

**Bosna i Hercegovina**

**Босна и Херцеговина**



**Sud Bosne i Hercegovine  
Суд Босне и Херцеговине**

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**Case No: S1 1 K 003442 14 Kžk 2**

**Rendered on: 18 June 2014**

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**In the Panel of Judges: Redžib Begić, Presiding  
Tihomir Lukes,  
Dragomir Vukoje, LLM**

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

**v.**

**ŽELJKO IVANOVIĆ**

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**SECOND INSTANCE VERDICT**

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**Prosecutor for the Prosecutor's Office of Bosnia and Herzegovina:  
Dubravko Čampara**

**Counsel for the Accused Željko Ivanović:  
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**Number: S1 1 K 003442 14 Kžk 2**

**Sarajevo, 18 June 2014**

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

The Court of Bosnia and Herzegovina, in the Appellate Division Panel of Section I for War Crimes, comprised of Judges Redžib Begić, as the Presiding Judge, and Tihomir Lukes and Dragomir Vukoje, LLM, as members of the Panel, with the participation of Legal Advisor-Assistant Nevena Aličehajić as the Record-taker, in the criminal case against the accused Željko Ivanović, for the criminal offense of Genocide in violation of Article 171(1)(a) and (b) of the Criminal Code of Bosnia and Herzegovina, as read with Article 31 of the same Code, acting upon a confirmed Indictment of the Prosecutor's Office of Bosnia and Herzegovina, No. KT-RZ-17/09 of 1 June 2009, amended on 20 October 2011, after a public hearing held before the Appellate Panel, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Dubravko Čampara, the accused Željko Ivanović and his Defense Attorney, Petko Pavlović, on 18 June 2014 rendered, and on 19 June 2014 publicly announced the following:

## **V E R D I C T**

**THE ACCUSED ŽELJKO IVANOVIĆ, aka „Arkan“**, son of Dragan and Zora, née Stjepanović, born on 20 November 1972 in the village of Brežani, Srebrenica municipality, PIN ..., ... by ethnicity, citizen of ..., resident of ..., elementary school completed, construction worker by occupation, unemployed, single, ID card number ..., issued by the ..., previously received a one-year suspended sentence for having committed the criminal offence of Endangering the Public Transport, no other proceedings pending against him,

## **IS FOUND GUILTY**

### **Because:**

Intending to destroy, in part, a group of Bosniak people from eastern Bosnia, as a member of the special police forces of the 3<sup>rd</sup> *Skelani* Platoon within the 2<sup>nd</sup> Šekovići Detachment of the Special Police Brigade of the Republika Srpska Ministry of Interior (MoI), together

with members of the 2<sup>nd</sup> Šekovići Detachment of the SPB and other members of the VRS and the MoI, during the period 10-19 July 1995, when the VRS and the MoI RS launched a widespread and systematic attack against the Bosniak civilian population of the UN safe area of Srebrenica (the Srebrenica enclave), by forcibly transferring on a permanent basis the entire Bosniak civilian population from the Srebrenica enclave, and by capturing, detaining, summarily executing and thereupon burying over 7,000 Bosniak men and boys from the Srebrenica enclave, in the afternoon hours of 12 July 1995, and on 13 July 1995, Željko Ivanović undertook the following activities:

Together with other members of the 2<sup>nd</sup> Šekovići Detachment of the SPB and other members of the VRS and the MoI, he secured a section of the Bratunac-Konjević Polje road, in the place of Sandići, and participated in ensuring that the road is passable in order to carry out an unobstructed transport of the Bosniak population by trucks and buses, and contributed to the execution of the plan to forcibly transfer women, children and elderly, who were loaded onto buses and trucks and left the safe area; participated in the capturing of a large number of Bosniak men from a column, several hundreds of them, who tried to break through the woods up from the Bratunac-Konjević Polje road to the territory held by the Army BiH, and who were under fire from Praga (a self-propelled anti-aircraft gun), tanks and infantry weapons deployed along the road, while being called for and encouraged to surrender, and thereupon frisked and deprived of personal documents and other personal belongings, left with no food, water and medical aid, even though some of them were wounded; and in the afternoon hours of 13 July 1995, he participated in escorting the column of several hundred captured Bosniaks from the place of Sandići to a warehouse of the Kravica Farming Cooperative (FC Kravica), who were brought by buses, together with the captured Bosniak men, to the warehouse, detained in the FC warehouse, being aware that they would be executed, in the afternoon hours of the same day, after the captives had been detained in the warehouse, Željko Ivanović stood in front of the warehouse, in a semicircle formed by members of the 2<sup>nd</sup> Detachment, from which they fired at the detainees in the warehouse, and thereupon, together with Petar Mitrović, Slobodan Jakovljević and Branislav Medan, also members of the 2<sup>nd</sup> Detachment, armed with an automatic rifle, he left the semicircle and went around the warehouse, with the intent to guard the rear side of the warehouse and prevent any possible escape of prisoners through the windows at the rear side of the warehouse, which were the only possible escape points for the captives. At the same time, in the early evening hours, other members of the 2<sup>nd</sup> Detachment, including Milenko Trifunović, Brano Džinić, Aleksandar

Radovanović, Radomir Vuković, Mirko Milanović and others, firing from submachine-guns, automatic rifles and throwing hand grenades from the front part of the warehouse, killed the majority of over a thousand of captured Bosniak men.

Therefore,

Contributing to the killings of members of a group of Bosniaks from the Srebrenica enclave, who constituted a substantial part of ethnic Bosniaks from Eastern Bosnia, he aided and abetted in destroying, in part, this group of people on the national, ethnic and religious grounds,

### **Whereby**

**he committed the criminal offense of Genocide under Article 141 of the Criminal Code of the Socialistic Federative Republic of Yugoslavia, adopted pursuant to the Law on the Application of the Criminal Code of the Socialistic Republic and the Criminal Code of the Socialistic Federative Republic of Yugoslavia (the adopted CC of SFRY), as read with Article 24 of the same Code,**

**and therefore,**

Pursuant to the aforementioned legal provisions, applying Articles 33, 38 and 41 of the adopted CC of SFRY, the Accused is

## **S E N T E N C E D**

### **TO IMPRISONMENT FOR A TERM OF 20 (TWENTY) YEARS**

Pursuant to Article 50 of the adopted CC of SFRY, the time the Accused spent in custody, running from 4 March 2009 through 7 December 2010, from 10 December 2010 until the committal to serve the prison sentence pursuant to the Verdict of the Court of Bosnia and Herzegovina, No. S1 1 K 003442 12 Kžk of 17 June 2013, and the time he spent serving the sentence pursuant to the above referenced Verdict from 18 September 2013 through 16 May 2014, shall be credited towards the prison sentence imposed.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused Željko Ivanović shall be relieved of the duty to reimburse the costs of criminal proceedings, which will be paid from budget appropriations.

Pursuant to Article 198(2) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties shall be instructed to pursue their claims under property law in a civil action.

## **R E A S O N I N G**

### **I. PROCEDURAL HISTORY**

1. The amended Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-17/09 of 20 October 2011 charged the accused Željko Ivanović with the commission of the criminal offense of Genocide under Article 171(1)(a) and (b) of the Criminal Code of Bosnia and Herzegovina (the CC of BiH), as read with Article 31 of the same Code.

2. The Trial Verdict of the Court of Bosnia and Herzegovina No S1 1 K 003442 10 Krl (ref. to X-KR-07/180-3) of 24 April 2012 found the accused Željko Ivanović guilty because, by the acts described in the enacting clause of the Trial Verdict, he committed the criminal offense of Crimes against Humanity under Article 172(1)(a) of the CC of BiH, as read with Article 29 of the same Code, for which offense he received, pursuant to the referenced Code and applying Articles 39, 42 and 48 of the CC of BiH, and Article 285 of the Criminal Procedure Code of Bosnia and Herzegovina (the CPC of BiH), a prison sentence for a term of 13 (thirteen) years. The same Verdict decided, pursuant to Article 56 of the CC of BiH, that the time the Accused spent in custody shall be credited towards the imposed prison sentence, and that, pursuant to Article 188(4) of the CPC of BiH, the Accused shall be relieved of the duty to reimburse the costs of criminal proceedings which will be paid from budget appropriations. Pursuant to Article 198(2) of the CPC of BiH, it was decided to instruct the injured parties to pursue their possible claims under property law in a civil action.

3. The Decision of the Appellate Division Panel No. S1 1 K 003442 12 Krž8 of 16 November 2012 granted the appeals filed by the Prosecution and the Accused's Counsel, Petko Pavlović, revoked the Trial Verdict due to the established essential



violations of the criminal procedure provisions, and ordered a hearing before the Appellate Division Panel.

4. After the hearing held on 17 June 2013, the Appellate Panel handed down a verdict finding the accused Željko Ivanović guilty of the criminal offense of Genocide under Article 171(a) of the CC of BiH, as read with Article 31 of the same Code, for which offense he received a sentence of long-term imprisonment of 24 (twenty four) years.

5. The Decision of the Constitutional Court of Bosnia and Herzegovina on Admissibility and Merits, No. AP 4606/13 of 28 March 2014, granted, in part, the appeal of Željko Ivanović, having found violations of Article II/2 of the Constitution of Bosnia and Herzegovina (the Constitution of BiH) and Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), revoked the Verdict of the Court of BiH No. S1 1 K 003442 12 Kžk of 17 June 2013, and referred the case back to this Court to render, as a matter of urgency, a new decision pursuant to Article I/2 of the Constitution of BiH and Article 7(1) of the ECHR in relation to the sentence imposed.

6. The above referenced Decision dismissed as ill-founded Željko Ivanović's appeal filed from the foregoing Verdict in relation to violations of Article II/3.e) of the Constitution of BiH and Article 6(1) of the ECHR, that is, in relation to the violation of the right to a fair trial.

7. Acting upon the referenced Decision of the Constitutional Court, the Appellate Panel of this Court on 17 June 2014 held a new hearing before this Court, where Prosecutor of the BiH Prosecutor's Office, Dubravko Čampara, fully stood by the amended Indictment No. KT-RZ-17/09 of 20 October 2011, whilst the parties to the proceedings, and the Accused's Counsel, proposed no new evidence for presentation.

## **II. EVIDENCE ADDUCED**

8. At the hearing held before the Appellate Panel, all the evidence, both the subjective and objective, presented during the first instance proceedings, and during the earlier hearing held before the Appellate Panel, was accepted, also including the earlier accepted established facts in this case.

### **III. CLOSING ARGUMENTS**

#### **A. PROSECUTION'S CLOSING ARGUMENT**

9. In his closing argument, the Prosecutor stood by his earlier presented closing argument, and requested that the Accused receive the most stringent punishment.

#### **B. CLOSING ARGUMENT OF ATTORNEY PETKO PAVLOVIĆ, COUNSEL FOR THE ACCUSED**

##### **ŽELJKO IVANOVIĆ**

10. The Accused's Counsel submitted, in his closing argument, that the convicting verdict could not have been based on the evidence of Witness I-3, and that the volume of the evidence presented was insufficient to render a convicting verdict.

11. The Defense Attorney holds that, in deciding on the sentence, the Accused's conduct before the Court, and the fact that the Accused did not kill civilians should be taken into account, namely that as an aider and abettor, the Accused could receive a less stringent punishment.

12. The accused Željko Ivanović entirely stood by his Counsel's submission.

### **IV. APPLICABLE LAW**

13. In rendering the earlier Verdict, revoked by the above referenced Decision of the Constitutional Court of BiH, the Appellate Panel has addressed the issue of the application of substantive law in this case. Having comparatively analyzed Article 171 of the CC of BiH and Article 141 of the adopted CC of SFRY, primarily from the aspect of sentences these Codes prescribed for the criminal offense of Genocide, the Appellate Panel concluded that the application of the CC of BiH, as a Code subsequent to the adopted CC of SFRY effective at the time when the offense charged against the accused Željko Ivanović under the Indictment was committed, is more favorable to the Accused. The earlier Verdict provided a proper line of argument for such a finding, wherefore it shall not be repeated here.

14. Obviously, these arguments were not accepted by the Constitutional Court of BiH,

which has held, in its Decision, that the adopted CC of SFRY was the more lenient law for the Accused, and that the CC of BiH was retroactively applied to the prejudice of the Accused in relation to the sentence imposed. The Panel has, therefore, concluded that the adopted CC of SFRY should apply in the concrete case as the Code applicable *tempore criminis*.

## **V. GENERAL ELEMENTS OF THE CRIME OF GENOCIDE**

15. The criminal offense of Genocide is criminalized under both the national and international law.

16. Article 2 of the Convention on Genocide has defined this criminal offense as follows:

“In the present Convention, genocide means any of the following acts, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

17. Genocide, as defined above, has been introduced in customary international law. Specifically, as early as 1951, the International Court of Justice determined that:

“The principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation”.

18. In addition, the Report of the Secretary General of the Security Council, drafted pursuant to paragraph 2 of the Security Council Resolution 808 (1993), unanimously approved by the Security Council Resolution 827, stated that:

“The part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: [...] the Convention on Prevention and Punishment of the Crime of Genocide of 9 December 1948”.

19. Finally, the wording of Article 2 of the Convention is also contained in Article 4 of the ICTY's Statute and in Article 2 of the ICTR's Statute, unequivocally recognizing that customary international law accepts the definition of Genocide contained in the Convention on Genocide. The ICTY itself has so noted in its Trial Chamber's Judgment in *Jelisić*, and stated that:

“Article 4 takes up word for word the provisions of the Convention [ on Genocide]... the Convention has become one of the most widely accepted international instruments relating to human rights. There can be absolutely no doubt that its provisions fall under customary international law...”

20. In the national legislation, the crime of Genocide was criminalized by the CC of SFRY, and is almost identically prescribed by the CC of BiH. The contents of both these definitions are consistent with the definition of Genocide under Article 2 of the Convention on Genocide. The referenced crime was introduced into the national legislation through Article 171 of the CC of BiH and Article 141 of the CC of BiH to ensure that the state, among other things, comply with its obligations undertaken under the Convention on Genocide which, in Article V, provides as follows:

“The contracting parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide...”

21. The SFRY actively participated in the process of drafting the Convention on Genocide, and ratified it in 1950. By introducing the crime of Genocide into the national legislation, as consistently defined with Article 2 of the Convention on Genocide, the international provisions and case law were, in fact, incorporated in the national legislation, and thereby become part of the national legislation.

22. As already mentioned above, the crime of Genocide was criminalized in Article 141 of the adopted CC of SFRY, which reads as follows:

“Whoever with the intention of destroying a national, ethnic, racial or religious group in whole or in part orders the commission of killings or the inflicting of serious bodily injuries or serious disturbance of physical or mental health of the group members, or a forcible dislocation of the population, or that the group be inflicted conditions of life calculated to bring about its physical destruction in whole or in part, or that measures be imposed intended to prevent births within the group, or that children of the group be forcibly transferred to another group, or whoever with the same intent commits one of the foregoing

acts, shall be punished by imprisonment for not less than five years or by the death penalty.”

23. The Indictment charged the accused Željko Ivanović with committing the referenced crime as an aider and abettor. Aiding is defined under Article 24(1) of the adopted CC of SFRY, which reads as follows:

“Anybody who intentionally aids another in the commission of a criminal act shall be punished as if he himself had committed it, but his punishment may also be reduced.”

24. As defined above, genocide combines two types of elements, namely: the *chapeau* or general elements, including the genocidal intent, or more precisely, the genocidal *mens rea*, and the *actus reus* elements of the underlying criminal acts, or the essential acts.

25. The essence and specific nature of the crime of genocide is that the crime of genocide requires proof of two separate criminal intents, namely the intent of the underlying act and the genocidal intent. The difference between the crime of genocide, in terms of its commission, and aiding and abetting in genocide, with which the accused Ivanović was charged and of which he was found guilty, however, lies exactly in the genocidal intent. More specifically, proving the criminal offense of genocide requires proving the genocidal intent on the part of the perpetrator. In relation to aiding and abetting in (the commission of) genocide, however, the perpetrator neither has nor shall have the genocidal intent (or otherwise he would be a perpetrator of genocide), but he must be aware of the genocidal intent of others.

(b) The use of the term “Bosniak”

26. Even though the term “Bosniak” was not generally accepted at the critical time, the Panel has accepted the wording used in the Prosecution’s Indictment. More specifically, the term “Bosniak”, used here, is a historic, ethnic and cultural term, which also includes the unity of nationality, ethnicity and religion. During the critical period, the referenced term was not accepted to such an extent as it is today. Therefore, describing the Srebrenica events, the witnesses referred to members of the Muslim nation rather than to Bosniaks, as defined under the Indictment. Yet, considering that the term “Bosniak” has, in the meantime, become a constitutional category, emblematic of one of the constituent peoples in Bosnia and Herzegovina, formerly referred to as Muslims, the proper usage of this term, in both the Indictment and the Verdict, is not called into question and, in this Panel’s view,

it does not call into question its comprehensibility.

## VI. UNDERLYING ACTS OF THE CRIME

### (c) The act of genocide – *actus reus*

27. The Prosecution's amended Indictment charged the accused Željko Ivanović with the commission of the criminal offense of Genocide under Article 171(a) and (b) of the CC of BiH, as read with Article 31 of the CC of BiH (Accessory).

28. Considering the legal definition of the criminal offense, relevant to the case at hand,<sup>1</sup> it ensues that the *actus reus* or the act of commission of the criminal act underlying the crime charged against the accused Željko Ivanović implies *killing members of the group and causing serious bodily or mental harm to members of the group*.

#### (i) Killing members of the group as the *actus reus* of Genocide

29. Killing members of the group, at the very least, includes the criminal offense of murder, also separately regulated by our law, whose essential elements are as follows: a) depriving another person of his life, and b) presence of awareness and will-willingness or consent to deprive another person of his life. This form of the crime of Genocide differs from murder in the fact that, in the crime of Genocide, members of a group of people are being murdered with the existing subjective element manifested in the intent to exterminate a group of people, in whole, or in part.

30. As stated above, all criminal acts underling the crime of genocide have both the requisite *actus reus* and *mens rea*. As regards the criminal offense of murder, the underlying elements of this crime are the following:

- i. Depriving another person of his life
- ii. Direct intent to deprive another person of his life because the perpetrator was aware of his act and he wanted to commit the act

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<sup>1</sup> See para. 41 of the Verdict.

31. Even though the term “genocide” requires the killing of members of a group, such a definition necessarily need not imply that genocide requires a large number of victims. On the contrary, the *actus reus* of the criminal offense of genocide may also be satisfied with the killing of only one person.<sup>2</sup> Yet, in order for a murder to satisfy the elements of genocide, it should be proved that the killed persons were members of a national, ethnic, racial or religious group which the perpetrator wanted to destroy, in whole, or in part.”<sup>3</sup>

32. That over 1,000 prisoners, Bosniak men, were killed in the FC Kravica was proved beyond a reasonable doubt in this case, in other final Verdicts of this Court, and in the ICTY Judgments. There is no doubt that the death of persons killed in the FC Kravica was a violent death caused by fire arms and explosive devices used by, among others, members of the II Detachment of the Šekovići Special Police, whose member was also the accused Željko Ivanović. In the Panel's view, the Prosecution has proved beyond a reasonable doubt that the accused Željko Ivanović was present inside the FC Kravica compound at the time when the execution was carried out, and that he gave a significant contribution to the commission thereof. More specifically, the accused Željko Ivanović, together with three other members of the II Detachment of the SPB Šekovići convicted under the final Verdicts, Petar Mitrović, Slobodan Jakovljević and Branislav Medan, went around the warehouse to secure the rear windows, the only possible escape points for the captives, through which Witness I-2 ultimately successfully fled. According to this Panel, even though there is no evidence whatsoever that the accused Ivanović indeed fired a single round towards the window, his presence at the site and guarding the prisoners to prevent them from fleeing demonstrate his awareness that such acts of his significantly contributed to the killing of Bosniak prisoners.

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

33. It should be noted, at this point, that the Panel has rejected the legal qualification provided in the Indictment, more precisely, it did not find that the Accused is responsible for the act of commission set forth in Article 171(1)(b) of the CC of BiH.

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<sup>2</sup> ICTR Trial Chamber in *Ndindabahizi* has noted that the *actus reus* of genocide may be satisfied with the killing of only one person. Prosecutor v. *Ndindabahizi*, ICTR-2001-71-I, Judgment of 15 July 2004, para. 471.

<sup>3</sup> *Prosecutor v. Brđanin*, IT-99-36-T, Judgment of 1 September 2004, para. 688.

34. Considering, however, that the Indictment charged the Accused with the referenced act, the Panel will briefly refer to the essential elements of this act.

35. In defining what constitutes causing serious bodily or mental harm to members of the group, the law does not provide for precise guidelines. Thus, the Panel has relied on the case law of *ad hoc* international courts<sup>4</sup>, which determined that, in order to recognize such a character of harm, it need not be permanent or irremediable, but must be harm that results in a grave and long-term disadvantage to a person's ability to lead a normal and constructive life.

36. The phrase bodily harm could be construed to mean harm that seriously injures the health, causes disfigurement or any serious injury to the external, internal organs or senses.<sup>5</sup> Mental harm refers to more than minor or temporary impairment of mental faculties.<sup>6</sup> The ICTY and ICTR hold that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury.<sup>7</sup>

37. The ICTY's Chamber in *Blagojević et al.* found that „the trauma and wounds suffered by those individuals who managed to survive mass executions does not constitute serious bodily and mental harm”.<sup>8</sup> This also refers to the Bosniak men who survived, but “suffered mental harm having their identification documents taken away from them, seeing that they would not be exchanged as previously told, and when they understood what their ultimate fate was”<sup>9</sup>. The Trial Chamber is convinced that the forced displacement of women, children and elderly people was itself a traumatic experience, in the circumstances of the case, such as forcible separation from their loved and its consequences, and in particular, the fact that they are still searching for the bodies of their loved ones.<sup>10</sup>

38. The ICTY's Chamber, found, however, that the harm must be inflicted intentionally.<sup>11</sup>

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<sup>4</sup>ICTY and ICTR Judgments, see e.g. Judgments in *Blagojević and Jokić*, Trial Judgment, para. 645, *Akayesu* Trial Judgment, para. 502, *Krstić*, Trial Judgment, para. 513.

<sup>5</sup>*Prosecutor v. Kayishema and Ruzindane*, ICTR-95-1-T, Judgment, 21 May 1999, (“*Kayishema and Ruzindane Trial Judgment*”), para. 109, Trial Judgment in *Blagojević and Jokić*, para. 645.

<sup>6</sup>Trial Judgment in *Blagojević and Jokić*, para. 645, *Prosecutor v. Semanza*, ICTR-97-20-T, Judgment, 15.5.2003. (“*Semanza Trial Judgment*”) para. 321, 322 and *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgment, 7 July 2006 (“*Ntagerura et al. Appeals Judgment*”) para. 644.

<sup>7</sup>Trial Judgment in *Krstić*, para. 513, Trial Judgment in *Blagojević and Jokić*, para. 646.

<sup>8</sup>Trial Judgment in *Blagojević and Jokić*, para. 647.

<sup>9</sup>Trial Judgment in *Blagojević and Jokić*, para. 647.

