testimony of Defense witnesses for both Accused, who only indirectly and to a certain extent spoke about the events described under Count 2 of the Indictment.

194. Also, abundant physical evidence about the events on the road and in the warehouse was admitted in the case file, however, only the evidence most relevant for rendering the decision will be specifically examined and evaluated.

195. Finally, with regard to the facts relevant to the events described under Count 2 of the Indictment, it is important to refer to the Decision No. S1 1 K 002995 10 Kri issued by the Court on 30 March 2011 and the facts therein under the number: 58, 59, 61, 62, 63, 65, 66, 67 and 68.

196. The Court concluded that the events of 13 and 14 July 1995 in general had been indisputably established, including the facts that members of the Jahorina Training Center were deployed along the Kravica-Konjević Polje road, where Bosniak men were captured and taken to the Kravica Farming Cooperative, where they were executed.

197. However, in light of the above mentioned facts, when examining the presented evidence, the Court focused on the position of the Accused Dragan Nešković and Zoran Ilić, their acts and behavior and their state of mind in respect of such acts and conduct.

198. A number of witnesses testified to the activities carried out on the Bratunac-Konjević Polje road, including Witness S-117, whose testimony is particularly relevant. According to him, the 1st company (Dragan Nešković's company) was deployed along this road, the witness could hear shooting and explosions from the direction of the Kravica warehouse, and he found out about the killings there the following day. In his opinion, it was some sort of retribution exacted by the Šekovići Platoon.¹⁰

199. Witness NI-110 was proposed by the Prosecution and examined about the objective and/or the purpose of their deployment on the road and about the fate of the men who were taken out and/or captured on the road.

200. It follows from the testimony of this witness that he learned from his superiors already at the time when they were ordered to deploy in the area around Srebrenica that the ultimate goal of the operation would be to separate and kill Bosniak men.¹¹

201. However, the presented evidence did not convince the Court beyond any reasonable doubt that the Accused Dragan Nešković, at the time when he was on the road, was aware of the fate that awaited the captured Bosniak men. The Court reached such a conclusion on the basis of the presented evidence and credible testimony of Witness S-117, Witness NI-110, witnesses Zoran Erić, Jovan Nikolić and Ilija Nikolić, which make an integrated and logically consistent whole. Moreover, it did not follow from the presented evidence that the Accused Dragan Nešković participated in their execution. The same applies to the Accused Zoran Ilić as well.

¹⁰ Transcript of 5 April 2011, pages 16-18, 30, 31 and 33.

¹¹ Transcript of 5 July 2011, pages 5 and 6.

202. In support of this conclusion, it should be noted that Witness S-117 was deployed on the road, and while he was there, he could hear shots and explosions from the direction of the warehouse. He found out the following day that it was retribution exacted by the Šekovići Platoon. More precisely, the witness stated he had found out that members of this platoon allegedly ill-treated the captured people, so that one captive seized a rifle and killed one member of the Šekovići Platoon, which resulted in the execution of the imprisoned men.

203. Witness Zoran Erić testified to the event which preceded the killings. His testimony was corroborated by witnesses Jovan Nikolić and Ilija Nikolić, who testified to have heard about those events from Zoran Erić. According to these witnesses, someone seized a rifle from one member of the Šekovići Platoon and killed one soldier. After that, everyone started shooting and the majority of the captured men were killed.

204. This chain of events was also confirmed by witness NI-110, who was near the warehouse on the relevant occasion. According to him, a certain Jusuf from the village of Kadrići killed one member of the Šekovići Platoon, whereafter other members of his platoon opened fire at the people inside the warehouse.¹²

205. Therefore, based on the presented evidence, the Court could not conclude beyond any reasonable doubt that the Accused Dragan Nešković, while deployed on the road (this fact follows directly from the testimony of witness S-117), was aware that the Bosniak men they captured and/or deprived of liberty and escorted to the Kravica Farming Cooperative would be killed. The Court found credible and reliable the testimony of Witness S-117. According to him, the killings of the captives occurred as a consequence of the murder of one member of the Šekovići platoon, that is, as opposed to Witness NI-110, members of the Jahorina Training Center did not know that Bosniak men would be killed.

206. This conclusion should be clarified by noting that the Court did not find problematic the allegations of Witness NI-110. On the other hand, it can be logically assumed that the Accused Dragan Nešković had a completely different understanding of his assignments and their purpose (that it was a legitimate capture of enemy soldiers) than witness NI-110, who was a member of a different unit and had much more wartime experience, and, as

¹² Transcript of 5 July 2011, pages 9-11.

such, he could understand and comprehend the information he received from his superiors already when he was assigned to combat in a different place.

207. Also, when deciding about the participation of the Accused Zoran Ilić in the capture of men, the Court indisputably established that over the relevant period the Accused Zoran Ilić was on leave in Bratunac at a military farewell party for his brother. This conclusion follows from the testimony of a number of witnesses, including: Žarko Matić, Zdravko Dačić, Željko Vasić, Mirko Dragičević, Duško Nikolić, Miodrag Josipović, Jakov Kosanović, Nikola Petrović, Zoran Jovanović, Neđo Nikolić, Borivoje Jovanović, Dragomir Jovanović, Mirko Mičić, Petar Zorić, Radivoje Ilić, Petko Tešić and Ranko Krstić, and from Exhibits O2-6 – photograph with Željko Vasić's signature, O2-6-2 - photograph with Žarko Matić's signature, O2-8a and c - photograph with Žarko Matić's signature, O2-9a, b and c - VoB-2, VoB-3 and VoB-1 Forms for Žarko Matić, O2-32 - VoB-2 for Miroslav Ilić certified by the Ministry of Defense – Bratunac Department, O2-32a - VoB-2 for Miroslav Ilić certified by the Ministry of Defense – Bratunac Department and Sarajevo Military Post, O2-32b - VoB-1 for Miroslav Ilić, O2-33 - VoB-2 for Zarija Milovanović, O2-33a - VoB-3 for Zarija Milovanović, O2-33b - VoB-1 for Zarija Milovanović. Based on this evidence, the Court established beyond a doubt that the Accused Zoran Ilić was not present at the crime scene at the relevant time - he was in Bratunac.

208. All these witnesses confirmed that a military farewell party was organized for Miroslav Ilić, the Accused Zoran Ilić's brother, which lasted from 12 to 13 July 1995 and the recruits were seen off in the early afternoon hours of 14 July 1995.

209. These witnesses confirmed that the military farewell party was organized, the witnesses were at the farewell party on 12 and 13 July 1995 and had the opportunity to see the Accused Zoran Ilić. In addition, the witnesses could also see Zoran Ilić's escort who was assigned to him while he was on leave in Bratunac.

210. Zdravko Dačić, who escorted the Accused, testified as a defense witness. He marked himself and the Accused Zoran Ilić on photograph O2-6-2 using numbers 1 and 2, explaining that the photograph was taken at Miroslav Ilić's military farewell party.

211. According to Defense witnesses for the Accused Zoran Ilić, the farewell party lasted two days, from 12 to 13 July, Miroslav Ilić's friends of the same age were invited on 12 July 1995, while elderly friends of the Ilić family came on the 13th.

212. It follows from the testimony of witness Zdravko Dačić that after the Accused Zoran Ilić saw off his brother on 14 July 1995 at the bus station in Bratunac, he was escorted and handed over to the Bratunac PS. According to witness Miodrag Josipović, Zoran Ilić spent the night and stayed there until the morning hours of 15 July 1995.

213. Finally, with regard to the farewell party and the testimony of the mentioned witnesses, in addition to the mentioned photographs, the Court took into account the VoB forms which clearly show that Žarko Matić, Zarija Milovanović and Miroslav Ilić started serving their compulsory military service on 14 July 1995, as follows from the VoB-1 Form (on the day they were sent off at the bus station in Bratunac), and they arrived in Bileća the following day – 15 July 1995 (VoB-3 - unit file – Military Post 7588 Bileća).

214. In turn, the Prosecution presented Exhibit T-55 (Order issued by the President of the Republika Srpska of 16 June 1995), which *inter alia* introduced special measures - highest level of combat readiness for the armed forces, all state organs and organizations, all companies and institutions and the entire population. The same order specified that all leaves from the units would be regulated by orders of the VRS General Staff Commander and the Minister of Internal Affairs.

215. This Prosecution Exhibit clearly confirms the highest level of combat readiness; however, in this specific case, this was a general enactment which did not entirely prohibit leaves from units, but it imposed substantial restrictions thereon.

216. Therefore, it follows from the presented evidence that the Prosecution failed to prove beyond any reasonable doubt that, while the Accused Dragan Nešković was deployed on the road, he was aware that by capturing the Bosniak men he participated in the implementation of the plan to kill them, and/or that he was aware that the captured men would be killed.

217. Based on the evidence presented both by the Prosecution and the Defense, the Court was not satisfied beyond any reasonable doubt that the Accused Zoran Ilić participated in the Jahorina Training Center operations, and/or that he was deployed on the Kravica-Konjević Polje road and took part in capturing the Bosniak men who were subsequently killed.

218. Finally, Count 2 of the Indictment charged the Accused Dragan Nešković with executing Bosniak men in the Kravica Farming Cooperative as a member of the firing

squad and with issuing orders to two members of the Jahorina Training Center he knew to kill two captured Bosniak men, which they did. Zoran Ilić was charged with firing individual shots in the pile of executed men to “finish them off”. It should be noted that these charges rely mainly on the testimony of Witnesses NI-102, S-115 and NI-104. In addition, the Court did not give credence to the testimony of witnesses NI-104 and S-115, while the testimony of witness NI-102 was not sufficiently clear and explicit to allow reaching a conclusion about the culpability of the Accused.

219. Anyhow, taking into account the necessity to evaluate the testimony of Witnesses NI-104, S-115 and NI-102 as one whole, not the portions thereof, and to examine them in the context of individual allegations of the specific Counts of the Indictment, the Court will specifically explain in the Reasoning why no credence was given to Witnesses NI-104 and S-115, and why the testimony of Witness NI-102 was found insufficiently clear and convincing.

D. COUNT 3

220. Under Count 3 of the Indictment of the Prosecutor’s Office of BiH, the Accused Zoran Ilić was charged that on 17 July 1995, during the first day of the search of the forest area above the Konjević Polje – Bratunac road, which was carried out with the aim of capturing several hundred male Bosniaks, including some children, he summarily executed a captured Bosniak man in the village of Jelah.

221. The Prosecution examined a number of witnesses about this incident, but only Witness NI-101 testified to the direct participation of the Accused Zoran Ilić in the search of the terrain and the killing of one Bosniak man.

222. In reaching the conclusion that the terrain near the Kravica-Konjević Polje road was searched on the stated day, the Court relied on the testimony of this witness and witness Dragomir Vasić, and on the Prosecution exhibits admitted in the case file (Drina Corps Regular Combat Report of 19 July 1995).

223. Having examined and evaluated the presented evidence, the Court concluded that random killings of captured people took place during the search of the terrain, which was not disputed by the Defense Counsel for the Accused.

224. However, the evidentiary procedure relevant to Count 3 of the Indictment focused on the acts of perpetration specifically charged against Zoran Ilić.

225. In brief, the point of dispute among the parties and the defense counsel was whether the man who was deprived of his life on the relevant occasion was killed by the Accused Zoran Ilić or by someone else.

226. The testimony of Prosecution Witness NI-101 about this incident is particularly relevant, since he stated that the search of the terrain lasted two days and his unit did not participate in the search on the first day.¹³

227. However, responding to the Prosecutor's question if he had the opportunity to see any murder during the search, the witness gave a positive answer and added that he had the opportunity to see a murder of a young boy aged between 19 and 21 years.¹⁴

228. The witness saw the murder from a distance of around 30 meters and, according to him, the young boy was killed by a person whose nickname was "Simo from Alipašino."¹⁵

229. However, when examining the witness, the Prosecutor insisted on the transcripts made during the investigation, in which the witness named the Accused Zoran Ilić as the person who committed this murder.

230. When asked by the President of the Panel to explain why he changed his testimony, the witness said that he had known the Accused Zoran Ilić, but that Ilić had not committed the murder.

231. Responding to a question if he was afraid of the Accused or his family, the witness said he was concerned because he had been forced to give such a false statement with regard to the Accused Zoran Ilić.¹⁶

232. Responding to the questions about the transcripts made during the investigation, the witness said that he had experienced major inconveniences when giving his statement under the investigation. Members of his household and/or close family members also suffered consequences of investigators' actions.¹⁷

¹³ Transcript of 6 September 2011, page 28.

¹⁴ Transcript of 6 September 2011, page 28.

¹⁵ Transcript of 6 September 2011, page 28.

¹⁶ Transcript of 6 September 2011, page 34.

¹⁷ Transcript of 6 September 2011, pages 42, 43 and 44.

233. When specifically asked by the President of the Panel as to why he changed his statement given during the investigation and how his investigative statement was taken, Witness NI-101 said that the statements were taken under pressure, taking advantage of his personal situation.

234. The witness added that even at present he had to live with the fact that he was labelled as a deserter. Also, he experienced inconveniences in communication with the investigator Bajro Kulovac, who allegedly used to say that he could always "send a witness to prison for a year and find people to testify accordingly".¹⁸

235. Taking into account the allegations made by Witness NI-101 about the circumstances under which the transcripts were made during the investigation, his testimony at the main trial on 6 September 2011 and his testimony in general, together with certain inconsistencies therein which occurred depending on who examined him, the Court could not find this witness to be credible and consistent, that is, the Court concluded that his statements were largely dependent on the manner of examination and on who questioned him.