<sup>10</sup>Trial Judgment in *Blagojević and Jokić*, paras. 650, 652 and 653.

<sup>11</sup>Trial Judgment in *Blagojević and Jokić*, para. 645.



39. Even though there is no doubt that the forcible transfer of the population from the territory of the Srebrenica municipality, and the separation of men from women and children were carried out, that the men, who had surrendered or were captured in some other way, were held at the Sandići Meadow in inhumane conditions, lacking food, water and necessary medicines, and even though this Panel does not call into question that bodily or mental harm suffered by both the prisoners in Kravica and members of their families separated from each other, as well as the captured men held at the Sandići Meadow, due to the treatment accorded to them at the time of their capture, detention and everything else that preceded their execution, indeed constitute serious bodily and mental harm, the Panel did not find the Accused guilty of the referenced act.

40. This Panel is satisfied that neither the factual description of the Indictment described, nor the Prosecution presented any evidence to prove the Accused's intent to cause such serious bodily or mental harm through the acts undertaken against these men. More specifically, the Prosecution has neither proved nor showed a slight likelihood that the Accused indeed had any role in the separation of men from women and children, and in depriving them of food, water and medicines. Also, the Prosecution presented no evidence whatsoever that the Accused could personally make any changes in such a situation. Therefore, the Panel did not find the Accused guilty of aiding and abetting genocide committed through the act of commission, as described in Article 171(1)(b) of the CC of BiH, or more precisely, through causing serious bodily or mental harm to members of the group, for which act the existence of the Accused's intent would also need to be proved.

(d) **Genocidal intent – *mens rea***

41. As already noted in para. 25 of this Verdict, the difference between the crime of genocide and aiding and abetting in genocide is exactly related to the *mens rea* element, or genocidal intent, which does not require, in relation to aiding and abetting in genocide, that an aider/abettor must possess this genocidal intent, but rather that he must be aware of the genocidal intent of others.

42. The genocidal intent, of which the perpetrator must be aware, is prescribed by the law as follows:

- a. an aim
- b. to destroy
- c. in whole or in part
- d. a national, ethnic, racial or religious group.

43. In the verdicts of this Court, the trial panels have, in detail, considered each individual element constituting the *mens rea* of genocide, and determined what each of these elements refers to. Since the genocidal intent of the accused Željko Ivanović was not a subject of proving, as he was charged with, and found guilty as aider and abettor in genocide, this Panel will briefly refer to the referenced elements, solely in order to clarify what, in this Panel's view, the Accused had to be aware of, and of what he was indeed aware.

i. An aim (intent)

44. As set forth in Article 2 of the Genocide Convention, the „aim“ means intent to destroy a group as such, that is, it needs to be proved that the proscribed acts were committed against the victims because of their membership in the protected group, but not solely because of such membership<sup>12</sup>.

ii. To destroy

45. As concluded throughout the international courts' case law, it needs to be proved for the element of “destruction” that the perpetrator sought the physical or biological destruction of all, or part of the group.<sup>13</sup> Therefore, to prove the element of destruction, it is insufficient to prove that the perpetrator had intent to expel a certain group of people and deprive it of certain rights, but it rather needs to be proved that he acted with the intent to destroy the physical or biological existence of the group.

46. Pursuant to the Genocide Convention, there are a number of ways to physically destroy a certain group, and even though killing of members of the group is certainly a direct way to do it, there is also a series of other methods which, individually or in combination, may result in the physical destruction of the group.

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<sup>12</sup> *Prosecutor v. Niyitegeka-e*, ICTR-96-14-A, Judgment, 9 July 2004, (“*Niyitegeka Appeals Judgment*”) para. 53 (emphasis added in the original text).

<sup>13</sup> See, e.g. *Prosecutor v. Krstić*, IT-98-33-A, 19 April 2004, para. 25; Trial Judgment in *Krstić*, para. 580; *Prosecutor v. Semanza*, ICTR-97-20-T, Judgment, 15 May 2003, para. 315.

iii. In whole or in part

47. When it comes to this element of genocidal intent, the perpetrator need not have the intent to destroy, in whole, a certain national, ethnic or religious group „on a global scale“. Rather, the perpetrator's intent to destroy, in part, the group marked as protected would suffice. Thus, as the ICTY's Chamber also found in *Krstić*, the intent to exterminate a certain group of people from a limited geographical area, such as the territory of state, or even of a municipality, may be qualified as genocide, because the intent to destroy formed by a perpetrator will always be limited by the opportunity presented to him.<sup>14</sup>

48. Nevertheless, the genocidal intent as such, in the part in which the Panel upholds the view of international case law, implies the intent to destroy „a substantial part of that group“<sup>15</sup>. The determination of when the targeted part is „substantial“ may involve a number of considerations. Along this line, the Panel accepts that the foregoing requires an analysis of various factors such as the numeric size, an evaluation in relation to the overall size of the entire group; its prominence within the group; if a specific part of the group is emblematic of the entire group, or is essential for its survival. The perpetrator's perception of the referenced term, however, must be certainly taken into account as one of these factors.

49. In its final analysis, however, the Panel has to be satisfied that the part of the population, which is the subject of the attack, objectively represents „a substantial part of that group“.

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<sup>14</sup> Appeals Judgment in *Krstić*, para. 13.

<sup>15</sup> Trial Verdict in *Mitrović*, No. X-KR-05/24-1, with reference to the Appeals Judgment in *Krstić*, para. 8; KMP 1996 Report, p. 45. („None the less, the crime of genocide by its very nature requires the intention to destroy at least a substantial part of a particular group.“). See, also, the Trial Judgment in *Jelisić*, para. 82; *Prosecutor v. Sikirica*, IT-95-8-T, Judgment on Defense Motions to Acquit, 3 September 2001, para. 65; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 97; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgment, 7 June 2001, para. 64; Trial Judgment in *Semanza*, para. 316. See, also, Benjamin Whitaker, Revised and updated report on the question of prevention and punishment of the crime of genocide, U.N. Doc. E/CN.4/Sub.2/1985/6, para. 29 („The term „in part“ denotes a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership.“).

iv. A national, ethnic, racial or religious group

50. The object of protection in relation to the criminal offense of Genocide, as it ensues from its legal definition, is „a national, ethnic or religious group of people“. Each of the referenced terms has been defined by the ICTY's Statute and the international jurisprudence, and as such, also accepted by this Panel.

51. The notion “national” group is defined as a ‘collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties’.

52. An ethnic group is generally defined as a “group whose members share a common language or culture”.<sup>16</sup>

53. The definition of “racial” group is “based on hereditary physical traits often identified with a geographical region, irrespective of lingual, cultural, national or religious factors”.<sup>17</sup>

54. The “religious” group is “one whose members share the same religion, denomination or mode of worship”.<sup>18</sup>

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<sup>16</sup> Trial Judgment in *Akayesu*, para. 513; see also para. 720 of the same judgment, where the Chamber finds that the Tutsis were an “ethnic” group in terms of the prohibition of genocide. The Trial Chamber's view in *Kayishema and Ruzindana* is that an “ethnic” group is one “whose members share a common language and culture; or a group which distinguishes itself as such (self-identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)” (Trial Judgment in *Kayishema and Ruzindana*, para. 98). This Chamber found that the Tutsis were an “ethnic” group in terms of defining the scope of protected groups (Trial Judgment in *Kayishema and Ruzindana*, para. 523). The definition of “ethnic group” in terms of genocide, provided by these two Chambers is at the very least extremely vague. The fact that individuals share a common language (such as is the case with most of the Nigerians and Australians), or a common culture (as is the case with the Bosnian Serbs and Bosnian Muslims in many aspects), is hardly sufficient so as to suggest that only on this basis it can be stated that they constitute a common “ethnic” group in terms of the Genocide Convention. The notion of “ethnicity” is undoubtedly ambivalent, and bears a huge political significance. The criminal law (including the law of genocide) requires precision, and accordingly, the Tribunals should make efforts to define this law more precisely in relation to this law, even if it is quite acceptable, in light of the very purpose of the prohibition of genocide, that this term is being defined in relatively wider terms.

<sup>17</sup> Trial Judgment in *Akayesu*, para. 514. The Trial Chamber in *Krstić* noted that the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, national or ethnic origin” (Trial Judgment in *Krstić*, para. 555). See also Trial Judgment in *Kayishema and Ruzindana*, para. 98.

<sup>18</sup> Trial Judgment in *Akayesu*, para 515: This definition of religion strikingly goes round in circles since the capacity of group (as a “religious” group) is defined with the practice of traits which identify that group as particular religious group (e.g. its form of worship). Truly, in most cases, distinction between two or more groups of individuals will be evident, like for example, between the Bosnian Muslims and Bosnian (Orthodox) Serbs. This can, however, sometimes be apparent to a smaller extent. Let us take an example of two closely connected sects within the same denomination? What about different degrees of devotion to similar religion

55. The analysis of the circumstances surrounding the concrete case clearly showed that the men captured at the Sandići Meadow, and subsequently escorted to the FC Kravica and killed, were the Muslims-Bosniaks from Srebrenica.

56. The Bosniak Muslims constitute a national, ethnic and religious group, and as such, a category protected in terms of Article 171 of the CC of BiH.

57. The crime of genocide differs from the other criminal offenses falling under the same group first by its specific genocidal intent, *mens rea*, whose elements were described above. Therefore, a perpetrator of genocide must have the intent to destroy, in whole, or in part, a particular national, ethnic, religious or racial group, and, with this intent, he must commit any of the criminal offenses underlying the crime of genocide.

58. Considering that the Indictment charged Željko Ivanović as an aider and abettor in genocide (the crime under Article 171(1)(a) and (b), as read with Article 31 of the CC of BiH), in order to find him guilty it would be necessary to prove that he was aware of the genocidal intent of other, direct perpetrators. The Accused's acts, to be reasoned in detail below in the Verdict, combined with his awareness of the genocidal intent of others, represent his significant contribution to the commission of the crime of genocide. Therefore, this Panel has found him guilty as an aider and abettor in genocide.

## VII. STANDARDS OF PROOF

59. To reach a verdict in the concrete case, the Panel has evaluated the evidence pursuant to Article 281(2) of the CPC of BiH. More specifically, the Panel's conclusion on the decisive facts, primarily on the existence of the Accused's acts and guilt, was drawn after the Panel evaluated all pieces of evidence, individually and in combination.

60. In addition, the Panel has relied on the principle of free evaluation of evidence, as defined under Article 15 of the CPC of BiH. The referenced principle is exclusively limited by the principle of legality. More precisely, this means that the evaluation of evidence does not depend on the formal evidentiary rules pursuant to which particular evidence would

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(e.g., Muslims who do not practice religion as compared to fundamentalists)? What about religions or quasi-religious practices not officially recognized as religions (e.g., the Church of Scientology or Falun Gong)? No Tribunal shall, however, determine these issues since, in both cases (Rwanda and the former Yugoslavia), religious boundaries between different groups were rather clearly defined.

have more or less significant probative value, that is, it does not depend on the rules which would *a priori* determine the value of certain pieces of evidence.

61. Relying on the referenced principles, the Panel has evaluated each piece of evidence, individually and in combination, keeping in mind the case complexity and a large body of evidence. Despite the foregoing, the verdict will solely address the evidence relevant to determining the decisive facts.

62. As regards the evaluation of evidence, it has to be underlined that the statements of witnesses Petar Mitrović and Miladin Stevanović given during the investigation, and the evidence of Witness I-3, given in this case as well at various stages of different cases of this Court, are undoubtedly the key evidence in relation to the accused Željko Ivanović's guilt. The Panel has, however, evaluated a series of other witnesses' statements who testified about the general events that occurred at the critical time, in the Srebrenica territory, the capture of men, the activities undertaken by the 2<sup>nd</sup> Detachment of the Šekovići Special Police, including the Skelani Platoon, in securing the road and escorting the column to the FC Kravica, and ultimately, about the execution of prisoners itself. Even though these witnesses did not identify the accused Željko Ivanović as an actor in the events at issue, because they either had not known him, or they watched the event from a certain distance, their statements, correlated with the statements of the three key eye-witnesses to the event, were in the Panel's view the evidence of corroborative nature within the context of proving the decisive facts.

63. In addition, the Panel took into account the circumstances under which these witnesses testified. The fact is that they gave evidence in the case related to such a severe criminal offense, or the "crime of all crimes", the event tragic not only for the direct victims, but rather for the overall population of both the area concerned and the wider region, that some of them feared that they themselves could face criminal prosecution, and that, once their situation regarding the criminal prosecution was resolved, they nevertheless gave evidence in an effort to diminish the accused Ivanović's role, or they entirely withdrew their statements given at the earlier stages of the proceedings.

64. The witnesses' credibility was a particular issue with which the Panel had to deal in rendering its verdict. Specifically, during both the concrete proceedings and the other criminal proceedings, several witnesses, whose statements were decisive for establishing the accused Ivanović's guilt, gave a number of statements which either contained certain

discrepancies or contradicted each other in their key parts. The Panel was faced with a difficult task in determining whether at all, and in which statements, the witnesses indeed told the truth, whether they could be given credence at all, and to what extent.

65. In evaluating the credibility of certain witnesses, the Panel took into consideration all the circumstances under which they gave evidence, their conduct, demeanor and character. Audio-video recordings of the most witnesses' evidence were for that reason reviewed, particularly the evidence of all the key witnesses in the case before the Appellate Division Panel. In view of the foregoing, the Panel used, as a predicate fact, the fact that certain different evidence given in relation to certain events did not necessarily mean that the witnesses did not tell the truth, but rather that they could from different perceptions on the part of certain witnesses, the time elapsed since the critical events during which all of them were certainly exposed to various stories, recounts of events or other information about the events concerned, which could undoubtedly affect certain modalities of their perspective of the events.

66. The Panel has concluded that certain witnesses were sincere and reliable, even to their prejudice. Other witnesses were sincere, but unconvincing in certain parts of their evidence. According to the Panel, there may be different reasons for the foregoing. Certain witnesses were biased, loyal and testified with the intention to exculpate the Accused, and thereby to affect the outcome of the criminal proceedings. In certain parts of their statements, mostly those relating to the general context of the events in the incriminating period, which did not directly include the Accused, however, even such witnesses gave evidence which the Panel considered reliable. Therefore, this Panel also did not *a priori* reject certain evidence as untrue and useless, but rather made efforts to analyze in detail the statements of certain witnesses and to determine if certain parts thereof, and which ones in particular, were true and supported with the other pieces evidence, and in such cases accepted them in the part found to be sincere and reliable.

67. International tribunals have tried, through their jurisprudence, to set up the criteria on which the Panels might rely in assessing the credibility of witnesses. Even though each case is inherently specific, and should be individually dealt with, the factors to be considered in assessing the reliability of a witness's statement are as follows: the witness's demeanor in the courtroom, his role in the events in question, the plausibility and clarity of his testimony, possible existence of contradictions or inconsistencies in his successive statements or between his testimony and the other evidence, any prior examples of

false testimony, any motivation to lie, and the witness's responses during cross-examination<sup>19</sup>. In addition, the ICTY's Trial Chamber in *Kordić and Čerkez* has reviewed the factors which may be relevant in assessing the credibility of witnesses-accomplices, and highlighted the following criteria: explanation as to the statements' disparity, any plea agreement the witness-accomplice entered with the prosecution, the existence of any earlier convictions, the existence of any prior sentences for the same criminal offense, or awaiting the trial's completion, and whether the witness possibly has any other reason to resent the Accused. Ultimately, corroboration is one of the possible factors relevant for the assessment of the witness's credibility.

68. In view of all the foregoing, the Panel has assessed the statements of each and every witness heard in the proceedings against the accused Željko Ivanović. The reasons due to which credence was given to certain witnesses in this case will be presented in the reasoning of the Verdict. The Panel will now particularly address the issue of Witness I-3's credibility. In a way, this witness is the most controversial witness in the case, whose credibility, sincerity and impartiality were, during the entire course of the proceedings, challenged by the Accused's Defense, and they formed the basis for the Defense evidentiary proceedings.

#### **A. CREDIBILITY OF WITNESS I-3 WHO WAS GRANTED PROTECTIVE MEASURES**

69. The Defense tried to challenge the credibility of Witness I-3. The Defense argued that no credence could be given to the witness whose testimony incriminated the accused Željko Ivanović. The Defense argued that Witness I-3 was motivated to falsely charge the Accused through the fact that he entered a plea agreement with the BiH Prosecutor's Office. The Defense also added that, by incriminating the accused Ivanović and other persons the Prosecution investigated or prosecuted for the referenced crimes, the Accused strove and succeeded in securing for himself a more favorable position in this criminal matter. It was also highlighted, in the course of the proceedings, that Witness I-3 was unreliable. The Defense examined the inconsistencies in his statements given at different stages of the proceedings, and contended that a Court's decision could not be based on his testimony.

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<sup>19</sup> Appeals Judgment in *Nahimana et al.*, para. 194.



70. To prove that Witness I-3 was not a reliable witness, Counsel argued, in his closing argument, that this witness's statements were „manipulative“. In addition to the evidence given by Witness I-3 in this case, in the capacity of witness for both the Prosecution and the Defense, the accused Željko Ivanović's Defense tendered in the case record the other statements this witness had given in other cases of this Court. Also, to contest the referenced witness's credibility, the Defense heard several witnesses who had spent a certain period of time in custody together with this witness, and who testified about his personality, character and the alleged motives to incriminate the other persons charged with the events in Srebrenica.

71. In view of the foregoing, the Panel paid a special attention to the assessment of Witness I-3's credibility because of his, undoubtedly significant, knowledge about the events at issue and because, among other things, he was also an eye-witness to the whole event.

72. The foregoing proved to be a rather difficult task.

73. Witness I-3 testified as the Prosecution witness in the case against Željko Ivanović. Describing the critical events, Witness I-3 stated that Željko Ivanović was a member of the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade, Skelani Platoon, who was, in the second half of June, together with his unit, present in Srednje (the Sarajevo battlefield). On 10 July 1995, they were deployed to the Srebrenica territory in order to secure the Bratunac-Konjević Polje road, to escort, on the following day, a column of the captured Bosniak men from the Sandići Meadow to the FC Kravica premises, and ultimately, to the site of their execution. Witness I-3 described the accused Ivanović's role in the event which occurred in the Kravica proper. The witness stated that the accused Ivanović, along with three other members of the Skelani Platoon, went behind the warehouse to secure the rear windows, and to prevent the prisoners from fleeing.

74. Witness I-3 was directly examined and cross-examined by the Defense as a witness for the Defense. The Defense presented the witness with his earlier statements, attempting to demonstrate that he had given different evidence about the Accused's role in the critical event. Witness I-3, however, stood by his evidence as interpreted in the previous paragraph, and explained the reasons for which he had testified differently in some of his (earlier) statements. The Panel will address these statements in the text below.

75. Witness I-3 gave his first statement on 18 April 2008, and the Defense tendered it in the case record.<sup>20</sup> At the time, Witness I-3 was questioned in the capacity of a suspect in relation to the same event charged against the accused Željko Ivanović. In the referenced statement, Witness I-3 described, for the first time, the events covered by the Indictment, including the events before and after the critical events. After comparing this statement with his other statements, given at the subsequent stage when he negotiated entering a plea agreement with the Prosecutor, it becomes evident that this witness tried not to mention certain circumstances in order to avoid any self-incrimination. Nevertheless, back then and on a number of subsequent occasions, Witness I-3 identically spoke about the general context of the events he testified about. In the referenced statement, the witness identified members of the Skelani Platoon, including the accused Željko Ivanović, who had escorted the column of the captured men from the Sandići Meadow to the FC Kravica.<sup>21</sup> The witness significantly reduced the number of prisoners at whom members of the Skelani Platoon had fired from a semi-circle formed in front of the hangar. The witness stated that they fired at only a few captured Bosniak men who had tried to flee. Identifying members of the Skelani Platoon, the witness stated that *„he thinks that the accused Ivanović was in the firing group.”*<sup>22</sup>

76. Following this evidence, Witness I-3, then in the capacity of a suspect, initiated with the Prosecutor negotiations to enter a plea agreement. On 22 May 2008, he gave a statement in the capacity of a witness, which was far more detailed and comprehensive in relation to his statement given in the capacity of a suspect. At the time, Witness I-3 was under obligation to tell the truth, he was instructed about his rights, and, in parallel, the Prosecutor granted him immunity and the assurances that the referenced statement would be exclusively used for the purpose of guilty plea negotiations, and for granting protection to his family, but that it could not be used for any other purposes, or against him. In the referenced statement, among other things, Witness I-3 described in detail the firing at the captured men in front of the FC Kravica. For the first time, this witness stated that a fairly large number (several hundreds) of men, detained in both sections of the hangar, were summarily executed at the time.

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<sup>20</sup> Exhibit O-6.

<sup>21</sup> Pgs.26 and 30 of the transcript of 18 April 2008.

<sup>22</sup> Ibid., p. 55.

77. One of the other requirements for Witness I-3 to enter a plea agreement was to testify in the cases conducted against other persons charged with the same offense. The then pending case was against 11 persons accused in relation to the same event. Witness I-3 testified before the Trial Panel in this Court's case no X-KR-05/24. The witness testified in consistence with his statement given on 22 May 2008 (direct examination and cross examination of the witness of 29 May 2008 and 11 June 2008 respectively). The witness explained in detail the events that occurred in the FC Kravica compound on the critical day; however, while identifying members of the Skelani Platoon who escorted the column, or who subsequently fired at the prisoners from the semi-circle, or ultimately, among those who went behind the hangar, he did not mention the accused Ivanović. In his statement of facts and guilty plea agreement, made on 16 October 2008, after giving evidence in the case conducted against 11 persons charged with the very same event, whose contents is compliant with the evidence he gave in the capacity of a witness of 22 May 2008, and at the main trial in *Petar Mitrović et al.*, as particularly underlined by the defense attorney, this witness did not mention the accused Ivanović as an actor in the events at issue. The Defense has mostly referred to this witness's evidence in contesting his credibility, and in proving that the accused Ivanović did not participate in the referenced events, more specifically, that in certain statements of his, this witness had falsely incriminated the Accused.

78. In analyzing the referenced statements of this witness, however, the Panel was mindful of the overall context in which the hearing took place. The Prosecutor indeed focused on the event at issue, and on the clarification of facts characteristic for this event. The Prosecutor, however, also focused on another essential fact. The criminal proceedings, conducted against 11 other persons charged with the same event, were at its final stage. During the hearing of Witness I-3, and during his examination at the main trial, the Prosecutor was focused on examining the witness about the role the persons accused in the case had played in the critical events. This may be clearly inferred from the analysis of the course and the contents of the examination in all referenced statements. In the Panel's view, it is important that Witness I-3 did not deny, in any of his statements, the accused Ivanović's presence and role in the incriminating acts. The witness simply did not mention the Accused because no question at all was posed to him in relation to the fact of the Accused's presence.

79. Pursuant to the chronology of events, after giving evidence in the capacity of a witness

in *Petar Mitrović et al.*, Witness I-3 gave a statement before the Prosecutor, on 18 August 2008, also in the capacity of a witness.<sup>23</sup> On this occasion, the Prosecutor asked the witness to identify members of the Skelani Platoon who had been present and participated in the Kravica events. The witness himself stated: “*I had earlier stated this, and I will say it now too.*”<sup>24</sup> In identifying the persons who had been present and fired at the detained men in the FC Kravica, the witness also mentioned Željko Ivanović.