236. Here we should refer to the investigative statement given by Witness NI-101 on 26 March 2009, when Witness NI-101 recognized Ilić a.k.a. "Cindin" on the photographs. In contrast, the Witness NI-101 did not recognize Ilić when he testified on 10 November 2009.

237. Thus, having in mind the implausible credibility of Witness NI-101 and the fact that the Prosecution did not adduce any other piece of evidence in this proceeding that could directly corroborate the offenses charged against the Accused Zoran Ilić under Count 3 of the Indictment, the Court applied the *in dubio pro reo* principle set forth in Article 3 of the CPC of BiH and decided to acquit the Accused Zoran Ilić of the charges under Count 3 of the Indictment of the Prosecutor's Office of BiH.

E. WITNESSES NI-104 AND S-115

238. The testimony of Witness NI-104 and Witness S-115 served as crucial evidence with regard to the culpability of the Accused Dragan Nešković for the killing of two Bosniak

¹⁸ Transcript of 6 September 2011, pages 45 - 48.

men, that is, the part of the Indictment which alleged that the Accused Dragan Nešković ordered two members of the Jahorina Training Centre known to him to deprive two captured male Bosniaks of their lives.

239. These witnesses were members of the Jahorina Training Center, whom the Accused Dragan Nešković allegedly ordered to take away the two Bosniak men and deprive them of their lives. According to the witnesses, they obeyed the order.

240. Notwithstanding that Witness NI-104 and Witness S-115 gave a very similar account of the murder of two male Bosniak civilians, the Court did not find their testimony credible.

241. The fact is that the other parts of their testimony were largely inconsistent, both individually and in correlation with the other presented evidence.

242. According to witness NI-104, the command structure of a platoon consisted of a platoon commander and/or commander-instructor and platoon commander, where commander was subordinated to commander-instructor.¹⁹

243. Specifically, Goran Marković was assigned as an instructor, that is, as instructor-commander of the platoon to which witness NI-104 belonged, while the Accused Dragan Nešković was assigned as the commander on behalf of the deserters.²⁰

244. Obviously, this portion of this witness testimony is unclear, illogical and self-contradictory.

245. According to the witness, when they lined up, the instructors and Jević simply assigned the Accused Dragan Nešković as commander on behalf of the deserters.²¹

246. The witness did not say precisely if the Accused Dragan Nešković was the commander of all deserters or only one company, platoon or squad. He simply stated that the Accused was the commander on behalf of the deserters. However, there was not a single piece of evidence confirming that such a position ever existed, quite the opposite. The Prosecutor did not present any evidence about potential duties and responsibilities of the commander on behalf of the deserters; moreover, nothing was presented to prove that

¹⁹ Transcript of 31 May 2011, page 33.

²⁰ Transcript of 31 May 2011, page 15.

the person possibly assigned to that position could have the authority to order his subordinates to commit a murder.

247. Contrary to the allegations of Witness NI-104, Prosecution Exhibit T-36 (Document - Police Brigade Command for ATO (anti-terrorist operations)), did not mention the name of the Accused Dragan Nešković among the commanding officers, but it mentioned the name of Goran Marković (under number 61) who was in charge of the witness' platoon. More importantly, the document mentioned the name of Jevto Doder, who was examined as a Prosecution witness in this proceeding. When testifying about the commanding officers of the Jahorina Training Center, Doder upheld the statement given on 27 January 2009 (Exhibit T-2) and firmly stated that platoon commanders, by their function, were assigned as instructors, and he practically gave the names of all commanding officers of the Center.²²

248. It clearly follows from such Jevto Doder's testimony that the function of the platoon commander was not divided, that is, there was only one platoon commander and he was the instructor – in this case, it was Goran Marković.

249. In addition, we should point out the discrepancy between the testimony of Witness NI-104 and Witness S-115 who also stated that instructors were assigned as platoon commanders, and that the commander of his platoon was Marković.²³

250. Therefore, the testimony of Witness NI-104 regarding the position of the Accused Dragan Nešković and/or his position of a superior – platoon commander or commander on behalf of deserters – was obviously deficient, unsupported by other evidence, and unreliable.

251. This conclusion clearly followed from the fact that the witness, when examined about the command structure and commanding officers, gave unclear and confusing answers.²⁴

252. The investigative statement given by this witness on 13 May 2009 needs to be examined in this context. While Witness NI-104 recognized the platoon commander Goran

²¹ Transcript of 31 May 2011, pp. 15, 33 and 34.

²² Audio record of 15 February 2011, 03:32:30-03:37:05 hrs.

²³ Transcript of 24 May 2011, page 20.

²⁴ Transcript of 31 May 2011, pages 35, 38 and 73.

Marković in the photo album, he was completely unable to recognize the Accused Dragan Nešković.

253. It is illogical that Witness NI-104 could not recognize the person who ordered him to do something that he himself claims would never do, more precisely something that would never even cross the witness' mind, and something as important as the killing of a human being.²⁵

254. On the other hand, as it has already been stated, Witness NI-104 recognized Goran Marković - *commander-instructor* of his platoon.

255. When this witness spoke about the command structure of his platoon, he referred to Witness S-115 as his direct superior. With regard to the alleged superior and command authority of the Accused Dragan Nešković, the witness stated that Nešković was in charge of the morning line-up on Jahorina, and that he was authorized to issue orders.

256. In contrast, Witness S-115 resolutely denied his commanding role. According to him, the fact that once when his unit was lined-up, he stood in front of the line, could not be taken to conclude that he had a commanding duty.²⁶

257. On the other hand, the fact that the Accused Dragan Nešković stood in front of the line of soldiers bore much more importance. According to the consistent testimony of Witnesses NI-104 and S-115, this action of the Accused made him part of the commanding officers in the unit.

258. More precisely, according to Witness S-115, the Accused Dragan Nešković was assigned "*as a ... maybe ... how to put it ... a lower officer or something like that*".²⁷

259. At this point, we should make reference to the testimony of Witness S-115. According to the witness, the Accused Dragan Nešković was brought in front of the lined-up company, which implies that a possible command position of the Accused could be linked to a company, not to a platoon, as Witness NI-104 stated.

260. Finally, yet another portion of the testimony of Witness S-115 should be pointed out. As stated by this witness, the Accused was not addressed as "*commander*" or in

²⁵ Transcript of 31 May 2011, pages 71 and 72.

²⁶ Transcript of 24 May 2011, pages 40 and 41.

another similar way, he did not have any insignia of rank on his shoulder straps, and it was instructors-active police officers who were assigned as platoon commanders, not deserters.²⁸

261. Such allegations of Witness NI-104 and Witness S-115 leave the impression that they in fact could not precisely describe the duties of the Accused Dragan Nešković. However, this is entirely illogical since one of the most important characteristics of the units which are organized as brigades, battalions, detachments, companies, platoons and squads is their precisely defined, functional and fully developed superior-subordinate relationship.

262. In addition to the establishment rank, such relationship clearly includes the scope of decisions which every commander can independently make in accordance with his position.

263. In this case, apart from the unclear and unconvincing testimony of Witnesses NI-104 and S-115, the Prosecution did not present any other evidence relevant to the scope of decisions which the Accused Dragan Nešković could make as the alleged *platoon commander on behalf of the deserters* or as a *lower officer*.

264. Consequently, the Prosecution failed to prove that the request-instruction-suggestion, if any, made by the Accused Dragan Nešković to Witness NI-104 and Witness S-115 to deprive two Bosniak men of their lives, could be considered as an order, and that its enforcement could be considered as acting pursuant to the order.

265. Given that the alleged order in this specific case concerned the killing of two Bosniak men, that is, the order obviously exceeded the scope of everyday routine, and significantly departed from the usual morning line-up assignments, the Court was not satisfied that the Accused Dragan Nešković had the authority to order the murder.

266. In fact, the testimony of Witness S-115 implied that the Accused, as a *lower officer*, definitely could not issue such an order.

267. Ultimately, Count 2 of the Indictment contains a factual inconsistency which needs to be pointed out. First, it alleges that the Accused Dragan Nešković, as a member of the

²⁷ Transcript of 24 May 2011, page 10.

firing squad, **was ordered by another** to execute the captives, and then he, **as a commander**, issued the order to deprive two captured male Bosniaks of their lives.

268. However, the Prosecution failed to present evidence that would clarify this inconsistency, but instead they took unreliable allegations of Witness NI-102 and unsubstantiated assertions of Witnesses NI-104 and S-115 to reach their conclusion about the existence of those crucial facts.

269. There is another inconsistency relevant to the acts of Witnesses NI-104 and S-115 which has to be indicated. The two witnesses were first deployed on the road on the order of Mendeljev, but when they heard shooting and explosions, they headed in the direction of the warehouse.

270. It follows from the testimony of Witness S-115 that he was deployed on the road, and he went to the warehouse two times, first time during the night, and the second time in the morning hours.

271. According to Witness S-115, the second time he went to the hangar, he was allegedly ordered by the Accused Dragan Nešković that he and Witness NI-104 take the two men down the road and kill them.

272. Asked what he was thinking about at that moment, Witness S-115 answered that he was mostly scared and confused. As he explained, his worst fear was that they would be kept in front of the hangar, assigned to carry out the executions.

273. Such a reaction of witness S-115 would be reasonable and normal, if he had not stated that all this happened the second time he came in the vicinity of the warehouse and that he had already known what was going on there.

274. According to the witness, the first time when he came near the warehouse during the night, he wanted to see what was going on.

275. He found out then that some people were executed.

276. Thus, notwithstanding that the witness knew that executions were carried out near the warehouse, and he even informed some colleagues about that, Witness S-115 still

²⁸ Transcript of 24 May 2011, pages 48, 49 and 66.

headed in the direction of the warehouse together with Witness NI-104 for reasons that are completely inexplicable.

277. The witness attempted to explain his action under the pretext of going there again to see what was going on, saying that he did something which the Accused Dragan Nešković allegedly told him to do (although it was not said in a usual, formal, commanding tone or order), because he was afraid and confused. The Court dismissed this explanation as entirely illogical and contradictory.²⁹

278. It is indeed almost impossible to explain why would someone who knew that executions were taking place near the hangar go back there. On top of that, a question arises as to how the witness managed to overcome his feeling of fear and confusion caused by the possibility to be assigned to participate in the executions.

279. Witness NI-104 did not provide any better explanation either. According to him, when Witness S-115 and he saw the bodies in front of the warehouse, they wanted to return, but on their way back the Accused Dragan Nešković intercepted them, sent them back and told them to kill the two men. They were so shocked that, just like two robots, they did what the Accused Dragan Nešković allegedly told them to do.³⁰

280. It should be noted here that neither Witness NI-104 nor Witness S-115 denied they were close friends, nor did they deny they were together on the road while executing their assignment.

281. The Court was not convinced that these two witnesses were in a such severe state of shock that they allegedly executed the order without much thinking.

282. Since it follows from the testimony of Witness S-115 that they were talking among themselves about the executions that were carried out near the hangar³¹, which means that they were aware of them, and that Witnesses S-115 and NI-104 were consistent in stating that they were together near the road at that time, it was impossible for the Court to accept the explanation of these witnesses that, although they were aware of the executions, they nevertheless went to the hangar to see what was going on there and that they were overwhelmed by shock and fear at that moment.

²⁹ Transcript of 24 May 2011, pages 10, 15, 16, 64 and 67.

283. Finally, the witnesses were entirely unconvincing in claiming that they had understood the words of the Accused Dragan Nešković as an order, without even thinking about releasing the men whom they subsequently executed and/or about the consequences of their failure to execute the order.

284. Responding to questions about potential refusal to execute the order issued by the Accused Dragan Nešković, Witness NI-104 answered that he did not know what would have happened to him, more precisely, he never thought about that at all.

285. Finally, when asked to explain why he acted upon the alleged order of the Accused, Witness NI-104 said that he did not know what else to do.³²

286. Replying to the questions asked by the Defense Counsel for the Accused Dragan Nešković about the alleged order, Witness NI-104 said that they could have simply released the people whom they were allegedly ordered to kill and let them escape, but they simply did not do that. In addition, they were never asked to report about the execution of the alleged order.³³

287. Witness S-115 too did not mention in his testimony that they were ever asked to report about the execution of the alleged order issued by the Accused. With regard to a possible sanction for the failure to execute the order, Witness S115 stated he was afraid that he and Witness NI-104 would be kept in front of the hangar and ordered to participate in the executions.

288. However, such interpretation of Witness S115 is internally contradictory and/or inconsistent with the fact that the witness knew what was going on in front of the hangar because he had already been there, but he nevertheless went towards the hangar again together with Witness NI-104 and of his own free will.

289. Finally, it is entirely illogical that they abandoned their positions to which they were deployed on the express order of Mendeljev, only because they wanted to find out something that Witness S-115 already knew.

³⁰ Transcript of 31 May 2011, pages 23-27 and 64.

³¹ Transcript of 24 May 2011, page 67.

³² Transcript of 31 May 2011, pages 75 and 77.

³³ Transcript of 31 May 2011, pages 45 and 46.

290. Besides, willful abandoning of the position to which he was deployed on the order of his superior is absolutely inexplicable, especially in view of the fact that Witness S-115 exercised command duty, according to Witness NI-104.³⁴

291. It should also be noted that these two witnesses were inconsistent when they testified about the Accused Zoran Ilić, since the crucial parts of their testimony and the key facts were conflicting.