80. As it ensues from the part of the previous reasoning, the witness had indeed stated so in his first statement of 18 April 2008, which was supplemented, to a large extent, by his subsequent statement of 22 May 2008, and by his evidence given in *Petar Mitrović et al.* The statement of 18 August 2008, however, given by Witness I-3 after the case against *Petar Mitrović et al.* had been completed with a non-final verdict, also supplemented his earlier statements relating to the facts known to him. In the statements he gave just prior to his testifying in the case No X-KR-05/24, however, the Prosecutor posed no questions to this witness about the other participants in the critical event, including the accused Ivanović.

81. Witness I-3 subsequently testified in this Court's case against *Vuković et al.*, No X-KR-06/180-2. In presenting his information about the events in Kravica, Witness I-3 stated that the accused Ivanović, along with three other members of the Skelani Platoon (Petar Mitrović, Slobodan Jakovljević and Branislav Medan), went behind the warehouse in order to secure the windows at the rear of the warehouse.<sup>25</sup>

82. Witness I-3 testified in the capacity of a witness in this case and described the accused Ivanović's role in the events which had taken place in the FC Kravica compound.<sup>26</sup> Witness I-3 was questioned in detail about the accused Ivanović's presence and role in the critical acts. Witness I-3 identified the accused Željko Ivanović as one of members of the Skelani Platoon who was, with his unit, deployed to the town of Srednje, and along with other unit members, transferred to the UN safe area of Srebrenica, more precisely, to Bratunac. Witness I-3 further testified that, on 11 July 1995, the accused Ivanović was deployed to secure the Bratunac-Konjević Polje road, that he took part in escorting the column of captured men to the FC Kravica hangar, and that he ultimately stood in a semi-circle, but

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<sup>23</sup> Exhibit O-11.

<sup>24</sup> Transcript of Witness I-3's hearing No. TA-RZ-100/08 of 18 August 2008, p. 1.

<sup>25</sup> Exhibit O-13; Transcript of Witness D-5's hearing in the case X -KR-06/180-2 of 11 February 2009.

<sup>26</sup> Transcript in the case X-KR-06/180-3 of 23 March 2010.

that before the fire was opened, he had gone behind the warehouse, upon his commander's order, with three other members of the Skelani Platoon, to secure the rear windows of the warehouse, and prevent the captured men from fleeing. The witness was questioned with regard to the inconsistencies in his earlier statements. The witness explained that the difference laid in the fact that he had earlier identified Ivanović as a person who had fired (at the prisoners). Therefore, the witness publicly apologized to the Accused, and stated that he had erred. He repeated that Ivanović's role was just like he had described it – Ivanović secured the windows at the rear of the hangar, and he did not fire at the prisoners.

83. The statements Witness I-3 gave after he completed serving a 6-year prison sentence, received under the Court of BiH's final verdict, are specific in relation to the above referenced statements of his. The accused Ivanović's Defense tendered in the case record two Witness I-3's statements dated 2 March 2012 and 8 June 2012.<sup>27</sup> In both these statements, Witness I-3 denied the veracity of what he had stated in these statements and the evidence he had given in different cases before the BiH Prosecutor's Office and the Court of BiH. With regard to the facts relevant to the concrete case, Witness I-3 denied the accused Željko Ivanović's participation in the incriminating acts. The witness stated that the Accused was not with the unit when it was deployed in Srednje, that he did not come to the UN safe area of Srebrenica, that, therefore, he took no part in securing the road, or in escorting the column, and that, ultimately, he was not present inside the FC Kravica compound so as to be able to give any contribution to the execution of the captured men.

84. The Defense accentuated the differences in Witness I-3's statements. More specifically, the Defense pointed to the significance of differences between his statements (dated 22 May 2008, 29 May 2008, and 16 October 2008), where the witness did not mention the accused Ivanović, and those statements where he mentioned him, but in playing different roles in the incriminating acts, namely that he was present in front of the FC Kravica warehouse and fired at prisoners (the statements of 18 April 2008 and 18 August 2008), or that he was present inside the FC Kravica compound but that he did not fire, namely that he went behind the warehouse, with three other members of the Skelani Platoon in order to secure the rear windows.

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<sup>27</sup> Exhibit O-54, Witness I-3's statement of 2 March 2012 given to Attorneys Cvetko M. Marić and Radomir Džunić in their office in Loznica, and Exhibit A-O-1, Witness I-3's statement of 8 June 2012, given to Attorney Suzana Tomanović in her law firm in Belgrade.

85. In contesting Witness I-3's credibility, the Defense attorney presented further evidence by hearing witness Salih Alibašić, who was in custody together with Witness I-3 during the same period. Witness Salih Alibašić testified that Witness I-3 was on good terms with the other persons charged with the same event, primarily with the accused Petar Mitrović, who is his relative, but that their relations worsened when Witness I-3 started negotiating with the Prosecution a possibility to enter a plea agreement. Witness Alibašić further testified that Witness I-3 had told him that, unless he entered a plea agreement, the accused Mitrović would certainly do so. Witness I-3 also recounted to witness Alibašić that he was told that, if he accepted a guilty plea, he would be under obligation to testify, and to mention both the men he knew and men he did not know. Witness Alibašić even pointed to Witness I-3's statement that the Prosecutor would send him a statement in writing, which he would have to repeat, but that he never received it.

86. Witness Mitrović confirmed that Witness I-3 was married to his sister, but that they were not on good, friendly terms. Describing their mutual relationship, in the context of two of them being a family, witness Mitrović stated that his sister was his family, not his brother-in-law.

87. All the foregoing points to indeed disturbed relations between Petar Mitrović and Witness I-3. According to the Panel, this even suggests the motives by which Mitrović, as well as the other accused in the case in which Witness I-3 testified in the capacity of a witness (X-KR-05/24), and incriminated them (Aleksandar Radovanović and Milenko Trifunović), were driven to accuse Witness I-3 of giving false evidence.

88. Witness Mirko Ivanović<sup>28</sup>, accused Željko Ivanović's brother, also testified with regard to the conversation he had with Witness I-3. Witness Mirko Ivanović visited Witness I-3 upon his request in the penal-correctional institution. On this occasion, Witness I-3 allegedly stated that he regretted saying that the accused Ivanović had been present at the crime scene, because he was not present on a field mission, that he would like to rectify that, and that he felt sorry for his family. Witness I-3 also expressed his concerns about the consequences for the verdict and the sentence he served as a result of his possibly changed statement. For this reason, Witness I-3 asked witness Mirko Ivanović to check with the Accused's Counsel if such consequences were possible.

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<sup>28</sup> Transcripts in the case No X-KR-06/180-3 of 21 October 2010, the testimony of Mirko Ivanović, pp.12-13.

89. In analyzing, however, witness Mirko Ivanović's testimony in relation to the context of time when Witness I-3 gave evidence as a witness for the Defense in *Željko Ivanović*, it has become evident that Witness I-3 and Mirko Ivanović had a conversation several days prior to Witness I-3's giving evidence in the capacity of a witness for the Defense in this case.<sup>29</sup> At the time, Witness I-3 repeated in his testimony everything he had testified about in the capacity of a witness for the Prosecution, or more precisely, he corrected his testimony in relation to the earlier given statements relating to the critical events, but only in relation to the accused Ivanović's role. Witness I-3 repeated that he erred in saying that the Accused had also fired from a semi-circle when, in fact, he just stood guard. Therefore, Witness I-3 did not at call into question that the accused Ivanović was present inside the FC Kravica compound.

90. In view of the foregoing, and following a comprehensive analysis of all Witness I-3's statements, given either directly before the Trial Panel in *Željko Ivanović*, or tendered in the case record by the Prosecution or the Accused's Defense, the Appellate Panel concluded that, contrary to the submissions of the Accused's Counsel, the statements of Witness I-3 are consistent with regard to the decisive facts. More specifically, the Panel notes that omitting to mention in certain statements the accused Ivanović as one of the actors in the events at issue, may be attributed to the fact that, during the hearing, the Prosecutor did not pose any concrete question to this witness about the accused Ivanović, as he was not the key subject of his interest. However, when the witness testified, for example in *Petar Mitrović et al.*, he knew who the accused persons were, and against whom he testified.

91. Contrary to the Defense's submissions that Witness I-3 is a manipulative witness, who had adjusted his statements to the Prosecution's needs, being motivated by the offered plea agreement, and by a possibility to receive a less stringent sentence, the Panel has noted that Witness I-3 had never mentioned certain persons as actors in the events at issue, for example the then accused Miladin Stevanović. If the Defense's view in relation to Stevanović were accepted, the Prosecution would have been particularly interested in proving his guilt too, at the time when Witness I-3 gave evidence in the case No X-KR-05/24. However, from his first to the last statement, Witness I-3 consistently testified that the accused Stevanović had left the crime scene.

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<sup>29</sup> They spoke on 6 June 2010, and on 17 June, Witness I-3 testified as a witness for the Defense.

92. Furthermore, if the Defense's submission, that the Witness I-3 adjusted his evidence to the Prosecution's needs, were accepted, it would be logical that he, acting in favor of the Prosecution's alleged interest, have stood by his contention that the accused Ivanović had fired at the captured men in the hangar. In testifying in different cases, however, Witness I-3 recalled the events of the critical day, and publicly apologized to the Accused for having falsely testified against him. Reducing the scope of criminal activities with which he charged the Accused in his first statements, Witness I-3 changed his testimony and stated that he had erred, and that the accused Ivanović had not fired (at the prisoners). Therefore, Witness I-3 changed his testimony in favor of the accused Ivanović.

93. The Panel has evaluated Witness I-3's statements given in 2012, in combination with the other pieces of evidence, and, along this line, assessed their probative value. The contents of the referenced statements clearly show that they fully contradict the evidence this Witness gave in both this case and the other cases of this Court. In addition, the Panel took into account the circumstances under which the statements were given, as well as the Witness's possible motives to testify in the described way. In this context, the Panel first considered the fact that the witness gave these statements once he served the prison sentence received under the Court's final verdict, and that, in addition to being at liberty at the time of testimony, he abandoned the BiH territory, and thereby excluded any possibility for the BiH law enforcement agencies to undertake any measures to secure his direct hearing, and possibly to prosecute and sanction him for a conceivably false testimony. The Panel was also mindful of the fact that the referenced witness had earlier addressed the Prosecution and notified them about the pressure exerted on and threats sent to his family. Therefore, the Panel has noted that such statements of his may be interpreted in the context of his efforts to ease his current position, when he is at liberty after serving his sentence. In view of all the foregoing, and in particular of the fact that his last two statements contradict all the other pieces of evidence adduced, the Panel has inferred that no credence can be given to these statements.

94. The Panel, however, had to analyze the probative value of Witness I-3's evidence from another aspect. Specifically, the fact that this witness entered a plea agreement with the Prosecution is another fact underlined by the Defense calling into question the credibility and probative value of this witness's evidence.

95. Article 15 of the CPC of BiH contains one of the basic principles of criminal procedure,



that is, the principle of free evaluation of evidence. It ensues from the contents of this provision that:

“The right of the Court, Prosecutor and other bodies participating in the criminal proceedings to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules.”

In view of the referenced principle, there are no rules which would predetermine the probative value of certain pieces of evidence, or which would determine that the probative value of certain piece of evidence prevails over another piece of evidence.

96. The Constitutional Court of Bosnia and Herzegovina has also dealt, on a number of occasions, with the issue of probative value of the testimonies of the witnesses who entered plea agreements, or who testified after being granted immunity. The Constitutional Court of BiH has addressed an application filed by the appellant for a violation of the right to a fair trial under Article 6(1) of the ECHR because the decision on his guilt was mostly based on the testimony of a person, also prosecuted for the same criminal offense as the appellant, who entered a plea agreement with the Prosecution after the indictment had been issued.

97. The Constitutional Court does not exclude a possibility to use such evidence, but rather notes in this context the following:

“... it is necessary to apply other, fundamental principles of the criminal legislation to such kind of evidence as solicit and conscientious evaluation of evidence in isolation and in connection with each other and principle *in dubio pro reo*. As already stated, by applying the principle of free evaluation of evidence, the courts cannot *a priori* attach greater value to such evidence because it was obtained on the basis of agreement on confession of his guilt concluded with witness who was previously accused for the same offence. On the contrary, the courts have to evaluate this evidence in the same manner and based on the same rules prescribed under the Law for any other presented evidence, i.e. in isolation and in connection with other evidence, and bring all presented evidence in logical relation.”<sup>30</sup>

98. Further in the same case, the Constitutional Court infers that the evidence obtained on the basis of evidence of witness who concluded an agreement with the Prosecution confessing his guilt, or who was granted immunity from criminal prosecution, cannot be considered unreliable, or that it cannot be taken into account, but, on the contrary, that such evidence must be subject to a far more detailed analysis than the other evidence. The Constitutional Court has, in this respect, noted that:

“Even though such witnesses may often be unreliable, it in itself is not a reason not to have faith in the statement of such witness.”<sup>31</sup>

99. Ultimately, the Constitutional Court has set up specific criteria pursuant to which the statements of a witness who entered a plea agreement or who was granted immunity may be used as evidence. In the concrete case (M.Š.), the Constitutional Court did not find that the appellant's rights were violated because the court's conclusions were based on the statement of a witness who entered a plea agreement. The referenced witness's statement, however, was the only evidence on which it could be established that the appellant indeed committed the offense charged against him. Other evidence confirmed this testimony, but this circumstantial evidence did not refer to the key facts on which the judgment was based.<sup>32</sup>

100. In assessing the credibility of Witness I-3, the Panel has acted consistently with the referenced position of the Constitutional Court of Bosnia and Herzegovina, which has also upheld the views taken by the ICTY<sup>33</sup> and ICTR<sup>34</sup>. More specifically, the Panel took into account all Witness I-3's statements, analyzed them with due consideration and caution, both individually and in combination with the other pieces of evidence, and paid particular attention to the witness's possible motives or incentives to unreasonably incriminate the Accused. In view of the foregoing, the Panel gave credence to Witness I-3's testimony with regard to the facts supported by the other evidence adduced, the statements of the other heard witnesses, and the documentary evidence. The conclusion on the decisive facts related to the existence of the offense and the Accused's guilt, however, was not exclusively based on Witness I-3's testimony exactly because he is an accomplice, who entered a plea agreement with the Prosecution. Therefore, Witness I-3's testimony was rather assessed as a piece of evidence corroborating the other evidence adduced in the concrete case.

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<sup>30</sup> Decision of the Constitutional Court of BiH, AP-661/04 M.Š., para. 38.

<sup>31</sup> Ibid, para. 37.

<sup>32</sup> Ibid, paras 7. and 9.

<sup>33</sup> Appeals Chamber Judgment in *Krajišnik*: the Appeals Chamber is of the view that the Trial Chamber should briefly explain the reasons for which it accepted the evidence of witnesses who might have motive or incentive to implicate the accused, in order to show that such evidence was scrutinized with the required caution.

<sup>34</sup> Appeals Chamber Judgment in *Niyitegeka* concluded that nothing in the Statute or the Rules of the Tribunal prohibits a Trial Chamber from relying upon testimony of those who were partners in crime, while the Appeals Chamber Judgment in *Nahimana* et al. concluded that such testimony should be scrutinized with caution since the main task is to determine whether the witness concerned may have motives or incentives to implicate the accused.

## **B. EVIDENCE OF PETAR MITROVIĆ AND MILADIN STEVANOVIĆ**

101. During the entire proceedings, and even in the appeal filed from the Trial Verdict, as well as in the proceedings before the Appellate Panel, Counsel for the accused Željko Ivanović contested the lawfulness of evidence - Suspect Questioning Records for Petar Mitrović<sup>35</sup> and Miladin Stevanović<sup>36</sup>, tendered by the Prosecution into the case record as the key evidence incriminating the Accused.

102. The Defense's appellate arguments essentially focused on the fact that the referenced evidence is, by its character, unlawful evidence because at the time, witnesses Petar Mitrović and Miladin Stevanović gave these statements in the capacity of suspects, and thereupon in the capacity of accused persons. At the main trial in the case conducted against them, however, they remained silent. According to Counsel, the then suspects Petar Mitrović and Miladin Stevanović were not instructed, pursuant to Article 78(2)(c) of the CPC of BiH, that their statements given during the investigation may be read out at the main trial. Since these statements were nevertheless used in the proceedings against Željko Ivanović, the character of unlawful evidence was ascribed to them.

103. The Appellate Panel has concluded that the Defense's appellate complaints are ill-founded.

104. Specifically, when they gave their statements in the capacity of suspects, both witness Mitrović and witness Stevanović did so in the presence of their respective defense attorneys. They were instructed about their rights in compliance with the then applicable provisions of the procedural law. Article 78(2)(c) of the CPC of BiH, as interpreted by the Accused's Defense, was amended long after these two witnesses had given their statements in the capacity of suspects.

105. In 2005, when the then suspects Mitrović and Stevanović gave their statements, Article 78 of the CPC of BiH, which provided for the instructions that a suspect shall receive, read in its relevant part as follows:

“c) the right to comment on the charges against him and to present all facts and evidence in his favor.”

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<sup>35</sup> Exhibit T-39.

<sup>36</sup> Exhibit T-36.

106. The referenced provision was changed within the set of amendments to the CPC of BiH in June 2008, when the contents thereof, in terms of the information which shall be given to the suspect, were defined as follows:

“c) the right to comment on the charges against him and to present all facts and evidence in his favor, and if he does so in the presence of the defense attorney, the statement made shall be admissible as evidence at the main trial and may, without his consent, be read and used at the main trial.”<sup>37</sup>

Paragraph 6 of the same Article, pursuant to both the original and amended wording, prescribed that if any actions have been taken contrary to the provisions of this Article, the Court’s decision may not be based on the statement of the suspect.

107. Having reviewed the referenced records, the Panel noted that the then suspects Mitrović and Stevanović were informed about their rights pursuant to the then applicable provisions of the procedural law. In addition, the intention of the referenced provision and of the amendments made by the legislator therein is to protect the right of a suspect/accused to remain silent. Mitrović and Stevanović appeared in the concrete case as the witnesses obligated to testify, rather than as the suspects. Therefore, the Panel notes that a possible violation of the right to remain silent need not be reviewed. These witnesses’ statements made during the investigation were treated and assessed as an integral part of the witnesses’ testimony, and, as such, were correlated with the evidence they gave at the main trial in the case against *Željko Ivanović*, as well as with the other evidence adduced. For the stated reasons, and considering that the evidence is not unlawful from the aspect of the then instructions received by the suspects, since they were informed about their rights pursuant to the then applicable provisions of the CPC of BiH, this Panel has inferred that such evidence cannot be considered unlawful, and that there are no obstacles to tender these statements into the evidentiary materials, and to evaluate them in the case at hand.

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<sup>37</sup> Official Gazette of BiH 58/08.

## VIII. FINDINGS OF THE COURT

### A. STATUS OF THE ACCUSED

108. The Indictment charged the Accused with having committed the incriminating acts as a member of special police force, or the Skelani Platoon, within the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade.

109. In order to prove that the Accused indeed acted in the above referenced capacity, the Prosecution presented the following evidence: List of members of the Special Police Brigade,<sup>38</sup> indicating Željko Ivanović under No. 28, and the List of the Skelani Unit members,<sup>39</sup> indicating the Accused under No. 38. A number of the heard witnesses for both the Prosecution and the Defense confirmed that the Accused was a member of exactly the Skelani Platoon, which was within the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade. Ultimately, the Accused himself did not contest his capacity in the incriminating period. Therefore, the Panel has concluded that this fact is indisputable, and that it needs no further determination in detail.

### B. OVERALL CONTEXT OF THE EVENTS IN THE UN SAFE AREA OF SREBRENICA

#### 1. Status of the safe area

110. As it ensues from Resolution 819 (1993),<sup>40</sup> on 16 April 1993, the Security Council declared Srebrenica as a „safe area“, which „*should be free from armed attack or any other hostile attack...*“. The referenced Resolution further demanded „*immediate cessation of armed attacks by Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica*“, reaffirming among other things „*that any taking or acquisition of territory by the threat or use of force, including through the practice of “ethnic cleansing”, is unlawful and unacceptable*“, condemned and rejected „*the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian populations from Srebrenica and its surrounding areas...*“, and demanded, inter alia, „*the unimpeded delivery of humanitarian assistance to all parts of the Republic of Bosnia and Herzegovina, in particular to the civilian population of Srebrenica...*“

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<sup>38</sup> Exhibit T-74: List of members of the Special Police Brigade Skelani No.01/1-8-39/95 of 15 May 1995.

111. With the establishment of the “safe area” Srebrenica, which was within the military responsibility zone of the “Drina Corps”, the military confrontation lines around Srebrenica stabilized<sup>41</sup>, but not to a full extent. For the purpose of peace keeping, UN peace keeping forces were also deployed in the safe areas.<sup>42</sup>

112. Nevertheless, all the foregoing failed in preserving the peace in the Srebrenica safe area.

113. It further ensues from the Butler Report that, in early 1995, the Republika Srpska leadership initiated an effort to make the “Eastern enclaves” (inclusive of Srebrenica) untenable, for which purpose first the fuel and food provisions were limited, while in May and June 1995, minor military operations were taken by the Drina Corps along the southern edge of the “safe area”.

114. All the foregoing set the stage for a military operation code-named “Krivaja 95”, more specifically, it culminated in July 1995 in the events to be described further below.

## **2. The attack on Srebrenica**

115. The attack, carried out by the VRS and MUP, was planned and defined in the “Krivaja 95” order<sup>43</sup>.

116. The operation, code-named “Krivaja 95”, was the VRS plan to reduce the physical area of the Srebrenica enclave and to isolate it from the nearby Muslim enclave Žepa.<sup>44</sup>

117. On 8 March 1995, Radovan Karadžić issued “Directive No. 7”, ordering the Drina Corps the following:

„Through demonstrative and active combat operations....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-

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<sup>39</sup> Exhibit T-75: List of members of the Skelani Unit.

<sup>40</sup> Exhibit T-83.

<sup>41</sup> See „Srebrenica Military Narrative (Revised) - Operation „Krivaja 95“, by Richard Butler (hereinafter: Butler Report).

<sup>42</sup> *Ibid.*

<sup>43</sup> Established fact No.4.

<sup>44</sup> Exhibit T-53, Butler Report.

though combat operations, create an unbearable situation of total insecurity, with no hope of further survival or life for the inhabitants of Srebrenica and Žepa.”<sup>45</sup>

The Directive further stated:

„With relevant State and military organs responsible for work with UNPROFOR and humanitarian organizations, through planned and unobtrusively restrictive issuing of permits, reduce and limit the UNPROFOR logistic support to the enclaves and material resources supply to the Muslim population in order to make them dependent on our good will, and in parallel, to avoid any condemnation by the international community and international public.”<sup>46</sup>

118. On 31 March 1995, the VRS Main Staff issued Directive No. 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 enclave<sup>47</sup>.