292. According to witness S-115, while approaching the hangar together with Witness NI-104, he could hear cries and he saw lots of bodies.

293. However, when responding to the questions asked by the Defense Counsel for the second Accused, Witness S-115 said that he had an unobstructed view when he arrived near the warehouse, but he did not notice anything unusual.

294. Responding to an additional question, if he heard shooting, Witness S-115 said that he did not hear any shooting, and he assumed that he would have noticed if something like that had indeed happened.³⁵

295. As opposed to Witness S-115, Witness Ni-104, who came in front of the warehouse with Witness S-115 on the relevant occasion, said that he heard cries and saw a pile of dead bodies and he also saw the Accused Zoran Ilić in front of the warehouse, firing at the pile of bodies.³⁶

296. Obviously, the two witnesses gave completely different accounts of the key fact. One of them claimed to have seen the Accused Zoran Ilić firing at the dead bodies, whereas the other witness, although not negating that the two of them were together on the relevant occasion, denied to have seen the Accused Zoran Ilić, moreover, he denied to have noticed any shooting, even though he had an unobstructed view to the area.

297. In view of all these inconsistencies and contradictions in the testimony of these two witnesses, whose interest was to provide a distorted and fabricated interpretation of the relevant incidents in order to diminish their own responsibility for the killing of the two Bosniak civilians, the Court could not accept their testimony as credible.

³⁴ Transcript of 24 May 2011, pages 43, 48 and 71.

³⁵ Transcript of 24 May 2011, pages 15, 16 and 60.

³⁶ Transcript of 31 May 2011, page 25.

298. Since no credence was given to the testimony of the two witnesses, the Court proceeded as stated in Section C of the Reasoning of the Verdict.

F. WITNESS NI-102

299. Witness NI-102 testified as a Prosecution witness to the circumstances described under Count 2 of the Indictment.

300. It follows from the testimony of this witness that he saw the execution of a group of around 80 to 100 men, who were first called to get out of the warehouse, whereafter they were executed. He also saw 2-3 soldiers going through the bodies and killing the men who survived the execution.

301. However, this witness was unable to provide clear and firm answers to the key questions with respect to the allegations of the Indictment.

302. The witness was unable either to confirm or to deny that the Accused Dragan Nešković participated in the execution of the mentioned group of men as a member of the execution squad.

303. According to Witness NI-102, the Accused Dragan Nešković was near the group of men who were killed, but in addition to the Accused Nešković, there were around 40-50 members of the unit to which Witness NI- 102 and the Accused belonged at that site, as well as some 40-50 other people in uniforms who did not belong to the witness' unit.³⁷

304. The witness denied that any order was issued, shooting simply started at one point and everything lasted for about 3-5 minutes.³⁸

305. Responding to the key question – who fired at the lined up men, and/or if the Accused Dragan Nešković was among the soldiers/policemen who fired, the witness said that he was in a state of shock and he did not know who was shooting.³⁹

306. Finally, with regard to the Accused Dragan Nešković, Witness NI-102 did not confirm there was any execution squad, but only that there was shooting and people were killed.

³⁷ Transcript of 21 June 2011, pages 28 and 44.

³⁸ Transcript of 21 June 2011, 18 and 44.

³⁹ Transcript of 21 June 2011, page 44.

307. When speaking about the “*finishing off*”, witness NI-102 stated that the majority of men were killed during the execution, but some people survived, and the witness saw two or three men going through the rows and executing the survivors.⁴⁰

308. One of those men who killed the survivors was a member of the witness’ unit, however, when specifically asked by Defense Counsel if it was the Accused Zoran Ilić, the witness expressly stated it was not him.⁴¹

309. In brief, it follows from the testimony of Witness NI-102 that the people who went out of the warehouse, between 80 and 100 men, were executed, while those who survived the execution were subsequently killed by 2-3 individuals.

310. Witness NI-102 did not confirm that the Accused Dragan Nešković was in the execution squad which was ordered to kill the people, quite the opposite, the witness explained that no order was issued, more precisely, he did not hear any order. According to him, the Accused Dragan Nešković was at the relevant site with 80-100 armed people, but the witness could not tell who fired at the men, nor could he confirm that all of them were shooting; he only stated that a shooting occurred and lasted 3-5 minutes.

311. The testimony of Witness NI-102 in respect of the Accused Zoran Ilić was equally imprecise, that is, for the most part, it did not support the Prosecution’s allegations.

312. It follows from the testimony of this witness that 2-3 individuals participated in the execution of survivors, among whom he recognized one member of his unit, but it was not the Accused Zoran Ilić. The witness could not identify the other two persons.

313. Responding to questions about the personality of the Accused Dragan Nešković and Zoran Ilić, the witness stated he had never heard that the Accused Dragan Nešković issued any order to kill anyone, nor had he ever seen or heard that the Accused killed anyone.⁴²

314. Same as for the Accused Dragan Nešković, Witness NI-102 stated he never heard that the Accused Zoran Ilić had committed any killings at the relevant site.⁴³

⁴⁰ Transcript of 21 June 2011, page 18.

⁴¹ Transcript of 21 June 2011, page 39.

⁴² Transcript of 21 June 2011, page 32.

⁴³ Transcript of 21 June 2011, page 40.

315. Therefore, the testimony of Witness NI-102 did not generally corroborate the charges under Count 2 of the Indictment. The Prosecution did not present any evidence in support of the participation of the Accused in those offenses, other than the testimony of Witnesses NI-104 and S-115, whom the Court did not find credible, nor did the Prosecution present any evidence to prove the required *mens rea* for both Accused. Taking all this into account, the Court decided as stated and explained in Section C of the Reasoning of the Verdict.

VI. CONCLUSION

316. Having conducted the evidentiary procedure, the Court concluded that the Prosecution did not present the evidence of such quality and nature which would prove beyond any reasonable doubt the culpability of the Accused.

317. As said earlier, the parties did not dispute in general that the relevant incidents did indeed occur.

318. More precisely, the incidents that took place at the relevant site and at the time relevant to the Indictment were interpreted differently and different evidence was presented about the total number of victims.

319. However, notwithstanding that the Prosecution and the Defense generally agreed that the incident itself indeed took place, the parties disagreed about the participation of the Accused therein.

320. The Prosecutor argued that the Accused participated in the attack on civilians and that their acts had such weight and importance so as to constitute part of the attack.

321. Abundant evidence was presented and a number of witnesses were examined, including some eye-witnesses. Taking into account the entire body of evidence and all factors that could affect the perception of the witnesses, including fear, shock, age, their interest in diminishing their own criminal responsibility, inconsistencies when testifying to the decisive facts and alike, the Court could not conclude beyond any reasonable doubt that the Accused were guilty as charged. As a result, the Court applied the provisions of Article 284(c) of the CPC of BiH and rendered a Verdict acquitting the Accused of the charges under Counts 1, 2 and 3 of the Indictment.

VII. DECISION ON THE COSTS OF THE PROCEEDING AND CLAIMS UNDER PROPERTY LAW

322. Pursuant to Article 189(1) of the CPC of BiH, the Panel relieved the Accused Dragan Nešković and Zoran Ilić of the obligation to reimburse the costs of the criminal proceedings under Article 185(2)(a) through (f) of this law, so that these costs, together with the necessary costs of the Accused and remuneration and expenses of the Defense Counsel, shall be paid from within the budget appropriations of the Court.

323. Pursuant to Article 198(3) of the CPC of BiH, the injured parties are referred to pursue their property law claims by taking civil action.

RECORD-TAKER

Legal Advisor

Emil Pinkas

PRESIDING JUDGE

Minka Kreho

LEGAL REMEDY: An appeal from this Verdict may be filed within 15 days of the receipt of the written copy thereof.

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IX. ANNEX (PRESENTED EVIDENCE)

A. PROSECUTION EVIDENCE

1. Witnesses

1. Jevto Doder
2. Mile Janjić
3. Erić Zoran
4. Haso Hasanović
5. Ilija Nikolić
6. Dragoimir Vasić
7. Jovan Nikolić
8. Witness S-117
9. Witness S-116
10. Mićo Gavrić
11. Živorad Lakić
12. Witness NI-100
13. Witness S-115
14. Witness NI-104
15. Witness NI-102
16. Witness NI-110
17. Elco Koster
18. Witness NI-118
19. Witness NI-101
20. Dean Manning
21. Joseph Kingori
22. Vicentius Egbers
23. Richard Butler
24. NI-121
25. Vedo Tuco (expert witness)

2. Documentary evidence

- T-1 - Video record about the events in Srebrenica with transcripts - compilation;
- T-2 - Witness Examination Record for Jevto Doder No. KT-RZ-101/07 of 27 January 2009;
- T-3 - Photograph of Potočari;
- T-4 - Photographs presented at the main trial hearing on 22 February 2011 listed under number 103 in the Indictment against Dragan Nešković, and under number 91 in the Indictment against Dragan Crnogorac; they bear ICTY marking;
- T-5 - Record of Statement taken from Zoran Erić in the Ministry of Internal Affairs, Public Security Center Bijeljina, No: 12-02/4 of 19 June 2005;
- T-6 - Order No: 64/95 of 10 July 1995;
- T-7 - Response to Dispatch No: k/p-1-407/95 of 12 July 1995;
- T-8 - Dispatch No: 281/95 of 12 July 1995;
- T-9 - Dispatch No: 282/95 of 13 July 1995;
- T-10 - Dispatch No: 283/95 of 13 July 1995;
- T-11 - Dispatch No: 284/95 of 13 July 1995;
- T-12 - Dispatch No: 12-6/08-508/95;
- T-13 - Dispatch No: 01-16-02/1-205/95 of 15 July 1995;
- T-14 - Dispatch No: 01-16-02/1-206/95 of 17 July 1995;
- T-15 – Order No: 61/95 of 17 July 1995;
- T-16 - Dispatch No: 12-6/08-529/95 of 18 July 1995;
- T-17 - Dispatch No: 12-6/08-534/95 of 19 July 1995;
- T-18 - Dispatch No: 01-16-02/1-221/95 of 22 July 1995;
- T-19 - Information about the incident with General Mladić No: 01-16-02/1-231/95 of 28 July 1995;
- T-20 - Photographs;
- T-21 - Photograph of the warehouse;
- T-22 - Witness Examination Record for Jovan Nikolić of 14 April 2009;
- T-23 - Photograph of Potočari;
- T-24 – ICTY photograph of the meadow P9.3;
- T-25 - Photograph with witness Živorad Lakić's marks;
- T-26 - Photograph with witness NI-100 marks;
- T-27 - Photograph with witness S-115 marks;
- T-28 - Photograph with witness S-115 marks;

T-29 - Photograph with witness S-115 marks;

T-30 - Photograph with witness NI-104 marks;

T-31 - Photograph with witness NI-110 marks;

T-32 – Map of the Srebrenica Enclave;

T-33 - Jahorina Training Center List;

T-34 – Separate List of specialist team members – Jahorina;

T-35 – Photograph of Kravica;

T-36 – List of RS MUP Special Brigade members

T-37 – Special Police Brigade - ICTY;

T-38 – Organizational Chart of the RS Police in the Drina Corps AOR - ICTY;

T-39 – Photograph of Kravica signed by Ni-118;

T-40 – Photograph of Glogova with NI-118 marks;

T-41 – Witness Examination Record for NI-101 No: 17-04/2-6-04-2-322/09 of 26 March 2009 with transcript;

T-42 - Witness Examination Record for NI-101 No: 17-04/2-6-04-2-323/09 of 27 March 2009 with transcript;

T-43 - Witness Examination Record for NI-101 No: KT-RZ-101/07 of 10 November 2009 with transcript;

T-44 – Dr. Vedo Tuco’s Expert Witness Report of 12 February 2007, 15 February 2011 and 14 May 2010, 16 April 2010, CDs and additional expertise;

T-45 – Map with marked mass graves;

T-46 – Aerial photograph of mass graves in Zeleni Jadar;

T-47 – Dr. Vedo Tuco’s updated chart;

T-48 – Instructions for establishing standards of criminal prosecution; Military Prosecutor’s Office at the VRS Main Staff 00760330;

T-49 – Order on Application of military law in the Bosnian Serb Army of the Republic of BiH, Official Gazette of the Serb People of 13 June 1992, issued by Radovan Karadžić;

T-50 - Directive No.4 of 19 November 1992, author Ratko Mladić;

T-51 – United Nations Security Council Resolution No. 819 of 16 April 1993;

T-52 – Operational Directive No.7/1, Dt br. 02/2-15 of 8 March 1995, Supreme Command of the RS Armed Forces, issued by Commander-in-Chief Radovan Karadžić;

T-53 - Operational Directive No.7/1, br. Dt 2/2-15 of 31 March 1995, Main Staff of the Army of Republika Srpska, Commander Ratko Mladić;

T-54 – Interim and Combat Report of the 1st Bratunac Brigade Command, *strictly confidential* no. 03/253-54-1 of 25 May 1995, author Colonel Vidoje Blagojević;

T-55 - Radovan Karadžić's Order to introduce the highest state of combat readiness No. 01-1118/95 of 16 June 1995;

T-56 - Milenko Živanović's Order of 2 July 1995, No. 04/156-2;

T-57 - Dossier 37 - UNMO and UNPROFOR Reports on the military situation between 6 and 18 July 1995;