119. It further ensues from the established facts that “... the then commander of the Drina Corps, General-Major Milenko Živanović, signed two orders, on 2 July 1995, laying out the plans for the attack on the enclave and ordering various units of the Drina Corps to ready themselves for combat. The operation was code-named “Krivaja 95”.”<sup>48</sup>

120. It ensues from the foregoing that the VRS Main Staff, using the Drina Corps as an operational element, in a planned and systematic way, organized the attack on the UN Srebrenica safe area, pursuant to the goals set out in the Directives No.7 and No. 7.1. The attack aimed at ethnic cleansing of Srebrenica, first by depriving the population of basic necessities, creating difficult basic living conditions, the lack of food and medical assistance<sup>49</sup>, and then by the removal of the population<sup>50</sup>, causing by military operations damage and a large number of victims.

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<sup>45</sup> Exhibit T-84, Directive for further operations, No. 7 (hereinafter: the Directive No. 7) brpk 2/2-11 of 8 March 1995, Established fact-33.

<sup>46</sup> *Ibid.*

<sup>47</sup> Established facts Nos. 33-36.

<sup>48</sup> Established fact No. 39.

<sup>49</sup> Established fact No. 34 „Just as envisaged in this decree, by mid-1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic.“ Established fact No. 35 „In early July 1995, a series of reports issued by the 28<sup>th</sup> Division reflected the urgent pleas of the ABiH forces in the enclave for the humanitarian corridor to be deblocked and, when this failed, the tragedy of civilians dying from starvation.“

<sup>50</sup> Established facts Nos. 123,127,131 and 186; Exhibit T-91, Exhibit T-53 - Butler Report.

121. The VRS offensive on Srebrenica began in earnest on 6 July.<sup>51</sup> The attack, carried out by the VRS and MUP was planned and defined in the “Krivaja 95” order.<sup>52</sup> By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometers deep into the enclave, halting just one kilometer short of Srebrenica town<sup>53</sup>.

122. A large number of witnesses heard at the main trial testified about the attack the VRS and MUP launched on the enclave territory.

123. Witnesses I-1, I-2, Munira Subašić and Enver Husić testified that the shelling of the safe area lasted since 6 July 1995, and that it was particularly intensified on 10-11 July 1995. The shelling was carried out by the Drina Corps, in its zone of responsibility. All witnesses testified that they felt fear, that there existed no living conditions, and that, therefore, they decided to leave the enclave, which was indeed one of the goals of the attack defined by the VRS Main Staff.

124. In the circumstances when the population, deprived of the basic living conditions and exposed to the constant shelling, which posed threat to their lives, decided to leave Srebrenica, the Defense's theory, that the population voluntarily left the territory, cannot be accepted. In support of this conclusion also stands the fact, accepted from the ICTY Trial Chamber's Judgment in *Prosecutor v. Krstić*: “On 12 July, as the bus convoys were being organized, General Mladić was heard to say during an intercepted conversation: *They've all capitulated and surrendered and we'll evacuate them-those who want to and those who do not want to.*”<sup>54</sup> Witness Joseph Kingori<sup>55</sup>, a UN military observer in Potočari, attended one of the meetings held at the *Fontana* Hotel with Bosnian Serb representatives to discuss the issue of the enclave population. On this occasion, Colonel Vuković stated that “they did not belong there, that they should all leave the enclave...and that, if the Muslims did not leave, he would kill them all”<sup>56</sup>. Witness Kingori further testified that none of the remaining representatives of Bosnian Serbs, who attended the meeting, objected to such a

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<sup>51</sup> Established fact No.40.

<sup>52</sup> Established fact No.4.

<sup>53</sup> Established fact No. 45.

<sup>54</sup> Established fact No.127.

<sup>55</sup> Exhibit T-143, transcript of Joseph Kingori's testimony in *Krstić* of 31 March 2000.

<sup>56</sup> *Ibid* p.14.



statement. It rather „appeared as if they had already discussed what was being said, and that he only notified them of what they had earlier discussed.”<sup>57</sup>

125. Witness Miroslav Deronjić<sup>58</sup> testified that, when he spoke with Karadžić on 9 July, Karadžić stated as follows:

*“Miroslav, they should be all killed», and added »everyone you can«, saying “you” in plural. Then he added the following phrase: »The Principle of Western Slavonia «. This was literary the sentence he used. I am 100% sure that these are exactly the words he used. This phrase referred to the recent attacks launched by the Croats in the Western Slavonia, as discussed earlier. I realized that this refers to a widespread opinion that, during the attack, the Croats had killed everyone who got in their way, including civilians.”*

126. Thus, there was a plan of systematic attack on the Srebrenica safe area, which was implemented through the undertaken activities of shelling, relocation of the population and the killings of able bodied male population in the enclave, which was carried out in a combined action by the VRS and MUP RS forces. Specifically, as it ensues from Butler Report, in July 1995, four temporary command relationships pertaining to the Drina Corps were noted, including the Special Police Brigade of the Republika Srpska (MUP unit), as one of the units re-subordinated to the Drina Corps during the critical period, which also included the Skelani Platoon within the Second Detachment, with the accused Željko Ivanović being its member, as mentioned above. Supporting the foregoing is the Order No. 64/95 of 10 July 1995<sup>59</sup>, issued by the acting Minister of Interior, Tomo Kovač, showing that joint forces of the MUP units were formed (including the 1<sup>st</sup> Company from the Jahorina Training Center, the „Šekovići” 2<sup>nd</sup> Detachment and the Company from the PJP CJB Zvornik), to assist the VRS forces in the attack. According to this Order, the MUP joint forces were placed under the VRS Drina Corps command, which was subordinated to the VRS Main Staff under the command of General Ratko Mladić.

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<sup>57</sup> *Ibid* p.15.

<sup>58</sup> Exhibit T-149 - Miroslav Deronjić's statement of 25 November 2003.

<sup>59</sup> Exhibit T-13.

### 3. 10 July 1995

127. “On the morning of 10 July 1995, the situation in Srebrenica town was tense. Residents, some armed, crowded the streets.”<sup>60</sup>

128. “Commander, Colonel Vidoje Blagojević, the then Chief of the Main Staff of the Bratunac Light Infantry Brigade, issued on 10 July 1995, an order for a full mobilization of all conscripts under the compulsory work obligation, which had to be completed by 18:00 hours on the referenced day.”<sup>61</sup>

129. Military and police units were withdrawn from other battlefields. On 10 July 1995<sup>62</sup>, the then acting Minister of Interior, Tomo Kovač, issued an order requesting that, on the following day (11 July 1992), a part of the MUP RS forces participating in combat at the Sarajevo battlefield, be deployed as an independent unit in the Srebrenica area. This newly formed independent unit comprised the Second Šekovići Special Police Detachment, the First Company of the PJP CJB Zvornik, mixed company of the joined forces of the MUP RS, Serbia and Republika Srpska and a company from the Jahorina Training Center camp. The referenced unit was tasked with assisting the VRS in the attack.

130. As it ensues from Butler Report, during the evening of 10 July 1995, the bulk of the Muslim 28<sup>th</sup> Infantry Division unit exfiltrated the town heading for the northwest corner of the enclave to prepare for a breakout towards Tuzla. Women, children, the elderly and the infirm began heading toward the relative security of UN compounds in Srebrenica and Potočari.

131. In addition to the witnesses who testified about the culmination of tensions and fear in Srebrenica on the referenced day, the lack of conditions to further survive inside the safe area compound, which forced their decision to leave the area, urgent requests by Colonel Karremans for the NATO air support to defend the town also speak about the extraordinary situation, but no assistance was forthcoming until around 14:30 hrs on the

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<sup>60</sup> Established fact No. 47.

<sup>61</sup> Exhibit T-89.

<sup>62</sup> Exhibit T-13.

following day, 11 July 1995, when NATO bombed the VRS tanks advancing towards the town.<sup>63</sup>

#### **4. 11 July 1995**

132. By 11:00 hours, on 11 July 1995, Serb assault forces were again advancing towards the town, with Dutch peacekeepers again withdrawing before them. By noon, the last rear-guard Muslim units abandoned their positions, and the UN forces in Srebrenica withdrew to their compound on the northern part of the town, still crowded with Muslim refugees. By 16:00 hours on the same day, the Dutch began evacuating the remaining 4.000-5.000 Muslim civilians from the Bravo Company Compound in Srebrenica, their destination being the UN main compound, two kilometers to the north in Potočari<sup>64</sup>. When VRS troops subsequently entered the town, it was almost deserted.<sup>65</sup>

133. „Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Drina Corps Commander), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, too a triumphant walk through the empty streets of Srebrenica town”.<sup>66</sup>

134. “By the evening of 11 July 1995, approximately 20.000 to 25.000 Bosnian Muslim refugees were gathered in Potočari<sup>67</sup>. Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighboring factories and fields.”<sup>68</sup>

135. Witness Munira Subašić<sup>69</sup>, who had also lived in Srebrenica in July 1995, testified that, on 11 July 1995, between 10:00 and 12:00 hours a.m., the UNPROFOR personnel carriers were passing by, with interpreters shouting that „Srebrenica was taken and that it must be abandoned“. She, her husband and the son came to the UN compound in Potočari.

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<sup>63</sup> Established fact No. 48.

<sup>64</sup> Butler Report, p. 34.

<sup>65</sup> *Ibid*, p.35.

<sup>66</sup> Established fact No. 51.

<sup>67</sup> Established fact No. 65.

<sup>68</sup> Established fact No. 66.

<sup>69</sup> Main trial transcript in X-KR-06/180-3 of 11 March 2010, pp. 5-6.

136. Witness Kingori testified that, on 11 July 1995, a mass of refugees was inside and around the UN compound in Potočari, around 5.000 of refugees in the compound itself, and 7,000 – 8,000, or even 10,000 outside the compound. As to the ratio between male and female refugees, the witness stated: *“Perhaps I would not state the precise percentage, but there were less men than women, so I would say that 80% were women, and the rest were men. Most of the present men were the elderly, that is, older than the age of able bodied men or younger...there were young boys.”*<sup>70</sup>

137. It should be particularly underlined at this point that the evidence adduced shows that mostly the women, children and elderly assembled in the area of the UN compound in Potočari in order to be transported to the territory held by the Army BiH.

138. These refugees by no means represented all of the Muslims remaining in the enclave. Since the evening of 10 July 1995, soldiers of the ABiH and Muslim men had been assembling in the area of the villages Šušnjari and Jagličići, ultimately forming a column of around 10.000-15.000 men (military and civilians), which would attempt to escape along that route<sup>71</sup>. Only a small number of women, children and the elderly travelled with the column in the woods<sup>72</sup>. As the ICTY's Judgment found, the young men were afraid that they would be killed if they fell into Bosnian Serbs hands in Potočari and believed that they stood a better chance of surviving by trying to escape through the woods to Tuzla<sup>73</sup>. The column was mixed, military and civilian. About one third of the Bosnian Muslim column comprised soldiers of the 28<sup>th</sup> Division, and about two thirds were Bosnian Muslim civilian men from Srebrenica<sup>74</sup>. The head of the column was comprised of units of the 28<sup>th</sup> Division, and then came civilians mixed with soldiers, and the last section of the column was the Independent Battalion of the 28<sup>th</sup> Division<sup>75</sup>.

139. Witness Enver Husić<sup>76</sup> testified that, after the heavy shelling of Srebrenica, on 10 July 1995, he had to leave his house, so he went with his family to his relatives' house located „near the bus station“, where people assembled. On the following day, 11 July 1995, women and children went to Potočari, while he, his father and other able bodied men went

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<sup>70</sup> T-134, p. 23.

<sup>71</sup> Butler Report, p.35.

<sup>72</sup> Established fact No. 161.

<sup>73</sup> Established fact No. 148.

<sup>74</sup> Established fact No. 153.

<sup>75</sup> Established fact No. 154.

<sup>76</sup> Main trial transcript in X-KR-06/180-3 of 7 April 2010, pp. 5-6.

to the place of Kazani, where a column was formed, and headed towards the village of Jaglići. Witness Husić explained that he and his family accepted the decision of the most people, that there was a general decision that women and children would go to Potočari, and that men would attempt to escape through the woods.

140. Witness I-1<sup>77</sup> also testified that, on 11 July 1995, „the aggressor forced them out of their homes“. The witness further stated that the women and children went to Potočari, since it was promised that they would be immediately evacuated, that they would be safe, and that no one would harm them. On the other hand, the witness, along with other able bodied men, went towards the village of Jaglići, where a column was formed with the aim to attempt a break through towards Tuzla.

141. Witness I-2 was also in the column of men which attempted to break through towards Tuzla.

142. The fact that, on 11 July 1995, the then RS President issued two directives related to Srebrenica, namely the Directive appointing Miroslav Deronjić as the „*Civilian Commissioner for the Serbian Municipality of Srebrenica*“, and the other ordering the „*formation of a Public Security Station for Serb Srebrenica*“, also speaks about the fall of Srebrenica on 11 July 1995. Both these Directives contain the order that „*all citizens who participated in combat...be treated as prisoners of war...and the reminder be free to choose their place of residence or emigration.*”<sup>78</sup>

143. What followed, however, on the referenced and forthcoming days, including the contents of the meetings held at the Fontana Hotel, suggested that the refugees from Srebrenica had no option to choose.

## **5. 12 July 1995**

144. As it ensues from the evidence adduced, two essential facts are characteristic of 12 July 1995: a mass relocation of the population, primarily the women, children and elderly assembled on both the referenced and previous day around the UN compound in Potočari began on 12 July 1995, following the separation of able-bodied men from this group. On this day, however, specifically „by daybreak of 12 July 1992, information began

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<sup>77</sup> Main trial transcript in X-KR-06/180-3 of 10 September 2009, pp. 5-6.

arriving at various VRS headquarters that a large column of Muslims had assembled and were attempting to exfiltrate the former enclave from the area of Jaglići<sup>79</sup>.

145. Even though the representatives of the Serb military authorities, as one of the alternatives, offered the Srebrenica population, within the discussions from the second and the third meeting held at the Fontana Hotel, to stay and live there, or to go anywhere they wanted if it suited them, promising that wishes of each citizen individually would be respected provided that they hand over their weapons<sup>80</sup>, it was clear from the mere beginning that the Muslim population was not faced with a genuine choice as to whether to leave or to remain in the area. Certainly, the Bosnian Muslim refugees were not consulted or given the choice about their final destination<sup>81</sup>. As the ICTY's judgments also noted, „Plans to transport the Bosnian Muslim civilians out of the enclave crystalized at this second meeting<sup>82</sup>. In addition, General Mladić was the person who conveyed the meetings at the Fontana Hotel where he demonstrated a clear wish that the Bosnian Muslims leave the territory<sup>83</sup>.

146. Despite the promises given to the Bosnian Muslims, at the Fontana Hotel meeting on 12 July 1995, General Mladić had said that the military-aged men in the crowd at Potočari would be screened for war crimes.<sup>84</sup>

147. In the Panel's view, the adduced evidence confirmed beyond a doubt that there was intent to permanently and forcibly transfer the entire Bosnian civilian population from the Srebrenica enclave, with the intent to destroy, in part, a group of the Bosniak people of eastern Bosnia.

148. On 12 July 1995, General Major Milenko Živanović issued an order<sup>85</sup> that all available buses and mini-buses belonging to the VRS be secured for use by the Drina Corps Command, and arrive at the Bratunac stadium by 16:30 hours on 12 July 1995. It follows from the same act that the RS Ministry of Defense was already asked for state and private buses to be mobilized and made available to the Drina Corps by the stated hours.

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<sup>78</sup> Butler Report, p.35.

<sup>79</sup> Butler Report p. 39.

<sup>80</sup> Butler Report, transcript quotation from the 3<sup>rd</sup> meeting at the Fontana Hotel, p. 40.

<sup>81</sup> Established fact No.128.

<sup>82</sup> Established fact No.125.

<sup>83</sup> Established fact No.126.

<sup>84</sup> Established fact No.124.

<sup>85</sup> Exhibit T-91.

149. In parallel, the VRS civilian authorities intensively mobilized buses from various municipalities in the Republika Srpska<sup>86</sup>.

150. Leaving the safe area, however, was not an option for all the civilians assembled around the UN compound in Potočari. As already stated, at the third meeting at the Fontana Hotel, on the previous night, General Mladić informed those present of his intent to separate men between the ages of about 16 and 60 „to screen them for war criminals“. Once the Bosnian Muslim refugees began boarding the buses, Bosnian Serb military systematically separated able-bodied men who attempted to board from the crowd. In general, the separation of men from other refugees in Potočari lasted from the morning of 12 July 1995, and continued through 13 July, and the separated men were put on their own buses different from the ones carrying the women, children and the elderly.<sup>87</sup>

151. The transcript of witness Deronjić's testimony,<sup>88</sup> also shows that the men were separated from the women. Deronjić stated: *“Vasić told me that the men were being separated from the women in front of the UNPROFOR compound. I asked Vasić to tell Mladić it was totally crazy to do this on the site where the UNPROFOR was present, that it was simply not the place to do it there. ...”* The destiny of the separated men will be addressed below.

152. On 12 July 1995, General Mladić visited Potočari several times. Witness Kingori testified that, on 12 July 1995, he saw General Mladić, together with other high-ranking officers and soldiers, handing out non-alcohol beverages and sweets to Muslims gathered around the UN compound, which was filmed. The witness immediately thought this was propaganda, and *“that they wanted to show the world that, after all, they nevertheless did something for these people.”* That he was right, that it was indeed propaganda as he initially thought, the witness concluded from the fact that, as soon as the camera turned to the other side, soldiers took the sweets back from those to whom they had just given them<sup>89</sup>.

153. That General Mladić was present in Potočari on the referenced day also ensues from the testimony of witness Munira Subašić. According to this witness, Mladić said that the

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<sup>86</sup> Butler Report, p. 43.

<sup>87</sup> Established facts Nos.113, 113,110 and 108.

<sup>88</sup> Statement of 25 November 2003 from the *Blagojević* case, para. 198.

<sup>89</sup> Exhibit T-143, Transcript of Joseph Kingori's testimony in *Krstić*, 31 March 2000, p. 29.

men had to be screened, and that the women and children could leave. She cried and General Mladić asked why she was crying. When she told him she was looking for her son, they asked for his name and called him out. They brought her son to her, and she thought he would have stayed with her. However, they again took him away, and she has not seen him ever since. The witness did not find her son's mortal remains by the day of her testimony.

154. The second incident, related to 12 July 1995, pertains to the information about the column of Muslim refugees formed in the Jaglići area. Specifically, *immediately following the take-over of Srebrenica, the whereabouts of the 28<sup>th</sup> Division of the Army BiH were unknown. This was of great concern for the VRS, as was the possibility that forces of the 2<sup>nd</sup> Corps of the A BiH, attacking from the direction of Tuzla and Kladanj, would link up with elements of the 28<sup>th</sup> Division*<sup>90</sup>. It ensues from Butler Report, however, that the intercepts from the early morning hours of 12 July 1995 indicate that the VRS commanders began monitoring the column movement, and that by the afternoon hours of the referenced day, the Command of the Drina Corps and the Command of the Zvornik Brigade demonstrated detailed knowledge of the direction in which the column was moving<sup>91</sup>. Army units and RS Police units (operating under military control), attempted to prevent the column from escaping, and those units attacked the column<sup>92</sup>. During the period 12-18 July 1995 the Drina Corps Brigades, particularly the Bratunac and Zvornik Brigades, engaged in combat with the Bosnian Muslims column which attempted to break through to Bosnian Muslims held territory<sup>93</sup>. Heavy shooting and shelling continued throughout the day of 12 July 1995 and into the night, and ultimately, the head of the column abandoned hope<sup>94</sup>. 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.<sup>95</sup> A group of around 2,000 to 3,000 men from the column managed to reach the area between Konjević-Polje and Nova Kasaba by the morning of 13 July 1995. They could not cross the road as it was blocked by the

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<sup>90</sup> Established fact No. 149.

<sup>91</sup> See para. 166 of the Verdict – a substantial part of the 28<sup>th</sup> Division formed part of the column.

<sup>92</sup> Butler Report.

<sup>93</sup> Established fact No. 173.

<sup>94</sup> Established fact No. 177.

<sup>95</sup> Established fact No. 165.



Bosnian Serb units. At around 13:00 hours, Bosnian Serb forces surrounded this large group. The large group was forced to take the asphalt road”.<sup>96</sup>

155. The situation, however, following the surrender or capture, or the separation of women and children in Potočari, (take-away of personal documents<sup>97</sup>, shortage of food, water and medicines<sup>98</sup>, killings<sup>99</sup>), pointed to the conclusion that a different fate was intended for those men, other than the mere questioning and evacuation.

156. The foregoing is also confirmed by the evidence of witness Deronjić.<sup>100</sup> This witness testified that, on the morning hours of 13 July 1995, in a conversation between him and Beara in his office, Colonel Beara said that the „Muslim prisoners should be killed, and that he ordered that this be done”. The witness stated that he did not agree with this order.

157. The transport out of Potočari of the Bosnian Muslim men started in the afternoon on 12 July 1995.<sup>101</sup> On 12 and 13 July, the Drina Corps Command must have been informed about the diversion of the buses from their original task of transporting the Bosnian Muslim women, children and the elderly into transporting men from Potočari to Bratunac<sup>102</sup>. Most of the Bosnian Muslim men separated in Potočari and captured in forests were detained in Bratunac for between one and three days and subsequently bussed to other detention and execution sites.<sup>103</sup>

## **6. 13 July 1995**

158. On 13 July 1995, the transfer of the Bosnian Muslim population was completed and the first mass killings of detained men from the Srebrenica area started. The executions inside the FC Kravica compound will be particularly addressed in describing the role and actions of the accused Ivanović. At this point, the Panel will refer to the overall events that occurred on the referenced day within the general context of the events in Srebrenica.

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<sup>96</sup> Established fact No. 178.

<sup>97</sup> Iskaz svjedoka Kingorija, Established fact No. 167.

<sup>98</sup> Established facts Nos. 69, 700 and 73.

<sup>99</sup> Established fact No. 111; Established fact No. 114, Established fact No. 180.

<sup>100</sup> Deronjić, evidence from *Nikolić*, 28 October 2003, p. 1559 of the transcript.

<sup>101</sup> Established fact No. 185.

<sup>102</sup> Established fact No. 184.

<sup>103</sup> Established fact No. 145.