T-58 – Order for mobilization of all conscripts dated 10 July 1995, author Vidoje Blagojević;

T-59 – Security Bulletin No. 200 of 12 July 1995, Bijeljina MUP;

T-60 – Order for provision of buses for evacuation No. 22/226 of 12 July 1995;

T-61 – Dispatch by Dragomir Vasić, Zvornik PSC, No. 277/95 of 12 July 1995;

T-62 - Zeleni Jadar - grave, disturbed land, dated 20 October 1995 and 23 October 1995, ICTY R041-0658;

T-63 – Two versions of the Drina Corps Command Order to prevent the Muslim groups from passing through towards Kladanj and Tuzla, No. 03/156-12 of 13 July 1995, author Milenko Živanović;

T-64 – Regular Combat Report of 13 July 1995, author Radislav Krstić;

T-65 – Supply of information to the Deputy Minister of 14 July 1995, author Dragan Kijac;

T-66 - Regular Combat Report No. 38-56 of 14 July 1995, author Mile Simanić, Deputy Commander of the 5th Engineers Battalion;

T-67 - Dispatch of the VRS Bratunac Brigade, *strictly confidential*, number: 03/253-108/1 of 17 July 1995;

T-68 - Regular Combat Report of 17 July 1995, author Mile Simanić;

T-69 - Regular Combat Report of the Drina Corps Command, *strictly confidential no. 03/2-219* of 17 July 1995, author Major General Radislav Krstić;

T-70 – Interim Combat Report of the Drina Corps Command re: the situation in the 1st Zvornik Brigade AOR, *strictly confidential no. 03/2-221* of 18 July 1995, author Major General Radislav Krstić;

T-71 - Regular Combat Report of the Drina Corps Command, *strictly confidential no. 03/2-222* of 18 July 1995, author Major General Radislav Krstić;

T-72 - Regular Combat Report of the Drina Corps Command, *strictly confidential no. 03/2-223* of 19 July 1995, author Major General Radislav Krstić;

T-73 - Report on the engagement of the Special Police Brigade forces and other forces in the “Srebrenica '95” operation from 10 July to 21 July 2011, rapporteur Ljubomir Borovčanin;

T-74 - Procedure for treatment of war prisoners, author Milomir Savčić;

T-75 - Brochure - Book for Identification of Bosnian Muslims;

T-76 - Map – The Movement of the Column and Bosnian Serb positions, ICTY;

T-77 – Map showing the movement of the column;

T-78 – Photograph of the Sandići valley of 13 July 1995;

T-79 – Enlarged photograph of the Sandići valley;

T-80 - Photograph made from the direction of Bratunac, in the area between Kravica and Sandići, with the warehouse marked;

T-81 - Photograph of the back of the warehouse and remains of the cornfield;

T-82 - Photograph of the roof-beams on the west side with traces of blood;

T-83 - Photograph of the internal west part of the warehouse with blood stains on the wall;

T-84 - Photograph of shoeprints bellow the window;

T-85 - Magnified photograph of a shoeprint below the window;

T-86 - Map of primary and secondary graves, ICTY;

T-87 - Photo of ID for Ahmo Kadrić, from Glogova;

T-88 – Photograph of disturbed soil, Glogova, 30 October 1995;

T-89 – Additional photograph of disturbed soil, Glogova, 9 November 1995;

T-90 - Zeleni Jadar, secondary grave, ICTY;

T-91 - Aerial photograph - Zeleni Jadar, disturbed soil, 7 September and 2 October 1995, ICTY;

T-92 - Aerial photograph - Zeleni Jadar, disturbed soil 24 August and 2 October 1995, ICTY;

T-93 – Documents about exhumation at Sandići site, Cantonal Prosecutor’s Office in Tuzla, No. KTA-1137/04, June/July 2004 with a CD copy (original in Jević case);

T-94 – Sketch of the crime scene No. 14-13/1-7-243/05 of 4 October 2005;

T-95 - Four Summaries of the forensic evidentiary material made by Dean Manning, May 2000, February 2001, August 2003, November 2007;

T-96 - Laboratory finding – automatic ballistic comparison of 24 February 2000 made by Forensic Science Laboratory - Bureau of Alcohol, Tobacco, Firearms and Explosives;

T-97 - Forensic analysis of explosives based on the samples taken from various locations in Srebrenica, The Netherlands Forensic Institute;

T-98 - Assessment of a minimum number of persons exhumed by the ICTY between 1996 and 2001, January 2004, author Jose Pablo Baraybar;

T-99 - Report on excavation and exhumation of Glogova 1 mass grave in 2000, Richard Wright, 9 February 2001;

T-100 - Forensic Investigation of the Cerska Grave Site, dated 15 June 1998, dr. William Haglund;

T-101 – Report of the Chief Pathologist of the Srebrenica grave, ICTY, John Clark, 1999;

T-102 – Report on Excavation and Exhumations at the Glogova 2 mass grave 1999-2001, Forensic Anthropologist Jose Pablo Baraybar;

T-103 – Report on military events in Srebrenica – Operation “Krivaja 95”;

T-104 - Report on command responsibility at the VRS brigades, Richard Butler;

T-105 - Report of the American Naval Investigation Service on examination and finding of evidence at a warehouse in Kravica;

T-106 - Report on the number of missing persons and dead persons in Srebrenica by H. Brunborg and H. Urdal;

T-107 - Additional Report on the number of missing persons and dead persons in Srebrenica by Helga Brunborg, 12 April 2003, Oslo;

T-108 – Report on the examination and recovery of evidence from the Kravica Warehouse, Michael Hedley, March 2001;

T-109 - Report on blood and tissue samples found in Grbavica school and Kravica warehouse;

B. EVIDENCE FOR THE ACCUSED DRAGAN NEŠKOVIĆ

1. Witnesses

1. Ljubiša Simić
2. Milan Stojčinović

2. Documentary evidence

OI-1 – Witness Examination Record for citizen Haso Hasanović, Agency for Investigation and Documentation of BiH (AID), AID Sector Tuzla No. S-8/02-932/97 of 5 June 1997;

OI-2 - Witness Examination Record for Jovan Nikolić No. KT-10/05 of 10 October 2005;

OI-3 – Photograph marked by witness Jovan Nikolić;

O-I-4 - Transcript of testimony of witness S-115 of 13 July 2007;

O-I-5 - Transcript of testimony of witness S-115 of 6 February 2009;

O-I-6 - Transcript of testimony of witness S-115 of 8 December 2009;

O-I-6A - Transcript of testimony of witness S-115;

O-I-7 - Witness Examination Record for S-115 No. KTRZ-101/07 of 14 January 2010;

O-I-8 - Witness Examination Record for S-115 in the Prosecutor's Office of BiH No. T20 0 KTRZ 0000565 10, T20 0 KTRZ 000534 1 of 1 September 2010;