159. 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.<sup>104</sup> As ensues from the established fact No. 186, by 19:00 or 20:00 hours, [on 12 July], the total of between 9.000 and 10.000 Bosnian Muslim men, women, children and the elderly left Potočari by buses and trucks.<sup>105</sup> The removal of the Bosnian Muslim population from Potočari was completed on the evening of 13 July 1995.<sup>106</sup> The strength of the desire to capture all Bosnian Muslim men was so great that Bosnian Serb forces systematically stopped buses transporting women, children and the elderly at Tišća, and checked that no men were hiding on board.<sup>107</sup>

160. The Bosnian Muslim men, who had been separated in Potočari from the women, children and the elderly (numbering approximately 1,000) were transported to Bratunac, and subsequently joined by Bosnian Muslim men captured from the column.<sup>108</sup> No discernible effort was made to keep the prisoners from Potočari and the men captured from the column in woods separate.<sup>109</sup>

161. Between 1,000 and 4,000 Bosnian Muslim men captured from the column were held in the Sandići Meadow, along the Konjević Polje-Bratunac road. Most of the men were civilians. The soldiers guarding the men forced them to drop their belongings into big piles and to hand over their valuables.<sup>110</sup>

162. On the night of 13 July, between 80 and 120 buses and trucks were parked in Bratunac, with the number of Bosnian Muslim men estimated between 3,500 and 4,500.<sup>111</sup>

163. Therefore, there were several sites where the Bosnian Muslim men were held, either those who surrendered or were captured from the column, or separated from the women and children in Potočari, or subsequently singled out from the buses by which the women, children and the elderly were transported to the territory held by the A BiH. Thus, as it ensues from both the established facts and Butler Report, on 13 July 1995, the captured

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<sup>104</sup> Established fact No. 90.

<sup>105</sup> Established fact No. 286.

<sup>106</sup> Established fact No. 94.

<sup>107</sup> Established fact No. 204.

<sup>108</sup> Established fact No. 118.

<sup>109</sup> Established fact No. 119.

<sup>110</sup> Established fact No. 179.

<sup>111</sup> Established fact No.189.

men were held in the Sandići Meadow<sup>112</sup>, detained on trucks and buses in Bratunac<sup>113</sup>, Nova Kasaba<sup>114</sup>, the old school behind the Vuk Karadžić school in Bratunac,<sup>115</sup> in Orahovac, in the Grbavci<sup>116</sup> school, etc. The captured Muslim men were from all these sites, on the very day, or on the following days, taken to the mass-execution sites, as Butler described in detail in his report. It follows from the ICTY's established fact, also accepted by this Panel through the established fact 194 that: „It is also apparent that, by 13 July 1995, when a vehicle began scouting for detention sites, the Zvornik Brigade was aware of plans to transport the Bosnian Muslim prisoners northward, to sites within its zone of responsibility. This decision to transport them to remote locations up north (again with no provision made for food and water), rather than to recognize prisoner of war facilities, amounted to an unequivocal signal that a mass execution plan was in operation.”<sup>117</sup>

164. It further ensues from Butler Report that, on 13 July 1995, the MUP RS was given the mission (by the VRS) to complete the movement of the remaining Muslim civilian population from Potočari and to „deal“ with Muslims in the area south of the Bratunac-Konjević Polje road. Zvornik Chief of the CJB Vasić reported that General Mladić informed the MUP that the VRS was redirecting its military operation towards Žepa and is yielding all other tasks to the MUP, including the evacuation of the remaining civilian population (some 15,000) from Srebrenica. Further, the task of eliminating the threat posed by the 8,000 Muslim soldiers who were blocked in the woods around Konjević Polje also fell primarily on the MUP.<sup>118</sup>

165. On 13 July 1995, the Main Staff issued an order to the Drina Corps Command, No. 03/4-1638, preventing the leakage of confidential military secrets in the area of combat, but also directing that road segments Konjević Polje-Kravica-Bratunac and Rogatica-Borike-Višegrad be closed, specifically directing that no information was to be provided.<sup>119</sup>

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<sup>112</sup> Most of them were escorted and executed in the evening of 13 July 1995 in the FC Kravica.

<sup>113</sup> In the morning of 14 July, they were taken to the school in Petkovci, and subsequently executed - Butler Report 6.9-6.10.

<sup>114</sup> They were transported to the execution sites in the zone of the Zvornik Brigade – Butler Report 12.8.

<sup>115</sup> The men, who were not killed during the tree-day stay in the school, were transported on 15 July 1995 to the school in Pilica, and subsequently to the Branjevo Military Farm, and executed on a mass-scale - Butler Report 6.4-6.5.

<sup>116</sup> In the afternoon of 14 July, wearing blindfolds, they were taken to the field, lined up and shot - Butler Report 7.6-7.27.

<sup>117</sup> Established fact No. 194.

<sup>118</sup> Butler Report 12.7.

<sup>119</sup> Butler Report 12.10.

All the foregoing additionally points to the fact that the realization of the mass-scale execution plan was ongoing.

166. Therefore, in the days following 13 July 1995, when the first executions of the captured Muslim men from Srebrenica were carried out, the executions continued at various sites. After 13 July, a certain number of men not killed in the zone of the Bratunac Brigade, were transported to various sites up north, in the zone of the Zvornik Brigade, where the executions continued.

167. In this way, a large number of men from the Srebrenica area, who constituted around one fifth of the entire population of Srebrenica, were killed.<sup>120</sup> It ensues from the established facts in the ICTY's judgments that, *in July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number is likely to be within the range of 7,000 - 8,000 men.*<sup>121</sup>

## **7. 17 - 19 July 1995**

168. The operation of burial of the executed men began already in the evening hours of 13 July 1995. It ensues from the established fact No. 220 that Colonel Beara, together with Miroslav Deronjić and others, began organizing the burial of Bosnian Muslim men killed in the Kravica warehouse on the referenced day. Between 14 and 16 July 1995, the bodies of Bosnian Muslim men were transported by trucks from the Kravica warehouse to the grave sites in the villages of Glogova and Ravnice for burial.

169. Even though a large number of men surrendered, or were captured on 12 and 13 July 1995, the VRS forces and the MUP re-subordinated units, members of the Drina Corps, continually searched the area until 17 July in order to capture the [remaining] Muslims from the column.<sup>122</sup> As described above, and as it also ensues from Butler Report, during those days, mass executions were carried out at various sites. Butler Report concluded that "by the evening of 17 July 1995, all large-scale execution activity was completed. Most of the burial activity related to the executions was also completed."<sup>123</sup>

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<sup>120</sup> Established fact No. 22.

<sup>121</sup> Established fact No. 9.

<sup>122</sup> Established fact No. 160.

<sup>123</sup> Butler Report 10.53.

170. In those days, however, neither the domestic nor international public was aware of the destiny of the executed men. During the period 14-19 July 1995, a series of meetings was held with President Slobodan Milošević and General Ratko Mladić, to negotiate free access of the UNHCR and ICRC to the area. Despite an agreement being reached, the VRS continued to refuse entry to the areas where the Bosnian Muslim men were being detained.<sup>124</sup>

171. All the foregoing, in addition to the operations carried out in the meantime to bury the killed men in mass grave sites, points to the conclusion that there was an attempt to hide the traces of heinous crimes, in which over 7,000 Bosniak men were killed, before anyone came to the safe area. According to the Panel, there is no doubt that the transfer of the Muslim civilian population of the Srebrenica municipality was forcible, that the expulsion of approximately 40,000 citizens and the execution of over 7,000 Bosniak men and young boys, in the above described way, amounted to the realization of intent to destroy, in part, a group of the Bosniak people of Eastern Bosnia.

172. The Accused's role and actions in the implementation of such a plan will be described below.

## **IX. SECOND DETACHMENT OF THE SPECIAL POLICE BRIGADE**

173. As the Verdict earlier noted, during the critical period, the accused Željko Ivanović was a member of the Second Detachment of the Special Police Brigade (Šekovići Detachment), specifically, a member of its III Platoon – Skelani Platoon.

174. It ensues from the consistent evidence of the witnesses, members of the same platoon, heard at the main trial, Witness I-3, witnesses Miladin Stevanović, Velibor Maksimović, Petar Mitrović, Milenko Trifunović, that in mid-June, the Šekovići Detachment was deployed at the Sarajevo battlefield, in the Srednje area, where they stayed for approximately 15 days, and that thereupon it was re-assigned to the Srebrenica UN safe area.

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<sup>124</sup> Established facts Nos. 263 and 264.

a. The Accused's alibi

175. At this point, the Panel first needs to note that it gave no credence to the Accused's alibi, that he was not with his unit at the Sarajevo battlefield, but rather in the area of Srednje, and that thereby he could not have been, or would have been reassigned to Bratunac, in the enclave area, and that therefore he did not take part in the critical events.

176. Considering the Accused's alibi, the Defense witnesses Milisav Marjanović, Milenko Trifunović, Aleksandar Radovanović, Velibor Maksimović and Dragiša Živanović testified specifically about the fact that the accused Željko Ivanović did not go with his unit on a field mission in Srednje, or that he arrived with his unit in Bratunac, that he was deployed to the Bratunac-Konjević Polje road, and that ultimately, he was present in the FC Kravica when the critical event occurred.

177. In terms of this alibi and its probative value, the Panel recalls the positions taken by the International Tribunals in *Zigiranyirazo*<sup>125</sup>, and *Čelebići*<sup>126</sup>, namely that alibi is not a defense in its true sense at all. If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. By raising this issue, the defendant does no more than require the Prosecution to eliminate a reasonable possibility that the alibi is true.

178. The Defense tried to develop the Accused's alibi in four distinct directions. First, the Accused's alibi was built on the theory that two brothers could not, at the same time, be deployed in the field, and that, on the critical day, Platoon Commander Milenko Trifunović called Željko Ivanović's brother, Jelko Ivanović, who was a member of the same unit.<sup>127</sup> Milenko Trifunović, then Commander of the Skelani Platoon, confirmed the submissions of the Defense for the Accused.

179. Within the context of proving the Accused's alibi, the Defense further submitted, and heard witness Slaviša Stanojević with regard to this matter, that the Accused was a skilled construction worker, that he often worked at various construction sites, including in Montenegro, in order to earn some money for the unit, and that because of such an engagement in the field he was not present in Srebrenica on 12 and 13 July 1995. Also,

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<sup>125</sup> See the ICTR appeals judgment in *Zigiranyirazo*, para. 17.

<sup>126</sup> See the ICTY appeals judgment in *Čelebići*, para. 581.

<sup>127</sup> See Exhibits T-74 and T-75.

developing the Accused's alibi, the Defense submitted that he often participated in football contests, and that on 12 July 1995 he participated in a football contest on the St. Peter's day, wherefore he could not have participated in the critical events. To prove these submissions, the Defense heard witness Milisav Marijanović. Witness Marijanović confirmed that he had participated in and played at the referenced football contest together with Željko Ivanović, Miladin Stevanović and Petar Mitrović. Ultimately, the Accused's Defense built the alibi by proving that another Željko Ivanović was also a member of the Šekovići Second Detachment, and that the witnesses, mentioning Željko Ivanović as a participant in the critical events, did not imply the Accused.

180. The Panel has concluded that the testimonies of the witnesses heard with regard to the alibi were neither convincing nor reliable, and that the Defense's submissions were mutually contradictory and unconvincing.

181. Milenko Trifunović, witness for the Defense, was a single witness to confirm that, on the critical day, Jelko Ivanović, the accused Željko Ivanović's brother, went on a field mission. With regard to the foregoing, the Defense attorney has also examined the other witnesses, members of the Skelani Platoon. Witnesses Dragiša Živanović and Velibor Maksimović stated that they did not know whether the Accused was present with his unit on the Srebrenica field mission. Also, witness Maksimović did not confirm the Defense's theory that the Accused was not with his unit on the Srednje field mission either. On the contrary, evidently attempting to diminish the Accused's role, witness Maksimović testified that, on 15 June, the Accused was present with his unit at the Sarajevo battlefield, and that he went on a field trip in Srednje. Witness Maksimović, however, was not sure whether the Accused indeed returned, with the other group of his unit, back to Srebrenica. Witness Živanović was, under the final Court's decision, acquitted of the charges for the critical events exactly because the Panel found it proved that he was not present in Srebrenica, since he was absent with leave to see his brother off to the army. Witness Živanović stated that he logically did not know which members of the platoon went to Srebrenica, because he himself was not there. Witness Aleksandar Radovanović denied the Accused's presence in Srednje and in Srebrenica.

182. Contrary to such evidence of the Defense's witnesses, witnesses Petar Mitrović and Miladin Stevanović stated with certainty, in their statements given during the investigation, that Željko Ivanović was among the members of the Skelani Platoon deployed both in Srednje and in Srebrenica, and secured the Bratunac-Konjević Polje road. Witness

Mitrović even described the Accused's concrete role in the events inside the FC Kravica perimeter, which is to be addressed in more detail in the Verdict below. Witness I-3's evidence also confirmed the foregoing. In his testimony at the main trial, Witness I-3 indicated Željko Ivanović as the person who had gone on a field trip in Srednje, and who was subsequently present with his unit in Srebrenica. In cross-examination, Counsel argued that a large number of witnesses testified that Željko Ivanović did not at all go on a field mission. Witness I-3, however, stated that it was not true, and that those witnesses did not tell the truth.

183. At the main trial, both witness Mitrović and witness Stevanović withdrew their statements given during the investigation. The Panel, however, concluded that their evidence was neither convincing nor corroborated with any other pieces of evidence, and that therefore they could not be given credence. Witness Mitrović fully denied his statement. During his testimony, witness Mitrović was confused; he either refused answering certain questions, or avoided giving concrete answers. This witness stated that he did not remember certain facts, or that he even did not know certain facts which it is impossible that he was not aware of, at least from the recounts of events, particularly because he eye-witnessed the referenced events. Specifically, the Panel has analyzed the evidence witness Mitrović gave at the main trial, and concluded that he testified in an attempt to assist the Accused in avoiding his criminal liability. Neither witness Mitrović nor the other witnesses, convicted under the final verdicts like he himself, or acquitted of the charges for the same incident, had nothing to lose by testifying in such a way. During the investigation, witness Stevanović gave a detailed statement about the circumstances of which he was aware. At the main trial, however, he allegedly did not remember many details, including the fact of whether the accused Ivanović indeed was present with his unit in Srednje and Srebrenica.

184. Nevertheless, none of the above referenced witnesses, other than witness Trifunović, could confirm that Željko Ivanović's brother, Jelko Ivanović, was present in Srednje and Srebrenica. The Panel considers his evidence as unconvincing, unreliable, and uncorroborated by any other pieces of evidence. Therefore, the Panel could not give credence to the testimony of witness Trifunović. In the statements given during the 2005 investigation, when their memories of the events at issue were certainly much fresher, witnesses Mitrović and Stevanović did not mention Jelko Ivanović as the person who was, together with the unit, present on the referenced field mission, nor did Witness I-3 either, in



any of his statements.

185. The Accused's alibi was that, at the critical time, he was, together with Slaviša Stanojević, engaged in construction works in Montenegro. Despite confirming that the Accused indeed went to perform construction works with Slaviša Stanojević, including the work in Montenegro, and that thereby he "supported the unit" with sport shoes and sweat suits they had earned, certain number of the witnesses for the Defense (Živanović, Maksimović), could not confirm beyond a doubt that Željko Ivanović was indeed engaged in such works exactly during the period covered by the Indictment.

186. Ultimately, Counsel himself called into question such a theory of the Defense. Counsel examined witness Milisav Marijanović with regard to the Accused's alibi that, on 12 July 1995, he participated in a football contest organized on the occasion of St. Peter's Day. Witness Marijanović indeed confirmed this. This confirmation, however, made unconvincing the Accused's alibi that he had performed construction works in Montenegro. The Panel concludes that, by attempting to „move the Accused away“ from the crime scene, the Defense Attorney, in fact, attempts to prove that the Accused was practically, at the same time, present at two different places, which is impossible. For the foregoing reasons, the Panel could give no credence to the Accused's alibi.

187. Ultimately, the Panel has concluded that the Defense's submission that the Accused's identity was mistaken for the identity of some other member of the Šekovići 2<sup>nd</sup> Detachment, with the same first and last name, was neither well-founded nor convincing. Specifically, when the key witnesses in the case, Stevanović and Mitrović, indicated in their statements given during the investigation the members of the platoon who had, together with them, secured the road, they also mentioned Željko Ivanović and his nickname "Arkan". It was determined, over the course of the proceedings, that this was exactly the Accused's nickname, and the Defense did not contest this fact either. In addition, when he gave a statement in the Prosecutor's Office, Witness I-3 identified the Accused from a photo album, and indicated him as a member of the Skelani Platoon, who had together with them escorted the column of captured men towards the FC Kravica. Therefore, there is no doubt that, when speaking about Željko Ivanović as a member of the Skelani Platoon, Witness I-3 spoke about none other than the accused Ivanović.

188. Therefore, the Panel has concluded that all the foregoing indicates that such a defense of the Accused can be given no credence.

b. Deployment of the Šekovići Second Detachment in Srebrenica and further activities in the field

189. As stated earlier, on 10 July 1995, the VRS Staff Commander, Tomislav Kovač, issued an order No. 64/95,<sup>128</sup> among others, to the Special Police Brigade Commander that, *on 11 July 1995, or on the following day, a part of the MUP RS forces participating in the combat operations at the Sarajevo battlefield, be deployed as an independent unit in the Srebrenica area.* Item 2 of the referenced order showed that the Šekovići Police Special Detachment also formed part of this unit.

190. Such turn of events also ensues from the consistent testimonies of the Prosecution witnesses: Witness I-3, Petar Mitrović, Miladin Stevanović, Milenko Pepić, Slobodan Stjepanović, Marko Aleksić, and the testimony of the witnesses for the Defense, Velibor Maksimović and Aleksandar Radovanović. These witnesses confirmed that, on 11 July 1995, while they were deployed to Srednje, their Commander ordered them to withdraw from this field. They further consistently testified that, following its withdrawal from Srednje, the Detachment was deployed at the Srebrenica UN safe area, and placed first in the school in Bratunac, where they stayed overnight.

191. Unlike the other witnesses submitting that they did not know where they would be deployed, or even thinking they would be sent home, Witness I-3 testified that, already in Srednje, Milenko Trifunović, Platoon Commander, who had been informed by Detachment Commander Rade Čuturić, ordered them to go to Srebrenica, and that already at the time they were ordered to kill the able-bodied Muslim men and expel women and children.

192. Such a testimony of Witness I-3 was not corroborated by any other pieces of evidence, so as to this part, the Panel could not conclude, solely on the basis of his testimony, that this decisive fact was proved. Therefore, the Panel did not accept as proved the Prosecution's submissions, also presented in their closing argument, that members of the Skelani Platoon had been informed, even prior to their deployment to Srebrenica, about the assignment pertaining to the killing of military fit civilian men.

193. The Panel has, nevertheless, found unquestionable that members of the Skelani Platoon, deployed to a filed mission in Srednje, including the accused Željko Ivanović, as

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<sup>128</sup> Exhibit T-13, Order No. 64/05 of 10 July 1995.

determined based on the consistent statements of witnesses Mitrović and Stevanović given during the investigation, and supported with Witness I-3's testimony, on 11 July 1995, were withdrawn from the Sarajevo battlefield and deployed to a field mission in Srebrenica.

194. Witnesses Petar Mitrović, Miladin Stevanović, Milenko Pepić, Marko Aleksić, Slobodan Stjepanović and Witness I-3 consistently confirmed that, once they had left Srednje, they came to Bratunac and stayed overnight in a school. In the morning of the following day, 12 July 1995, they went to search the terrain up from the UN compound in Potočari.

195. The evidence of the referenced witnesses was also supported with a Dispatch Note of the Chief of Public Security Station, Dragomir Vasić, dated 12 July 1995,<sup>129</sup> which stated, under item 6, as follows:

“Joined police forces are heading towards Potočari with the aim to capture (members of) UNPROFOR, surround the entire civilian population and cleanse the terrain from hostile groups.”

196. In his statement given during the investigation, witness Miladin Stevanović describes that, on 12 July 1995, around 20 members of the Skelani Platoon were deployed to a “mountain-range” located between Potočari and the Budak hill, towards the Yellow Bridge (Žuti most).

197. Witness Slobodan Stjepanović, member of the 2<sup>nd</sup> Detachment of the Šekovići Police Special Brigade, also described that, on 12 July 1995, at unidentified time, members of his unit or “a smaller platoon” headed off from Bratunac towards Potočari. Even though the witness avoided responding as to what their assignment was in that part, the witness stated that, once they reached the Yellow Bridge, they turned to a village further away from Potočari. The village was abandoned, and in the houses or around them there were no inhabitants. From this place, at the distance of approximately 300 meters, the witness saw a group of “around 50” civilians in Potočari. In his statement given during the investigation,<sup>130</sup> however, witness Stjepanović testified that, at the time when the terrain

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<sup>129</sup> Exhibit T-14.

<sup>130</sup> Exhibit T-33, Witness Examination Record for Slobodan Stjepanović, made by SIPA, No 14-04/2-393/05 of 27 October 2005.

search was completed, after 2-3 hours, he saw a larger number of citizens in Potočari. According to his free estimate, there were up to 15,000 people.

198. Witness I-3 also testified that, on the morning of 12 July, Commander Trifunović gave to his unit the assignment to search the village of Budak near Potočari. The village was located en route from Bratunac towards Srebrenica, on the right side of the road up from Potočari. Witness I-3 also stated that there were no inhabitants in the village, that it was empty, and that they could not carry out their original assignment, namely to kill all able-bodied men and transfer the women and children to Bratunac and Potočari. They went back to Potočari, passed by the assembled civilians, sat in their vehicles and were thereupon directed to Sandići.

199. In his statement of 22 May 2008,<sup>131</sup> Witness I-3 was, in much more detail, examined about what he had seen in Potočari from the village of Budak. This statement of his given regarding the above circumstances is therefore much more comprehensive. The witness stated that, near the factory, and along the entire road in Potočari, he saw a large number of civilians, women, children, the elderly, the Muslim civilians, but he did not see any able-bodied men there. The witness saw that the boarding onto busses had already started.

200. In his statement given during the investigation, witness Stevanović also mentioned a large group of people assembled in Potočari.

201. Witness Predrag Čelić, member of the II Platoon of the Šekovići Special Police Brigade, testified that, following the night spent in Bratunac, they were in the morning deployed to the area overlooking Potočari, to the right from the bridge, with the task to establish lines, and if necessary, to search the area. From the site where they were deployed, they saw the UN base in Potočari, a mass of assembled people, UN soldiers, buses and trucks.

202. The Panel has considered all the referenced statements, the transcripts of evidence given by Miroslav Deronjić and Joseph Kingori in the ICTY cases, the testimony of Munira Subašić, the established facts, as well as Butler Report to which the Panel referred in the part addressing the general context of the events in Srebrenica on 12 July 1995. In the Panel's view, whoever saw, on the referenced day, the UN base in Potočari, and its

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<sup>131</sup> Exhibit O-7.

surrounding area, by which members of the Skelani Platoon passed, once they had searched the villages overlooking Potočari, and who also passed through Potočari itself heading towards Sandići, including the accused Željko Ivanović, could clearly realize that a large group of Muslim refugees, who had left their houses and homes, was being assembled in Potočari, that a large number of buses were ready for their removal, and that the situation was at the very least chaotic.

203. Witnesses I-3, Slobodan Stjepanović, Marko Aleksić and some other members of the Special Police Brigade were aware that Srebrenica had the status of a safe, demilitarized area. Even if they could not precisely define the meaning of the term „safe area“, they were aware that UNPROFOR was present in the safe area, and that their assignment was to protect the Muslim population who had lived there. In addition, they also knew that there were no combat inside the safe area.

### **1. The Bratunac-Konjević Polje road**

204. The heard witnesses, members of the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade, consistently testified that, once they finished searching the villages overlooking Potočari, they were deployed to the Bratunac-Konjević Polje road.

205. In his statement made during the investigation, witness Petar Mitrović stated as follows:

“...Once we spent the first night in this school, we were ordered to move to Kravica, and deploy along the road. Our assignment was to capture all Bosniaks as they surrender, because they were allegedly hiding in the woods. Around 24 members of the Skelani Platoon were deployed along the road between Sandići and Kravica, at a plain area near a house with a water fountain...”

Witness Mitrović further identified members of the Skelani Platoon, who were together with him deployed on this road, including Željko Ivanović aka Arkan.

206. Witness Miladin Stevanović testified that Commander Trifunović reassigned his Detachment to the place of Kravica, in order to secure the Bratunac-Konjević Polje road because Muslims would pass along this road. Identifying members of the Skelani Platoon deployed at the road, witness Stevanović mentioned that Željko Ivanović aka Arkan was

also deployed at this stretch of the road.

207. Consistently with the evidence of the two foregoing witnesses, Witness I-3 testified that they stayed in Kravica,<sup>132</sup> and that, looking from the Bratunac direction, they were deployed at the road section to the left from the hangar, next to the house with a water fountain.

208. Witness Marko Aleksić, acting Commander of the 1<sup>st</sup> Platoon, testified that, after being tasked with establishing a frontline at the hill/mountain-ridge overlooking Potočari, where the whole 2<sup>nd</sup> Detachment was deployed, they were ordered to come back, even before fully completing the assignment. Rade Čuturić issued an order directing them to secure the Bratunac-Konjević Polje road. Specifically, the witness explained that they were informed that a group of Muslims had crossed this road, that they were armed, and that therefore they should be deployed to secure this zone.

209. Witnesses Predrag Čelić and Milenko Pepić, members of the II Platoon, testified that after being on a field mission in the area overlooking Potočari, with the assignment to „search the terrain“, they came to the Kravica area by their vehicles. They were deployed along the Sandići-Bratunac road which, according to witness Čelić, also means towards Kravica. Commander Rade Čuturić ordered them to secure this road.

(a) Deployment of members of the Second Detachment of the Šekovići Special Police Brigade at the Bratunac-Konjević Polje road

210. When it comes to the deployment of members of the Second Detachment of the Šekovići Special Police Brigade, Witness I-3 and witness Petar Mitrović consistently testified that their Platoon was deployed at the road section from Sandići towards Kravica, the hangar of the farming cooperative, and near a house with a water fountain in front of it. This is the house from where the Muslims were subsequently urged to surrender, and where they began surrendering. Witness I-3 described that they stood along this road, two-by-two.

211. Witness Čelić also testified that the 2<sup>nd</sup> Detachment was deployed at the road from Sandići, the mountain-ridge, towards Kravica, and that it covered between 300 and 400

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<sup>132</sup> The witness explained that, as far as he was concerned, the terms Sandići and Kravica meant the same.

meters of the road towards Konjević Polje. The witness himself stood by the first house on the road from Sandići towards Kravica, next to the road. Members of the 2<sup>nd</sup> Detachment were deployed in such a way that they could see each other, with several meters distance between them. Witness Mirko Aščerić, deployed in Sandići, near three destroyed houses, testified that members of the 2<sup>nd</sup> Detachment were deployed “within a visible range”.

212. That the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade was deployed at the referenced road also ensues from witness Dragomir Stupar's evidence. This witness testified that the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade was deployed at the mountain ridge in Sandići, near a house which, as he believes, was not destroyed. At this spot, on the left side of the road, opposite to the referenced house, looking from the direction of Konjević Polje towards Bratunac, the witness saw a group of captured Bosniaks. Witness Radomir Pantić had certain information about the deployment of the 2<sup>nd</sup> Detachment, and presented them at the main trial. Witness Pantić was a Commander of the 1<sup>st</sup> Company of the PJP Zvornik. Specifically, Ljubomir Borovčanin directly ordered this witness to deploy his Company to secure the Bratunac-Konjević Polje road, to maintain its free passage, as there was information that the „column from Srebrenica“ had cut off this road. The witness stated that, once they arrived at the site, members of the 2<sup>nd</sup> Detachment had already been deployed at the segment of the road near the house with a water fountain, towards Kravica. Thus, his unit was deployed away from the referenced section, towards Konjević Polje.

213. Witness Marko Aleksić, the then acting Commander of the I Platoon, stated that the I Platoon was deployed in the middle, the II Platoon was deployed closest towards Bratunac, while the 3<sup>rd</sup> Platoon-Skelani Platoon was deployed after the I Platoon towards Konjević Polje, next to which the PJP Zvornik unit was positioned. Witness Čelić also confirmed that the 3<sup>rd</sup> Platoon was deployed closest to the Sandići Meadow, where the Bosniak men surrendered on the following day. The foregoing was also confirmed by the testimony of witness Milenko Pepić.

214. The witnesses consistently testified that the road was open to traffic.

215. Witness I-3 testified that trucks and buses transporting the women and children from Potočari drove along this road. This is consistently confirmed by witness Stevanović. Witness Slobodan Stjepanović testified that buses began driving along this road already on the evening of 12 July, and that trucks and buses were there on 13 July too. The

witness assumed that they transported Bosniak civilians. The witness noticed a number of buses driving in the opposite direction, towards Bratunac. Witnesses Radomir Pantić and Mirko Aščerić also testified that buses drove along this route. Witness Mirko Aščerić stated that *the “buses passed in both directions, that they were both crowded and empty, and that it was a busy road”*.

216. All witnesses consistently testified that their assignment was to secure the road where they were deployed. Some of them testified in detail that Muslims, hidden in the woods, were expected to surrender. Witnesses Petar Mitrović and Miladin Stevanović testified that their task was to accept all the surrendering Bosniaks. Witness I-3 also testified that there was an order to execute the Bosniak men. The witnesses further testified they were to prevent a possible attack by the Bosniaks, as the rumors had it they were armed. Their assignment, however, was also to secure unimpeded passage along the road, which was, according to their testimonies, a busy road.

217. Witnesses Mitrović and Stevanović, as well as Witness I-3, testified that they spent the night of 12/13 July 1995 at the referenced road.

218. The Appellate Panel concluded, on the basis of the consistent testimonies, that the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade, with its three platoons, including the Skelani Platoon, was deployed along the Bratunac-Konjević Polje road. The Accused's Defense did not dispute this fact either.

## **2. Surrender of the Bosniak men**

219. The Panel is satisfied that the evidence adduced undoubtedly confirms that the mass surrender of the Muslim men from the column began on 13 July 1995. The Panel has concluded so being mindful of both the witnesses' evidence, to be further analyzed in the reasoning, and the facts established in the ICTY's judgments, namely:

“The largest groups of Bosnian Muslim men from the column were captured on 13 July 1995; several thousand were collected in or near the Sandići Meadow and on the Nova Kasaba football field.”<sup>133</sup>

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<sup>133</sup> Established fact No. 168.



“The Drina Corps Command knew that along the Bratunac-Konjević Polje road, on 13 July 1995, thousands of Bosnian Muslims had been captured along that stretch of road throughout the day.”<sup>134</sup>

“By the morning of 13 July, a group of approximately 2,000 to 3,000 people from the column had reached an area between Konjević-Polje and Nova Kasaba. They could not cross the road as it had been blocked by Bosnian Serb units. At around 13:00, the Bosnian Serb forces surrounded the large group. The large group was then forced down to the asphalt road.”<sup>135</sup>

“Between 1.000 and 4.000 Bosnian Muslim men captured from the column were detained in the Sandići Meadow on 13 July, along the road between Konjević Polje and Bratunac. Most of the men were civilians. The soldiers guarding the men forced them to drop their belongings into big piles and to hand over their valuables.”<sup>136</sup>

The process itself of surrender of the Bosniak men from the column was described through the evidence of members of the 2<sup>nd</sup> Detachment, who were deployed along the road by the Sandići Meadow, where the men who had surrendered were held captives, but also through the evidence of the three injured parties-Witness I-1, Witness I-2 and witness Enver Husić. These witnesses succeeded in escaping the destiny of the most men detained at the Sandići Meadow. Other evidence, like the video clip by Zoran Petrović also confirms the foregoing<sup>137</sup>.

220. Witness I-1<sup>138</sup> was in the column of Muslim men from the place of Jaglić which attempted to cross over to the territory held by the ABiH towards Tuzla. The witness testified that, on 12 July 1995, they headed off from Jaglić through „some place known as Buljim“, and that in the evening hours they got ambushed by the „Serb aggressor“. They stayed there overnight, and on the following morning he succeeded in founding a couple of other men, and headed off with them. The witness does not know precisely at which point in time, during the day, the shooting started. The witness stated that they were shot at from a hill and from the asphalt (road), and that he heard shouts urging them to surrender.

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<sup>134</sup> Established fact No. 170.

<sup>135</sup> Established fact No. 178.

<sup>136</sup> Established fact No. 179.

<sup>137</sup> T-1.

<sup>138</sup> Transcript from the case X-KR-06/180-3 of 19 September 2009, Witness I-3's evidence.

Thereupon they surrendered and crossed over the river at the place where two soldiers stood, who searched them. The witness further testified that they had to hand over their money (the witness had only DM 100) and the weapons. With the hands behind their neck, they marched to a meadow where they saw a large number of men who had earlier surrendered. The witness heard whispering around him that approximately 2,000 men were at the site. In addition to the two soldiers who had searched them, there were many other soldiers. He saw a tank on each side of the meadow, and a PAM mounted on one of the tanks. Fire was opened from this weapon towards the woods. The witness stated that they fired “towards the Bosniaks”.

221. Witness I-2<sup>139</sup> also described the moment of his surrender to the Serb forces. The witness testified that they had difficult time walking through the woods, that a large number of men were killed, that there were explosions and shooting, and that as a result of all these circumstances, they (Bosnian Muslims) had to surrender. On 13 July 1995, they surrendered to the Bosnian Serbs in Kravica, at the road section between Konjević Polje and Bratunac. The witness stated that they crossed over the asphalt road, marching in a column one by one. Thereupon, they had to hand over their money, gold, watches, and all their valuables. Those who had any weapons with them had already thrown them in the woods. There were “a fairly large number” of men assembled at the meadow. The witness noticed a tank and a Praga (self-propelled anti-aircraft gun) shooting towards the woods. They (the Serb forces) also fired from mortars, but the witness could not see them. A three-barrel anti-aircraft gun stood on their left side, immediately next to the houses, also firing towards the woods from which they had come out and surrendered.

222. Witness Enver Husić<sup>140</sup> testified that he joined the column on 11 July, and that on 12 July 1995, the column started off towards Tuzla from the place known as Buljim. There was heavy shelling during all these days, since the attack on Srebrenica on 6 July, through 11 July, when he joined the column, and during the days he marched with the column through the woods. At one moment, he got separated from his father and brother. The witness stated that he had just fallen asleep, and that, when he woke up, they were gone. On 12 July, however, some time before the dark, they reached a “hillside” where they saw a large number of men, including his father, who had been wounded. They stayed in the

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<sup>139</sup> Exhibit A-T-1- Transcript of Witness I-2's evidence in the ICTY's case v. *Krstić*, No. IT-98-33-T of 10 April 2000.

woods overnight, at the place from which they could see the asphalt road down there. On the following morning, the Serb military on the asphalt road invited them, using a megaphone, to surrender. The witness remembered that they had been given an ultimatum to surrender by 10:00 hrs or by 12:00 hrs. The witness also remembered an UNPROFOR vehicle from which they were urged to surrender, with a promise that they would be escorted to Kladanj, and that no harm would be done to them. The witness stated that his father was wounded, that he was forceless, and that in the afternoon hours they decided to get down and surrender. The witness described the moment of surrender itself as follows:

“...When you get down from that hill, there is a small river, a creek and a small wooden bridge. I remember us crossing that bridge. We turned to the right, and took a macadam road, and went up to a hillside where we made the first contact with those Serb soldiers. A soldier stood on each side of the road. They requested us to hand over to them our money, jewelry, any valuables if we had any... they both had weapons, wore camouflage uniforms, and they had some bands here... I cannot be 100% sure... I think they were (members of) some kind of police force and this ... that flag...”

Witness recognized himself at Zoran Petrović's video-clip. He also recognized the road along which they surrendered, as well as the site where they had been searched before crossing over to the Sandići Meadow.<sup>141</sup> The witness had neither money nor anything else to hand over, so he passed by the house, crossed over the asphalt road and reached the meadow where a mass of people had already been gathered. The witness estimated that, while he was present in this meadow, there were around 1,000 men, and people kept coming in and surrendering. Once he reached the meadow, he saw a tank parked on his left-hand side.

223. Members of the 2<sup>nd</sup> Šekovići Detachment also described the Muslim's surrender in the Sandići Meadow. In his statement made during the investigation, witness Miladin Stevanović stated that, while he and other members of his platoon were deployed to secure the Bratunac-Konjević Polje road, one of the members of the Šekovići Detachment used a megaphone to call on Muslims to surrender, telling them: „*Come out, men,*

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<sup>140</sup> Transcript from the case, No. X-KR-06/180-3 of 7 April 2010, evidence of witness Enver Husić.

<sup>141</sup> *Ibid*, p.15; Exhibit T-1.

*surrender, and no harm would be done to you*". Subsequently, first smaller groups of five-ten, and thereupon larger groups of 20 and more Muslims, came out from the woods and surrendered. The witness described that chest-naked men, wounded men, men wearing civilian clothing or military uniforms were among the Muslims who surrendered. Once they surrendered, they were directed to take the road in front of a house, where two members of the Šekovići Detachment searched them, seized their money and escorted them across the road to the meadow, assembling them in a larger group of „around 200 men“, which was secured by members of the Šekovići Detachment. Witness Stevanović testified that, during this time, soldiers fired from the Praga towards the hillside where the Muslims were located, and from where they were coming down to surrender.

224. Witness I-3 described the surrender of Muslims in the Sandići Meadow. Consistently with witness Stevanović, Witness I-3 testified that a member of the Šekovići Detachment, standing on a house with a water fountain in front of it, to which their platoon was deployed along the road, used a megaphone to urge the Muslims to surrender. They began surrendering, first in smaller groups, and later their number increased. Before crossing to the right side of the road, to the meadow, they were searched, and all their money, gold and belongings were seized from them. A “circle” was formed around these men in the meadow (members of the police force stood at the distance of 5 -10 m from each other). They stayed there until the afternoon hours. Even though members of this witness's platoon did not secure the meadow, it could be easily accessed by them.

225. Witness Mitrović testified that, along with approximately 20 other members of the Šekovići Detachment, he secured a group of Bosniaks, around 500 men, who had surrendered.

226. Witness Predrag Čelić also described the surrender of the Bosniak men in Sandići. The witness stated that, from the spot where he was deployed to secure the road, he saw the people coming out from the woods, getting down the hill and surrendering. He heard someone calling on these men to surrender. Since he was far away from the spot, however, he did not see by which means they were called up. The shooting did not cease throughout the time.

227. Serving in the logistics of the 2<sup>nd</sup> Detachment of the Šekovići Special Police, witness Dragomir Stupar was present in Bratunac on 12/13 July 1995, and passed along the Bratunac-Konjević Polje road. The witness testified that (members of) the police force

secured the road, the Sandići mountain-ridge, the meadow where he saw a group of the captured Bosniaks, and a Praga located next to a house across the meadow. Occasionally, the witness heard the shooting and firing back from the woods.

**3. The situation in the Sandići Meadow and at the Bratunac-Konjević Polje road on 13 July 1995**

228. On 13 July 1995, a large number of the Bosniaks from the column were assembled in the Sandići Meadow. Exhausted, tired and encouraged by the urging to surrender, with a promise that no harm would be done to them and that they would be evacuated to the territory held by the ABiH, they began surrendering to the Serb forces on a mass scale. As already stated above, Witness I-1, Witness I-2, Witness I-3, witnesses Enver Husić, Miladin Stevanović, Predrag Čelić and other witnesses testified about these facts. In addition, Zoran Petrović's<sup>142</sup> video-recording confirms that the events indeed developed in the described way. A segment of the video-clip depicted the captured men sitting at the Sandići Meadow, a circle formed by members of the military and the police force who secured them, a Muslim urging the remaining Muslims in the forest to surrender, and Serb soldiers and members of the police force, standing in the immediate vicinity, encouraging him to continue calling them, as well as detonations from the artillery weapons firing at the surrounding woods.

229. All witnesses remembered that this was a very hot July day. Witness I-2 and witness Enver Husić consistently testified that the captured men had sat in the meadow, looking towards the asphalt road, surrounded by armed Serb soldiers. A segment of Zoran Petrović's film depicted exactly this scene. According to Witness I-2, children age 14-15, as well as many wounded men, were also among the captives. Witness I-1 testified that there were young boys among them, like his neighbor who was an eight-grade (primary school) student, or a boy somewhat older than him, whom Serb soldiers allowed to bring some water.

230. Witness I-3's evidence confirmed that the captured men were in a poor condition. Those men mostly wore civilian clothing, some of them wore torn clothing and some of them were wounded. Witness I-3 confirmed that the wounded received no medical

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<sup>142</sup> Exhibit T-1.

assistance and that the captured men were provided with no food. The witness remembered that a water cistern was brought there from Bratunac, which is consistent with the evidence of the witnesses-injured parties.

231. Specifically, all three witnesses-injured parties testified that the conditions in the meadow were poor. Despite the fierce heat, they were provided with no food, and the wounded received no medical assistance. Witness I-1 and Witness I-2 testified that they were sprinkled with tank water several times, and that certain captives from the group were allowed to bring some water in containers, but that despite all this they still lacked water. As obvious from Zoran Petrović's film, they were held in the open space, with no shade, roasting in the sun. Witness I-2 testified that, occasionally, younger boys were allowed to bring some water. This is consistent with Witness I-1's evidence. This witness stated that a neighbor of his, then in the eighth grade of the primary school and another, somewhat older, boy, were allowed to go and get some water. Witness I-2, however, stated that, when they all „rushed“ to the place where the water was brought because of the heat and their thirst, a Bosnian Serb soldier, whom the witness remembered as the commander of the soldiers who guarded them, and who did no harm to any of the captives, waved around with his knife all the time, threatening that he would retaliate his brother's death, fired a shot or two to scare them off, and to „calm them down“.

232. In describing the situation in the meadow, witness Enver Husić also stated that many men were wounded. They were provided with no medical assistance, and they received no food. While they were in the meadow, Serb soldiers were approaching them, threatening them, asking for their money and gold, and swearing their mothers. According to the eye-witnesses, certain number of men were singled out and taken away from the Sandići Meadow, and have never been seen again ever since. Also, some men were randomly killed in the Sandići Meadow, before mass executions in the Kravica hangar.

233. Witness Husić also testified that boys went to fetch some water, which he once used as an opportunity to flee from the Sandići Meadow. The witness stated that one of the soldiers had given him two containers to fill them with water at the spot down from the house. This was more than insufficient, as he was allowed to give to each prisoner only a screw-stopper filled with water. On another occasion, when he was sent to bring water from a place located some 50 m away, on the other side of the road, the witness used this opportunity to jump into one of the buses transporting the women and children from the Bratunac direction, and to save himself. His wounded father and brother stayed in the

meadow. He has never seen again either his father or most of his neighbors and friends who had stayed in the Sandići meadow.

234. Witnesses I-1 and I-2 testified that, while they stayed in the Sandići Meadow, there was a busy traffic along the Bratunac-Konjević Polje road. More specifically, buses crammed with the women, children and elderly drove along this road, transporting them from Bratunac towards Kladanj. Witness Stevanović confirmed so in the statement he gave during the investigation. Witness Enver Husić succeeded in jumping into one of the busses, where women and children hid him among themselves. Thus, he successfully avoided the horrible destiny intended for the other captives in the Sandići Meadow.

235. General Mladić's visit to the Sandići Meadow was particularly striking for the injured parties, as also confirmed by members of the 2<sup>nd</sup> Detachment, who testified in the capacity of witnesses, as well as by Zoran Petrović's video film.

236. Witnesses I-1 and I-2 consistently testified that General Mladić visited the Sandići Meadow and addressed the captured men sitting there.

237. According to Witness I-1, General Mladić asked the present men if they knew him. He introduced himself, and told them:

“... Naser had left you and fled to Tuzla. It is not advisable to make war with Serbs. A sheep cannot leave its fold until the fold-door is open. We have evacuated almost all your families. They are interned in Kladanj, Tuzla, and Živinice. Most probably, you will also be exchanged during the day. You will each find your family. No one will beat you, or provoke you, and you will be given food. We will place you somewhere where it is warmer, it is colder here, and it is very warm here for you. They gave him a big hand. Thank you, General! I also raised my hand. What is it? I told him: “General, you see my bare foot, my shoes are in a backpack, and we had put aside our backpacks, bags, stocking, anything we had, may I take my shoes to put them on. “You will get your shoes”, said the General. Thank you, General! Thus he went away...”

238. Witness I-2 testified, consistently with Witness I-1, that upon his arrival at the Sandići Meadow with his 5-6 body-guards, General Mladić addressed the assembled men. He told them *„not to fear, that they were good men, that they would be perfectly safe, that they would be all exchanged for their Serbs, and evacuated towards Tuzla and Kladanj.“*

239. Witness I-3's evidence also confirmed that General Mladić had indeed attended the Sandići Meadow together with Ljubiša Borovčanin and Rade Čuturić, Commander of the 2<sup>nd</sup> Detachment of the Šekovići Special Police. Even though the witness could not hear Mladić's whole speech and address to the captives, he knew about General Mladić's promise that they would be safe and transferred to the territory held by the ABiH.

240. Ultimately, nothing came of the evacuation or exchange. Shortly after General Mladić's visit to the Sandići Meadow and his address to the captured men, the transfer of these men to the Kravica hangar began.

#### **4. The role of the Accused and members of the Skelani Platoon in capturing, securing and escorting the men to the Kravica hangar**

241. The Panel has already described, in paras. 238-246 of the Verdict, how members of the Skelani Platoon were deployed and positioned along the Bratunac-Konjević Polje road. As the referenced part noted, members of the Skelani Platoon were deployed along the road section closest to the house where the Muslims from the column surrendered. As it ensues from the consistent witnesses' evidence, their assignment was to ensure safe and free traffic on the road along which vehicles, trucks and busses transported the women, children and elderly from Potočari. The Panel, however, inferred that members of this platoon also played an active role in the capturing of Muslim men, and subsequently, in escorting the column with a certain number of these men to Kravica.

242. The Panel has inferred, on the basis of the consistent statements of witnesses Miladin Stevanović and Petar Mitrović (given during the investigation), and of Witness I-3's testimony, that Željko Ivanović was, along with members of his platoon, deployed to secure the road at the referenced location.

243. As described by Witness I-3, even though the Muslims were urged to surrender, and the surrendered men from the column were searched by certain members of the 2<sup>nd</sup> Detachment of the 1<sup>st</sup> or 2<sup>nd</sup> Platoon, members of the Skelani Platoon were also involved in these activities. In his statement made during the investigation, witness Stevanović described the way in which money and other valuables were seized from the surrendering Muslims. The Prosecutor asked this witness whether, while he was there, other members of the Skelani Platoon were present at the posts to which they had been deployed. The



witness responded that „since there was money, they would come and go“.