O-I-8 A - Transcript of testimony of witness S-115;

O-I-9 - Witness Examination Record for NI104 KT-RZ-101/07 of 13 May 2009;

O-1-10 - Witness Examination Record for Elco Koster of 25 and 26 September 1995 made by ICTY investigators;

O-1-11 – Certificate issued by the General Administration Department of Sokolac Municipality of 26 January 2009, photocopy, original presented to the Court;

O-1-12 – Document No. 764/95 issued by RS MUP Pale on 23 June 1995, certified by ICTY;

O-1-13 – Order No. 01-509-1/95 issued by President of the Republic Radovan Karadžić of 21 March 1995;

O-1-14 – Document No. 273/95 by RS MUP of 23 March 1995;

O-1-15 – Document No. 03/156/11 issued by Drina Corps Command of 13 July 1995;

O-1-16 – Document No. 577/95 issued by RS MUP of 12 July 1995;

O-1-17 – Document No. 11-01 –OD-261/95 issued by Bijeljina PSC of 14 July 1994;

O-1-18 – Order No. 04/254-58 of the 1st Bratunac Light Infantry Brigade Command of 10 July 1995;

O-1-19 – List of War Criminals known to the Command of the 1st Bratunac Light Infantry Brigade of 12 July 1995;

O-1-20 – Document No. 02/520-2 of the Staff of the Supreme Command of the Armed Forces of R BiH of 20 April 1993;

O-1-21 – Document No. 1/825-84 of the Main Staff of the Army of BiH of 17 June 1995;

O-1-22 - Document No. 02/1-670/4 of the Army of BiH 2nd Corps Command of 28 June 1995;

O- 1-23 – Document No. 04.-114/95 of the 28th Division Command of 30 June 1995;

O-1-24 - Document of the Main Staff of the Army of BiH of 30 July 1996;

O-1-25 – Document of the Army of BiH 2nd Corps Command of 28 August 1995;

O-1-26 - Document No. 04/1-105-603 of the Army of BiH 2nd Corps Command of 8 July 1995;

O-1-27 – Amended Indictment No. KT-RZ-101/07 in the case of Duško Jević of 6 March 2012.

C. EVIDENCE FOR THE ACCUSED ZORAN ILIĆ

1. Witnesses

1. Miodrag Josipović
2. Jakov Kosanović
3. Nikola Petrović
4. Zoran Jovanović
5. Neđo Nikolić
6. Borivoje Jovanović
7. Dragomir Jovanović
8. Mirko Mičić
9. Petar Zorić
10. Radivoje Ilić
11. Petko Tešić
12. Mirko Dragičević
13. Duško Nikolić
14. Srbislav Davidović
15. Zdravko Dačić
16. Željko Vasić
17. Žarko Matić
18. Krstić Ranko
19. Ljubiša Simić (expert witness)

2. Documentary evidence

- OII-1 – Witness Examination Record for Haso Hasanović, State Investigation and Protection Agency, number: 17-04/2-6-04-2-387/09 dated 16 April 2009;
- O-II-2 – Photograph of the warehouse marked by witness S-115;
- O-II-3 – Witness Examination Record for S-115;
- O-II-4 - Transcripts with enclosed photographs;
- O-II-5 – Decision on appointment of the Civil Commissioner of the municipality of Srpska Srebrenica;
- O-II-6 – Photographs 1, 2, 3 list of proposed evidence No. 35;
- O-II-7a – Order for expert evaluation;
- O-II-7b – Report on forensic findings;

O-II-8 - Photographs 1, 2, 3 list of proposed evidence No. 35;

O-II-9 a,b,c - Master file for Žarko (Miloje) Matić;

O-II-10 - Srebrenica Demilitarization Agreement of 8 May 1993;

O-II-11 – Preparation order *op. no. 1* of 2 July 1995;

O-II-12 – Order on Active Combat Operations *op.no.1*, Drina Corps Command, strictly confidential No. 04/156, dated 2 July 1995;

O-II-13 - Order on Active Combat Operations *op.no.1*, Command of the 1st Bratunac Light Infantry Brigade confidential No. 439-2 of 5 July 1995;

O-II-14 - Transcript Nova Footage – Colonel Karremans / General Mladić;

O-II-15 – Drina Corps Command Intelligence Department strictly confidential No. 17/897 of 12 July 1995;

O-II-16 a,b,c,d - Order No. 02-21-3615/95 to provide buses dated 12 July 1995;

O-II-17 - Order to prevent progressing of the Bosniak groups toward Kladanj and Tuzla of 13 July 1995;

O-II-18 - Order to prevent progressing of the Bosniak groups toward Kladanj and Tuzla of 13 July 1995;

O-II-19 - Order to attack Žepa enclave of 13 July 1995;

O-II-20 – General’s Memo No. 04-520-51/95 dated 13 July 1995;

O-II-21 – Order 453-2 to search the terrain dated 14 July 1995;

O-II-22 - Report No. 1/825-174 on reception and condition of the units of the 28th Division of the land forces Srebrenica of 28 July 1995;

O-II-23 – Birth certificate for Ramiz Bećirović;

O-II-23 a – Statement of the Military Security Service of 11 August 1995;

O-II-24 – Statement by witness Hendrik Nicolai Cornelis;

O-II-25 - Report on the staffing of war units, 28th Division, of 1 July 1995;

O-II-26 - Successes and tasks of the ARBiH units, Information and the Order of 2 July 1995;

O-II-27 - Information from the Municipality of Srebrenica Presidency session held on 9 July 1995 at 19.00 hrs;

O-II-28, O-II-28 a, O-II-28 b – Regular Combat Report No. 03/2-219 of 17 July 1995, Drina Corps Command;

O-II-29 – Report based on the debriefing on Srebrenica of 4 October 1995;

O-II-30 - Main Staff of the Army of BiH, Report on Supply of material resources and weapons to Žepa and Srebrenica enclaves dated 28 May 1996;

O-II-31 – Birth certificate for Zoran Ilić;

O-II-31A - Birth certificate for Miroslav Ilić;
O-II-32 – Master file for Miroslav (Jovica) Ilić;
O-II-32 a - Master file for Miroslav (Jovica) Ilić;
O-II-32 b – Certificate from file for Miroslav (Jovica) Ilić;
O-II-33 – Master file for Zarija (Petko) Milovanović;
O-II-33 a, b – Unit file for Zarija (Petko) Milovanović;
O-II-34 - Transcripts from hearings held on 14 March, 17 March and 21 March 2011 in the case of Duško Jević *et al.* when witness S – 101 was examined.

D. EVIDENCE PRESENTED EX OFFICIO BY THE COURT

S-1 – Video footage made during the site visit on 7 June 2011;
S-2 – Photographs taken during the site visit on 7 June 2011;