244. The Panel has considered the general context of the events, the fact that members of the Skelani Platoon, as a unit involved in a concrete military operation, resubordinated to the VRS, were deployed at this location exactly with the aim to contribute to a successful capturing of the Muslim men from the column, to their subsequent execution, as well as to secure an unimpeded passage of the buses and trucks with the Bosniak civilian population, in order to implement the plan of forcible transfer of the women, children and elderly from the UN safe area of Srebrenica, and to exterminate them. The Panel has inferred that the Accused, as a member of the Skelani Platoon police force deployed at the site, undoubtedly had the knowledge and awareness of the background of these events, wherefore his role in the capture of these men cannot be considered irrelevant, even though he did not urge the men to surrender, took no part in searching them, and did not stand in the circle around the Sandići Meadow, but rather on the road. According to the Panel, any member of the Skelani Platoon police force, deployed to secure the Sandići road, and subsequently to escort the column of men to the FC Kravica, including the accused Ivanović, personally contributed to the capturing of the referenced men.

## **B. ESCORT OF THE MEN TO THE FC KRAVICA HANGAR**

245. The escort of the Bosniak men from the Sandići Meadow to the FC Kravica hangar began in the early afternoon hours, shortly after General Mladić's visit. As it ensues from the evidence adduced, this transfer was carried out in two ways: the men marched in the column towards the hangar escorted by members of the Skelani Platoon, and the captured men were bussed.

### **(a) The column**

246. Witness I-1 was in the group of captured men marching, under the escort, to the FC Kravica. The witness testified that one of the armed soldiers, who stood with a „wolf-dog“, ordered the captured men to form a column, four by four. The column formed in such a way marched along the asphalt road towards the Kravica hangar. The witness estimated that the column length was around 300-400 m, and that the distance between him and the men marching in front of him was approximately one meter or more, while armed soldiers with rifles „at the ready“ stood on each side of the column, at the distance of 6-7 m between them. When the men arrived to the front of the hangar, described by the

witness as a „farming warehouse“, they were ordered to enter it. The witness managed to enter the hangar. He sat by the wall as he felt back pain. Other men kept coming in. The last person who came in had nowhere to sit. According to the witness, the place was crammed, and *„even if you threw a match, it would not fell on the concrete, it would lend either on (someone's) shoulder or lap“*.

247. Witness Petar Mitrović described the column of captured men. The witness testified that the earlier mentioned members of the Skelani Platoon, who were deployed to secure the road, including Željko Ivanović, escorted around 500 surrendered men from the column to the Kravica hangar.

248. Witness I-3 testified that Commander Milenko Trifunović ordered them to form a column, and that the Commander had received this order from Rade Čuturić. Witness I-3, consistently with Witness I-1's evidence, testified that the column was formed in a way that four by four men marched in the line, and that two by two walked hand in hand. According to Witness I-3, the column was mostly secured by members of the Skelani 3<sup>rd</sup> Platoon. Consistently with witness Mitrović, Witness I-3 stated that, in addition to this platoon, Željko Ivanović also escorted and secured the column of men marching towards the Kravica hangar. The column was, in this way, escorted to the FC Kravica, where the captured men were ordered to enter the hangar through the doorway of the smaller room of the hangar<sup>143</sup>.

249. The evidence of witnesses Milenko Pepić, Slobodan Stjepanović and Marko Aleksić is also relevant with regard to the escort of the column to the FC Kravica hangar.

250. Witness Milenko Pepić testified that, upon Commander Čuturić's order, he was transferred to the Yellow Bridge, that also upon his order he was issued with a Motorola hand-held radio, and that the Commander ordered him to stop the traffic along the Bratunac-Konjević Polje road when the column of surrendered men was to be escorted to Kravica. The witness did as he was ordered. He stopped the traffic, wherefore a column of buses transporting the women, children and elderly from Potočari was formed starting from the place where the traffic was stopped.

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<sup>143</sup> T-2, T-2a – Photo of the FC Kravica-where Witness I-1 and I-3 identified the same entrance as the entrance to the hangar through which the men from the column entered the hangar.

251. Witness Marko Aleksić also testified that Rade Čuturić informed him via Motorola that a column would pass along the road and that they should be careful. The witness stated that the whole column comprised men in civilian clothing, and that there were around 500 men in the column. According to the witness, the men, three - four of them, marched in the column heading towards Kravica and Bratunac.

252. Witness Slobodan Stjepanović also testified that a column comprising mostly civilians, able-bodied men, marched from the direction of Konjević Polje towards Bratunac. The men in the column marched one behind the other, one line comprising 3-4 men. The witness could not specify the number of men in the column, but he stated that there were approximately 400 men.

253. Ultimately, witness Ilija Nikolić testified that, on 13 July, in the afternoon hours, the police stopped him in the place of Sandići, on the road towards Milići. At the hill, on the right side of the road, the witness noticed a group of mostly civilians. According to the witness, there were between 150-200 men surrounded by members of the police force. Since the police did not allow them to pass towards Milići, the witness and his friend went to Kravica. They stayed there as long as it took them to drink a beer or two. Witness Nikolić noticed a column coming from the Konjević Polje-Bratunac direction, comprised of around 200 men, with 3-4 men in each line, escorted by 15-20 police officers wearing the same uniforms like the police officers who had stopped them in Sandići. The column passed through the gate and entered the hangar through the door at the corner of the hangar. Momir Nikolić told the witness that these police officers were "*some special police force*".

254. The Panel has determined beyond a doubt, based on the evidence adduced, that members of the Skelani Platoon, including the accused Željko Ivanović, escorted to the FC Kravica hangar a column of men who had earlier surrendered, and who had been captured in the Sandići Meadow.

(b) Bussing of the captured men

255. Witness I-2 testified that, after General Mladić left the Sandići Meadow, the Commander who stood in front of them, holding all the time a knife in his hand, selected the most capable men from the column, using words "you, you, you", whereupon these men were escorted to the road. Several buses waited on the road and they boarded these

buses. The buses were crammed, and it was hot in there. The witness immediately noticed that, even though they were promised, during the selection process at the meadow, that they would be exchanged, the bus did not drive towards Konjević Polje, but rather towards Bratunac. After a short drive, the bus turned to the right, and drove to a warehouse, where they were ordered to promptly enter the warehouse through its back entrance on the left side.

256. Witness I-2's evidence was supported by the evidence of witness Luka Marković. Witness Marković testified that, on 13 July 1995, around 15 or 16 buses with Muslim refugees arrived at the hangar, and that he saw them getting off the bus with their hands behind the neck.<sup>144</sup> Zoran Erić also confirmed that the buses were present in front of the Kravica hangar. An aerial image of the FC Kravica, taken on 13 July 1995, shows a bus parked in front of the hangar. Ultimately, Witness I-1, who was escorted to the hangar in the column, stated that he noticed a bus in front of the hangar, parked between the warehouse and the asphalt road, and that the captured men passed between the bus and the warehouse to enter the hangar.

257. Even though Witness I-3 and witness Mitrović did not state, in their evidence, that the men were bussed to the hangar, the Panel notes that this fact is proved beyond a reasonable doubt on the basis of the above analyzed evidence. The reasoning for such evidence of witness Petar Mitrović and Witness I-3 can also lie in the fact that the column of the captured men was escorted to the hangar subsequently, that is, once the men from the bus had already abandoned the bus. Once he came to the hangar, Witness I-1 also noticed only one bus parked.

(c) Number of the captured men in the warehouse

258. The Kravica hangar, as determined on the basis of the evidence adduced, comprised two separated rooms with two separate entrances. A larger room of the hangar will be hereinafter referred to as "the first section", while the smaller room of the hangar, where both survived witness were brought, Witness I-1 and Witness I-2, will be referred to as the "second section".

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<sup>144</sup> Exhibit T-46 - Witness Examination Record for Luka Marković, No. 14-4/2-290/05 of 20 September 2005.

259. The hangar (both sections) is 61.10 m in length, 10.20 m in width, and 4.10 meters in height. The side facing the east, being on the left side looking from the roadway, is 30.77 m in width, while the west side is 24.26 m in width. There are windows on the south, rear side of the warehouse, and both sections of the warehouse have four windows each.<sup>145</sup>

260. It ensues from the evidence of Witness I-1 and Witness I-2 that both sections of the warehouse became crammed full with the captured men brought in there. The witnesses testified about the mass of people and the crowded warehouse. According to Witness I-1, the last man could not get in, while he himself hardly managed to sit by the wall. Considering the foregoing, and the surface area of the warehouse, it may be inferred that at least 2 captured men must have been placed in 1m<sup>2</sup> of the space. Simply calculated, the warehouse surface area multiplied by two prisoners in 1 m<sup>2</sup> equals more than 1000 prisoners who must have been escorted to the warehouse on 13 July.

261. The foregoing is consistent with the witnesses' statements. Witness Mitrović testified that, on the referenced day, a group of approximately 500 captured men in the column was brought to the hangar. Witness Slobodan Stjepanović mentioned around 400 men in the column, with a possibility that their number was even larger. Witness I-1 testified that four by four men marched in the column, which was between 300 and 400 m in length, and that the distance between them was 1-1.5 m. Witness I-2 testified that, according to his estimate, between 1000 and 1500 men were crammed in the warehouse.

262. The Panel has accepted such submissions of these witnesses as they match the calculation of the warehouse space area where the men were placed. Specifically, a certain number of men were brought by buses, including Witness I-2. Between 40 and 50 passengers can board a bus. Luka Marković testified that between 15 and 17 buses with prisoners came to the hangar on the referenced day. Considering the foregoing, it may be inferred that over 500 hundred men were bussed to the hangar. Therefore, a simple adding of these numbers result in over one thousand men. This number is consistent with the Panel's conclusion inferred based on the Witness I-1's and Witness I-2's evidence, who had in detail described the situation in the hangar, their position inside it, and that at least two prisoners must have occupied 1 m<sup>2</sup>. Correlated with the warehouse surface area, the foregoing results in the number of over 1000 men detained, on the referenced day, in two sections of the FC Kravica hangar.

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<sup>145</sup> Exhibit T-100, Crime scene outline, No. 14-13/1-7-243/05 of 4 October 2005.

### C. EXECUTION OF THE CAPTURED BOSNIAK MEN IN THE KRAVICA HANGAR

263. The Indictment charged the accused Željko Ivanović that, along with members of the 2<sup>nd</sup> Detachment of the Special Police Brigade Šekovići, he took part in the killing of over 1,000 captured Bosniak men, who were detained in the Kravica hangar on 13 July 1995.

264. Based on the evidence adduced, the Panel concluded beyond a reasonable doubt that, having brought the column of captured men to the Kravica hangar, where a significant number of captured men had also been bussed, members of the 2<sup>nd</sup> Detachment, mostly the Skelani Platoon, formed a semi-circle in front of the hangar, and that firing from fire weapons and a machine gun, and using hand grenades, they killed a substantial number of these prisoners. In addition, the accused Željko Ivanović's role is apparent from the fact that, upon his Commander's order, he went behind the hangar, along with three other members of the Skelani Platoon, to secure the rear windows and thereby to prevent the captured men from any possible fleeing.

265. The eye-witnesses to this event testified about the way in which the men were liquidated in the warehouse.

266. The two survived witnesses testified that they had been both held in the smaller section of the hangar. Witness I-1 stated that he had sat by the wall in the hangar's corner. Witness I-1 described the shooting at the captured men inside the warehouse as follows:

"They were shooting at us, using hand-grenades, grenades, bursts of fire, all sorts of things ... both through the windows and the door. The warehouse was full of bugija, and because of this bugija, one could see less than 6 meters away<sup>146</sup>.

Witness I-1 testified that this kind of shooting lasted throughout the night. He sat in his corner all the time. When the shooting was over, he spent the night in this corner of the hangar. On the following morning, he heard that survivors were urged to come out from the hangar. Listening to the sounds, the witness understood that the men who had responded were by truck transported somewhere else. The wounded men, subsequently called out, and promised to receive medical assistance, were killed. The witness stayed in the same corner all day long (it was Friday). In the evening, he saw a loader which began a load-up of the dead bodies. The load-up, however, was soon finished for the day, and

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<sup>146</sup> The witness explains that the term *bugija* means (lot of) dust, or heavy smoke.

the witness decided to flee. He ran across the asphalt road to a corn field. Even though one of the soldiers had noticed him, and shouted after him, the witness successfully fled into the forest. Several days later, the witness reached the Žepa territory.

267. Witness I-2 described:

...They fired from all possible weapons. First, they fired from the infantry weapons, automatic rifles. Then they stopped (that fire). They were shooting for a half of an hour, and took a break. Then another round of the shooting started. They threw hand-grenades through the windows. These hand grenades were falling some 2-3 meters away from me. I could feel the explosions, detonations. As a result of these hand grenades, I was wounded by shrapnel. I was wounded, injured, but I felt good. I was not heavily wounded. The men started screaming and it was horrible. I can hardly describe it...This was worse than in any movie...It lasted throughout the night, except for short breaks..."

Witness I-2 further testified that he had successfully escaped through the window into a corn field, but that soldiers noticed him, and wounded him in his shoulder. The witness stayed lying down throughout the night and during the following day, pretending he was dead. On the following morning, he heard soldiers walking through the warehouse and shooting at everyone still alive. Pretending to be dead in the corn field, the witness saw an excavator collecting the bodies, and heard the sound of bodies being loaded onto a truck. Later that day, the witness successfully crawled towards the safe area.

268. Considering that Witness I-1 and Witness I-2 were inside the cramped hangar, sitting<sup>147</sup> or lying,<sup>148</sup> they understandably could not see what was precisely happening in front of the hangar, or identify who and in what way fired at them.

269. Therefore, the evidence of Witness I-3 and witness Petar Mitrović were crucial for the Panel in relation to this part. These witnesses in detail described the events in front of the hangar just before the summary execution of the captured Bosniak men inside the hangar, as well as the very process of their liquidation.

270. Witness I-3 testified that, once the last captive from the column entered the warehouse, members of the 2<sup>nd</sup> Detachment, I, II and III Platoon (Skelani), including the

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<sup>147</sup> Witness I-1 testified that he sat in a corner of the hangar.

accused Ivanović, formed a semi-circle between the two corners of the warehouse where the captured men had been previously placed. Members of the police force standing in the semi-circle, including members of the Skelani Platoon, were armed with automatic rifles. There was also a light machine gun, “84-orka”.

271. Witness I-3 testified that, once the semi-circle of police officers was formed, member of the Skelani Platoon, Krsto Dragičević, entered the hangar to speak with the prisoners. The Commander called him back once, but he (Dragičević) entered the hangar again, and one of the captured men, standing at the doorway, snatched his rifle from his hands and killed him at the hangar door. What followed next, about which the witness testified on a number occasions, and what the Defense did not contest either, is that Commander of the 2<sup>nd</sup> Detachment, Rade Čuturić, standing in the immediate vicinity, seized the rifle from the captured Muslim who had killed Krsto Dragičević, but burnt his both hands because he grabbed the rifle barrel just after it fired.

272. Witness I-3 further testified that, once Krsto Dragičević was killed and Rade Čuturić aka “Oficir” burnt both his fists in this incident, the Commander of the Skelani Platoon gave them an order to “kill them all”. According to the witness, Petar Mitrović, Branislav Medan, Slobodan Jakovljević and Željko Ivanović were not among the members of the Skelani Platoon who fired at the captured men because, upon Commander Trifunović’s order, they went behind the warehouse to secure the rear windows. The witness explained in detail that the windows at the hangar’s rear side could be seen through both the doors located at the front side of the hangar, so the Commander ordered two members of the Skelani Platoon, Mitrović and Medan, to cover the right side, and Ivanović and Jakovljević to cover the left side and secure the windows to prevent the captured men from fleeing.

273. Witness I-3 testified that the shooting itself began with a light machine gun, “84-orka”, with which Mirko Milanović was issued, while the others fired from automatic rifles. According to Witness I-3, the firing police officers maintained the semi-circle formation all the time, that is, when they emptied their magazines, they left the semi-circle to take new ones, and returned to the semi-circle. Subsequently, hand grenades were thrown inside through the hangar door and a smaller window. According to the witness, the shooting lasted between an hour and a half and two hours. In his statement given on 22 May

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<sup>148</sup> Witness I-2 testified that he had thrown himself on the ground before the shooting started.



2008,<sup>149</sup> Witness I-3 in detail described that the shooting and killing of the prisoners first started in the first, larger section of the warehouse, and that once it was completed, the killing in the second, smaller section of the hangar, began.

274. With regard to the decisive facts, the referenced evidence is corroborated by the statements of witness Petar Mitrović<sup>150</sup> given during the investigation. Witness Mitrović described that, once the column of around 500 Bosniak men was brought into the hangar, an incident occurred in which Krsto Dragičević was killed, and Detachment Commander, Rado Čuturić, injured by burning his hands after he had grabbed the rifle barrel with which Krsto was killed. The witness further described that, in front of the hangar, members of the Skelani Platoon fired at the captured men through the hangar's big entrance door. Like Witness I-3, witness Mitrović too specified that Mirko Milanović fired from a light machine gun, and that other members of the platoon fired from automatic rifles. Witness Mitrović was ordered to go behind the hangar, together with Željko Ivanović, Branislav Medan and Slobodan Jakovljević, to secure the windows at the rear, and to prevent the prisoners from jumping through them. Witness Mitrović further stated that, while the four of them were behind the hangar, bursts of fire directed into the hangar continued, and, soon thereafter, the witness also heard explosions of hand grenades thrown into the warehouse by members of the police force from Šekovići (Vojvoda and Čupo). According to this witness, he and other members of the Skelani Platoon stayed near the hangar until their "relieve," or deserters from Serbia, came, in the evening hours, whereupon they left Kravica.

275. Witness Marko Aleksić stood on the road when the column of captured men was brought to Kravica. This witness stated that, shortly after the column had passed by him, he heard bursts of fire from the direction in which the column had gone. The witness heard several detonations, and thought these were hand-grenade detonations.

276. Consistently with witness Aleksić, witness Predrag Čelić testified that after the column had passed, he heard the shooting and hand grenade detonations.

277. Witness Milenko Pepić also confirmed that, after the captured men had been brought to the FC Kravica, they heard shooting. Rade Čuturić gave him an assignment to block the road while the column was escorted, and, as it turned out, until the completion of

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<sup>149</sup> Exhibit O-7.

<sup>150</sup> Exhibit T-39 Witness Examination Record for Witness Mitrović, KT-RZ-10/05 of 21 June 2005, and T-40 Crime Scene Investigation and Reconstruction Record, KT-RZ-10/05 of 4 October 2005.

executions. Witness Pepić testified that Rade Čuturić ordered him via a Motorola hand held radio to stop the traffic on the road, which he did. After the column had passed, however, he was not ordered to open the road for the vehicles passing, but rather the road remained blocked. Čuturić passed by him on his way to the Bratunac Hospital, after he had burnt his hands in the incident inside the hangar. Vehicles with the women, children and elderly, however, could not pass along the road. The witness testified that during this period, he heard shooting from the Kravica direction, which was much heavier than before. Only after the „Oficir“ passed him by, on his way back to Kravica from the hospital, when he briefly notified the witness about what had happened, did the witness receive from him a new order, via the Motorola hand held radio, to let the vehicles pass.<sup>151</sup>

278. Witness Dragomir Stupar also confirmed, in principle, that the incident indeed occurred in the way as described by witness Mitrović and Witness I-3. On 13 July 1995, this witness passed along the road between Bratunac and Konjević Polje. When he passed by for the first time heading towards Sandići, witness Stupar saw both police officers lined-up along the road and a fairly large group of captives held in a meadow on the left side of the road. The witness stayed in Konjević Polje for an hour or two, and on his way back to Bratunac, he again had to pass through Kravica, which is when he saw a man waving at him on the road, so he stopped the vehicle. He saw Rade Čuturić walking with his hands lifted in front of him, and Witness I-2, a young man, who took along a wounded soldier. They asked the witness to give them ride to Bratunac, which he did. Rade Čuturić had severe burns, and he recounted to him, on the way to Bratunac, that one of the prisoners had seized a rifle from the hands of police officer Krle and killed him, and that Čuturić thereupon grabbed the rifle barrel.

279. The employees of the FC Kravica, who had been present inside the perimeter of the farming cooperative when the captives were brought there and when the killings were carried out, had significant information about the incident at issue. The Panel has taken into account this information as the evidence corroborating the evidence of witness Mitrović and Witness I-3.

280. In July 1995, witness Luka Marković was employed with the Farming Cooperative Kravica. On Thursday, 13 July 1995, he was at his work post. Even though the present soldiers had banned him and other workers of the Cooperative any access to the hangar

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<sup>151</sup> Evidence of witness Milenko Pepić, transcript from the case No. X-KR-06/180-3 of 4 February 2010.

while the captives were inside it, witness Marković noticed that the prisoners were first brought by buses, and counted 17 buses bringing in the captured Muslims. When the shooting started, the witness was in his office. He heard a short burst of fire, which was then followed by heavy bursts of fire. First, from his office window, he saw 7 soldiers shooting at the prisoners, and thereupon, within 2-3 minutes, reinforcement of around 30 other soldiers arrived, and they fired at the captured men from machine guns M-84 and M-53. According to this witness, the shooting started at around 21:00 hours and lasted through 23:00 hours. Once the detainees, placed in the open, left section of the hangar were killed, hand grenades were thrown through the windows in the other section of the hangar and the prisoners killed. On the following morning of 14 July 1995, a loader came to collect the bodies and loaded them up onto dumper-trucks. Witness Marković stated that all prisoners from the warehouse had been killed, except one, who tried to flee on 14 July, but was killed by the soldiers.

281. Another employee of the FC Kravica, witness Zoran Erić, testified that he was within the FC Kravica compound, more precisely in a barn, when the shooting started. Witness Erić also confirmed that bursts of fire, single shots and subsequently detonations could be heard. The witness stated that they were subsequently forced to cover the corpses with hay.

282. Witness Jovan Nikolić was a Director of three farming cooperatives, including the Kravica Farming Cooperative. He came to the FC Kravica compound on 13 July 1995, in the evening hours, at around 22:00 hours, because he had heard there were some prisoners and problems. When he came to Kravica, a man came out from a corn field, told him to turn his lights off, and told him about the incident in which one of the prisoners seized a rifle and killed a member of the Skelani Platoon. This man also told him that there were many dead. Witness Nikolić testified at the main trial, and confirmed that the statement he made during the investigation was true. He stated in the referenced statement that, while he was in front of the hangar, he heard bursts of fire towards the center of the hangar and hand-grenade detonations. The witness also stated that a man wearing a police uniform approached him, and that, on the following day, it was a generally known fact that the special police unit from Skelani committed the killings.

283. When the shooting started on the disastrous 13 July 1995, witness Momir Nikolić, also an employee of the Farming Cooperative, was together with witnesses Marković and Erić, inside the FC radius, because he came to check the livestock in the barn. The

witness testified that the Muslims held in the hangar were killed, and that he heard the shooting coming from the asphalt road towards the hangar. Also, the witness stated that the shooting was heard all around the place. On the following morning, an excavator came to collect the bodies, and a tank-truck to clean up the terrain.

284. Zoran Petrović made a video-recording in the afternoon of 13 July 1995, when he passed by the warehouse. It is a 27-second clip depicting a bus and a pile of bodies lying outside the warehouse.<sup>152</sup> An aerial image<sup>153</sup> also showed a pile of bodies in front of the hangar entrance itself.

285. The Panel has concluded beyond a doubt, on the basis of the evidence adduced, that on 13 July 1995, the captured Bosniak men, earlier detained in the Kravica hangar, were executed, and that the 2<sup>nd</sup> Detachment of Šekovići Special Police, including approximately 20 members of the Skelani Platoon, actively participated in these actions.

286. There are certain inconsistencies in the witnesses' evidence with regard to the time when the shooting began and its duration. It can be concluded from their evidence, as they consistently testified that, in total, the shooting lasted between 1.5 and 2 hours. In order to precisely determine when the shooting indeed started, the Panel had to comprehensively examine all pieces of evidence.

287. It ensues from the evidence of survived Witness I-2 and Luka Marković that the shooting started later in the evening, when according to Witness I-2, it was already dark. The Panel, however, concluded that the killing of the captured men by members of the 2<sup>nd</sup> Šekovići Detachment began in the afternoon hours, soon after the column had been brought there.

288. Such a state of facts ensues from the evidence of Witness I-3 and witness Petar Mitrović, but also from the evidence of witnesses who had heard the shooting from the Kravica direction while they were securing the road. Further, it is indisputable that the shooting in the hangar was preceded by the incident in which Krsto Dragičević was killed, and Rade Čuturić burnt both his hands. An excerpt from the Bratunac<sup>154</sup> Hospital protocol shows that Rade Čuturić was admitted on 13 July 1995, at 17:40 hrs, and that Krsto

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<sup>152</sup> Exhibit T-1 and frozen film sequence Exhibit T-111.

<sup>153</sup> Exhibit T-114.

<sup>154</sup> Exhibit T-78.

Dragičević's body was examined at 19:00 hours on the same day. Since the killing started immediately after the incident, in which both of them were wounded, it can be concluded that the killing began in the afternoon hours, at around 16-17 hours.

289. The evidence of Miladin Stevanović also confirms the fact that the shooting started in the afternoon hours. Witness Stefanović had gone to Bratunac before the column was brought to the hangar. On his way back from Bratunac, at around 17.00-17.30 hours, he arrived in Kravica, where he was stopped by two soldiers. He saw Krle's body in front of the hangar, covered with a groundsheet. He saw 7-8 other bodies. Trifunović and other members of the Detachment were present there. Mirko Milanović stood by the second section of the hangar, holding a machine gun. Witness Stevanović testified that, at the time, he saw dead bodies in the larger section of the hangar, and a young man throwing hand grenades inside that space.

290. In the Panel's view, all the foregoing suggests the conclusion that the mass execution of the captured men in Kravica by members of the 2<sup>nd</sup> Detachment began in the afternoon hours, and lasted for around 2 hours, and that once the mass liquidation was carried out, members of the Skelani Platoon withdrew from the FC Kravica area". Witness Mitrović and Witness I-3 consistently testified that their Platoon left Kravica in the evening hours. The foregoing also ensues from the fact established in the ICTY's Judgment: "Meanwhile, *BOROVČANIN arrived at the Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m., after Stupar had told him to urgently go there. Borovčanin saw a large pile of bodies in front of the West and Centre Rooms of the Kravica Warehouse. A large number of bullet holes were also visible on the outside walls of the Kravica Warehouse*"<sup>155</sup>.

291. Therefore, at the time of Borovčanin's arrival at the warehouse, mass executions had already been completed.

292. As it ensues from the witnesses' earlier examined evidence, members of the 2<sup>nd</sup> Detachment killed a large number of men, that is, most of the 1,000 captured men brought to the Kravica hangar on 13 July 1995. Witness I-1 and Witness I-2 survived the execution. These witnesses testified that, in addition to the perpetrators' cruelty and determination not to leave any survivors-witnesses to this crime alive, a certain number of men nevertheless survived this "first round" of liquidation. Their number, however, was small, that is, these

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<sup>155</sup> Established fact No. 6 (*Popović et al.*).

individuals were, on the following day, lured by the units which had replaced the 2<sup>nd</sup> Detachment at the site, to come out of the warehouse, and thereupon liquidated. Yet, the fact that a certain number of men survived the massacre committed by members of the 2<sup>nd</sup> Detachment, that is, just a few men, as it ensues from the survived witnesses' evidence, does not call into question the conclusion that, on 13 July 1995, members of the 2<sup>nd</sup> Detachment liquidated over 1,000 captured men in the Kravica hangar.

#### **D. FORENSIC EVIDENCE FROM THE WAREHOUSE**

293. Forensic evidence collected on the crime-scene confirms that the killing in the FC Kravica was committed exactly in the way as the witnesses described, more precisely, that automatic weapons and explosive devices were used in the mass execution-massacre. In April 1996, they commenced forensic examination of suspected execution points and exhumation of mass graves.<sup>156</sup> Between 30 September and 1 October 1996, Investigators from the United States Naval Criminal Investigations Service and the ICTY attended the Warehouse Kravica site, as one of the sites of mass execution of the Bosnian Muslims from the Srebrenica territory. An investigation of this building was then conducted, which showed strong evidence of these killings, including numerous bullets strikes, evidence of explosions, bullets and shell cases, as well as human blood, bones and tissue adhering to the walls, floors and the ceiling. All the foregoing is contained in Dean Manning's first report.<sup>157</sup>

294. According to Manning's first report, the inspection of the Kravica warehouse showed numerous impact areas along the north wall (caused by fire weapons or explosions), and contiguous with these impact areas were suspected blood spatter and tissue deposits. These deposits were visible throughout the height of the ceiling. In the north-west, there was an impact sight with significant blood and tissue spatter and dripping patterns. There are also two suspected seats of explosive detonations along this wall at the junction of the south and west walls. One suspected explosive pattern originated near the floor and extended upwards and outwards to a height of approximately 24 inches. There are suspected tissue and blood spatter patterns both within the soot/residue pattern and extending beyond to a height of nearly 11 feet from the floor.

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<sup>156</sup> Established fact No. 269.

<sup>157</sup> Exhibit T-64 Summary of Forensic Evidence-Execution Points and Mass Graves, Dean Manning, ICTY investigator, 16 May 2000.

295. There are six areas along the base of the wall that are marked with suspected explosive residue and impact defects that are consistent in their dispersion and pattern with having been the seats of explosion detonations. Dispersed within the soot/residue pattern is extensive suspected blood spatter. Numerous impact defects are surrounding the central portion of the soot/residue pattern. Present with a central section of this wall is a defect in the concrete that has passed completely through exterior and interior walls. The steel reinforcing bars within the concrete have been broken at this point.

296. Although the complete east wall could not be examined, there was an area containing a possible seat of a blast with damage to the wall. There were numerous impact defects in the wall spreading up and out from the suspected seat of the blast and the area was marked with suspected explosive residue, and suspected human blood and tissue deposits.

297. The exterior part of the south wall contained the main entrances and exists to the warehouse area. This wall was heavily marked with hundreds of impact defects, most heavily concentrated around the doors. Three metal fragments consistent with the jacketed portion of a bullet were recovered from the impact defects. The exterior portion of the north wall is not heavily marked by impact areas of defects although there is a single through and through hole in the wall. Directly beneath the hole, was mound with human bones, as suspected.

298. The west wall was also marked with significant blood and tissue spatter and dripping patterns. There are also two suspected seats of explosive detonations along this wall, at the junction of the south and west walls: one suspected explosive pattern originated near the floor. There are suspected tissue and blood spatter patterns extending beyond to a height of nearly 11 feet from the floor. There are six areas along the base of the wall that are marked with suspected explosive impact defects; numerous impact defects (a defect that has passed completely through interior and exterior walls); an extensive suspected blood spatter that extends several feet above; the steel reinforcing bars within the concrete have been broken at this point. There is a suspected seat of a blast with damage to the east wall beginning approximately one foot from the wall; there were numerous impact defects in the wall; the suspected seat of the blast and the area was marked with suspected explosive residue, and suspected human blood spatter and tissue deposits.

299. As a result of the investigation and examination of the mass grave sites, additional

forensic evidence related to the killings was found. As the ICTY's judgments noted<sup>158</sup> „forensic evidence showed that there were two types of mass graves, „primary graves“, in which individuals were placed soon after their deaths and „secondary graves“, into which the same individuals were later reburied“.

300. Evidence collected from the mass grave Glogova 1 indicates that the mortal remains of the men killed in the Kravica warehouse were initially buried at this site. Exhumations conducted between 7 August and 20 October 2000 at the primary gravesite of Glogova 1 also revealed matches between broken masonry and door frames, and other artefacts found at both the gravesite and at the Kravica Warehouse execution site, suggesting that some of the victims from the Kravica Warehouse were buried there.<sup>159</sup> The bodies in the primary graves in Glogova contained the bodies of the victims from the Kravica Warehouse massacre, and the bodies of these victims were subsequently moved to graves in the area around Zeleni Jadar.<sup>160</sup>

301. As Manning First Report noted, „comparison of ejector marks on the shell cases to determine possible matches with other shell cases collected from the mass grave Zeleni Jadar 5, showed that they were identical to ejector marks on the two shell cases located at the Kravica Warehouse. It is therefore concluded that (mortal remains) of certain individuals killed in the Kravica warehouse were found in the mass gravesites of Glogova 2 and Zeleni Jadar 5.

302. In addition, Dean Manning's Report from February 2001,<sup>161</sup> stated that „in Glogova 1, ample evidentiary materials were found linked to the mass execution site in the Kravica warehouse, such as crushed construction materials, door frames which did not differ from those found in the Kravica warehouse, parts of vehicles and straw which originated from the hangar, as reported by one of the massacre survivors“. A diagram made during the investigation conducted by the ICTY presents the execution sites and both primary and secondary graves.<sup>162</sup>

303. In 2000, the ICTY investigators collected samples of construction materials, tiles, insulation and color from the warehouse for comparison with the similar materials found at

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<sup>158</sup> Established fact No. 270.

<sup>159</sup> Established fact No. 273.

<sup>160</sup> Established fact No. 276.

<sup>161</sup> Exhibit T-61.



the mass gravesites. The investigators reported that the forensic samples taken from the Glogova 01 mass grave site matched those taken from the warehouse. The report stated that “the action of enlarging the doorway at Kravica Warehouse, with the force described, would have resulted in the component parts of that doorway and the surrounding masonry falling on and amongst the bodies of the victims that lay within. It would have been inevitable that the use of a bucketed plant machine, scooping up and removing those bodies from the building, would have also picked up anything lying with the bodies ... debris was conveyed with the bodies and deposited with them in their place of burial.”<sup>163</sup>

304. Ultimately, the evidence of witness Ilija Nikolić may be correlated with all the foregoing. Witness Nikolić confirmed that, on the day following the massacre in Kravica, he saw large piles of earth excavated at the nearby Glogova site.

#### **E. THE KILLINGS IN KRAVICA WERE NOT AN INCIDENT**

305. According to the Panel, the facts of the incident are indisputable, in which one of the captured Muslim men snatched a rifle from the hands of Krsto Dragičević, a member of the Skelani platoon and killed him, whereupon the Detachment Commander, Rade Čturić nicknamed “Oficir”, ran up to him, or “immediately intervened”, as described by Witness I-3, and took away the rifle by which Krsto Dragičević had just been killed, to prevent any further shooting at members of his Detachment, and burned both his hands in this incident.

306. The Panel, however, does not accept the Defense’s submissions that the killings of the captured Muslims which followed thereafter were just a result of the referenced incident. Specifically, the Panel has inferred that all the circumstances, earlier described through the events and activities undertaken during those critical days in the Srebrenica municipality, suggested that the captured Muslims were escorted from the Sandići Meadow to the Kravica hangar and intended for execution. The Panel has accepted that the so called “burnt hand incident” could have been an instant trigger for opening fire at the captured men, but certainly not a motive and reason for the killing of more than 1,000 captured Bosniak men.

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<sup>162</sup> Exhibit T-67.

<sup>163</sup> Exhibit T-58.

307. Having examined all the circumstances surrounding the concrete case, the Panel concluded that there was indeed a plan for execution, such as the one carried out in the Kravica hangar. The Panel was first mindful of the circumstances under which the Bosniak men from the column had surrendered. Witness I-1, Witness I-2, as well as witness Enver Husić testified that two Serb soldiers had searched those men. It is true that the surrendering Bosniaks had to surrender their weapons, if they had any with them. It ensues from these witnesses' evidence, however, that most men had thrown their weapons away already in the woods as they feared to surrender to Serb forces with weapons in their hands. The foregoing was also confirmed by Witness I-3. This witness testified that no men he saw surrendered with any weapons. Not only weapons, however, were seized from these men. Also seized were money, golden jewelry, all personal belongings they had, including their personal documents. As it ensues from Witness I-2's evidence, all these effects seized from them, both the valuable items and the backpacks with personal belongings, were piled. Describing the moment of his surrender to Serb soldiers, Witness I-1 also added that he had to hand over to Serb soldiers all the money he had on him, that is, DM 100. The witness further testified about General Mladić's visit to Sandići. The witness addressed the General and asked for his permission to take his shoes (from his bag). The witness stated: "*We put away our backpacks, bags, and nylons, whatever we had...*"<sup>164</sup> The General told the witness: "You will get your shoes". It does not ensue from his evidence, however, that the witness was allowed to take his shoes out from his backpack that he had put away.

308. The established fact No. 203 speaks about the destiny of items seized from the surrendered Bosnian Muslims. Specifically, the ICTY Judgment v. General Krstić, accepted in this case as adjudicated, noted: "*The papers and belongings seized both from the Bosniak Muslim men in Potočari and the men captured from the column, were piled up and eventually burnt.*" Exactly the fact that personal documents were also seized from the Bosnian Muslim men, rather than from the women, children and elderly, as specified by witness Kingori<sup>165</sup>, directly suggests the conclusion that the liquidation of the surrendering men was designed and planned in advance.

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<sup>164</sup> Transcript of Witness I-1's testimony in the case No. X-KR-06/180-3, 10 September 2009.

<sup>165</sup> Transcript of witness Joseph Kingori's evidence in *Krstić*, p. 34.

309. Such a conclusion is also confirmed by the transcript of Miroslav Deronjić's testimony of 28 October 2003 in *Momir Nikolić et al.*, and by the earlier mentioned conversation<sup>166</sup> of 13 July 1995, where the need to kill the Muslim detainees was openly discussed.

310. In addition, the conditions in which the captured men were held in the Sandići meadow, in unbearable heat of a July day, with no shelter, shade or food, with insufficient water, and with no medical assistance provided even to the wounded, that is, with the captured men being fully deprived of their basic needs, also contribute to the Panel's overall understanding that no exchange or transport of the captured Bosniak men to the ABiH-held territory whatsoever was ever planned.

311. In such conditions, the selection itself of the FC Kravica, as a facility to which the captured men were brought, packing this facility with the men in the conditions unacceptable even for animals, not to mention humans, banning the employees of the FC Kravica any access to the hangar where the captured men were detained, formation of a semi-circle by armed members of the 2<sup>nd</sup> Detachment in front of the entrance to the warehouse, and sending four armed police officers, prior to the mentioned incident, behind the warehouse to prevent the prisoners from fleeing even through the small windows at the rear of the hangar, are the circumstances leaving no doubts for this Panel that the Kravica hangar, where the captured men were brought, had been selected exactly as a suitable site to liquidate such an enormous number of men, because any possibility to flee from such a restricted area was reduced to a minimum.

312. According to this Panel, there is another, very indicative and significant fact undoubtedly confirming that the killing of the men in the Kravica hangar was not a result of any incident. More specifically, all the witnesses testified that the traffic along the Bratunac-Konjević Polje road, otherwise very busy on the referenced day, was stopped because the transport of the women, children and elderly assembled in Potočari was most intensive, and trucks and buses crammed with refugees continuously passed along this road, during the mass execution of the men in the hangar. The foregoing was confirmed by Witness I-3, witnesses Miladin Stevanović and Predrag Čelić. The Panel, however, considers that, in relation to the foregoing, witness Milenko Pepić's evidence is particularly important. Witness Milenko Pepić, member of the 2<sup>nd</sup> Detachment of the SBP Šekovići,

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<sup>166</sup> See para. 184 of this Verdict.

was tasked by the Commander Rade Čuturić aka Oficir to stop the passage of trucks and buses to have the column of men from Sandići Meadow escorted to the Kravica hangar. Once the column was escorted, however, the witness received no order to release the traffic, but rather the road remained blocked. On his way to the Bratunac Hospital, after burning his hands in the hangar incident, „Oficir“ passed by the witness, but the vehicles with the women and children from Potočari were still blocked. The witness testified that, during this period, he heard that the shooting from the Kravica direction became more intensive than before. Passing by the witness on his way back from the hospital towards Kravica, “Oficir” briefly told the witness what had happened, and ordered him, via a Motorola hand-held radio, to let the vehicles pass. According to the Panel, the referenced period of time may be, beyond any doubt, correlated with the time when the executions, carried out by members of the 2<sup>nd</sup> Detachment, were completed. Specifically, Čuturić had been injured just before the killings started. Along this line, the Panel even accepts that Krsto Dragičević's murder and Oficir's injuries were indeed a „trigger“ for opening the fire, but certainly not a reason or motive to do so. Oficir needed a certain period of time to reach the hospital in Bratunac, where he was admitted at 17:40 hrs, as it ensues from the hospital protocol.<sup>167</sup> Dressing his hands itself and the return to Bratunac also required a certain period of time. Since the killing lasted between 1.5 and 2 hours, as already explained by the Panel, it may be inferred that Oficir certainly needed that much time to reach Bratunac, to have his injuries treated, and ultimately, to return to Kravica. Only after he returned to Kravica and checked the situation did the Commander of the 2<sup>nd</sup> Detachment allow that the passage of buses continue. In the Panel's view, the foregoing undoubtedly shows that such activities, at least from the moment when the column was escorted, or more precisely, from the moment of the site selection where the captured men would be brought, were planned.

313. Ultimately, the fact that approximately 20 members of the 2<sup>nd</sup> Detachment of the Special Police Brigade over a short period of time killed the majority of over 1,000 detained Bosniak men, which undoubtedly required using a large quantity of ammunition and hand grenades, must not be disregarded. It is quite certain that this must have been prepared in advance because, an ammunition clip or two, that members of the police force might have had on them, in addition to their side arms, would undoubtedly be insufficient for the

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<sup>167</sup> Exhibit T-78 – Excerpt from the Bratunac Hospital protocol of 13 July 1995.

random killing of such a large number of men. Witness I-3 also confirmed that there were in advance prepared weapons and ammunition to carry out the liquidation. This witness testified that after using one clip of ammunition, members of the police force standing in a semi-circle, were leaving the semi-circle to get new clips, and returning to it to continue the liquidation. In his testimony of 22 May 2008, this witness stated that there also stood a person who passed them new clips of ammunition.

314. The Panel has, therefore, concluded that all the foregoing circumstances confirm, beyond any reasonable doubt, that the killings in the FC Kravica on 13 July 1995, were certainly not a result of an incident, but rather of an activity designed and planned in advance and aimed at implementing the plan to exterminate the Bosniak population of the Srebrenica municipality, and thereby, to destroy, in part, a group of the Bosniak people from eastern Bosnia.

**F. CONCLUSION OF THE PANEL ABOUT THE ACCUSED'S ROLE AND HIS *MENS REA* OF THE GENOCIDAL PLAN OF OTHERS**

315. The Indictment of the BiH Prosecutor's Office charged the accused Željko Ivanović that (1) together with other members of the Second Detachment of the SBP Šekovići [...] he secured the section of the road between Bratunac and Konjević Polje, in Sandići; (2) he participated in capturing a large number of Bosniak men from the column; (3) he participated in escorting the column of over several hundred captured Bosniaks from Sandići to a warehouse of the Agricultural Cooperative in Kravica, and (4) he participated in the killing of prisoners in the warehouse, by going to the rear side of the warehouse, armed with an automatic rifle, to guard it and prevent the prisoners from possibly escaping through the warehouse rear windows.

**(a) The Accused was present at the section of the Bratunac-Konjević Polje road, in Sandići, on 12 and 13 July 1995**

316. The Panel has concluded, beyond a reasonable doubt, based on the evidence adduced, that members of the 2<sup>nd</sup> Detachment of the SBP Šekovići were, on 12 and 13 July 1995, deployed along the Bratunac-Konjević Polje road, and secured that the road along which the population of Srebrenica, mostly the women, children and elderly, were transported is passable. The Panel has analyzed, in paras. 238-246 of the Verdict, the evidence related to the deployment and position of members of the 2<sup>nd</sup> Detachment

along this road, particularly of the Skelani platoon members. The Panel has concluded that members of the Skelani Platoon were deployed along the section of the road between Bratunac and Konjević Polje, in Sandići, that is, at the section of the road by the house near which the Muslim men from the column surrendered, and thereby, next to the meadow where the captured men were placed and held. In relation to the house, the meadow is located just across the asphalt road secured by members of the Skelani platoon.

317. That the accused Željko Ivanović was indeed among members of the Skelani Platoon at this site, with the referenced task, the Panel concluded on the basis of consistent evidence of witnesses Petar Mitrović, Miladin Stevanović and Witness I-3.

318. In his statement made during the investigation,<sup>168</sup> Petar Mitrović stated that members of the Skelani Platoon, 24 men in total, were deployed to the Bratunac-Konjević Polje, at a plain, near a house with a water fountain. The witness identified members of the Skelani Platoon, who had been, together with him, deployed at the referenced section of the road, on that day, including Željko Ivanović aka Arkan.

319. On 4 October 2005, the Prosecution carried out, in the presence and with the participation of the then suspect, Petar Mitrović, a crime-scene investigation and the reconstruction of the incident within the FC Kravica compound, with which the accused Ivanović was also charged. Crime-scene Investigation and Reconstruction Record<sup>169</sup> was made at the time. Witness Mitrović stated that, in relation to the FC Kravica, the site where his Platoon had secured the road on 13 July 1995 was in the Kravica-Sandići direction, by the first houses, that is, at the distance of approximately 500-600 m from the Kravica facility. The witness again stated that Željko Ivanović was also among members of the Skelani Platoon, who had the same assignment. In the referenced statement, the witness corrected himself with regard to two members of the Skelani Platoon, and stated that, in his original statement of 21 June 1995, he had erroneously mentioned Velibor Maksimović and Dragiša Živanović<sup>170</sup> as present (at the crime scene). In relation to Željko Ivanović and his role in the subsequent events, however, the witness stood by his original statement, which will be reasoned further below.

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<sup>168</sup> Exhibit T-39, Suspect Questioning Record for Petar Mitrović of 21 June 1995.

<sup>169</sup> Exhibit T-40 Crime-scene Investigation and Reconstruction Record No. KT-RZ-10/05 of 4 October 2005.

<sup>170</sup> Final Verdict of the Court of BiH, No X-KR-05/24 of 29 July 2008, acquitted him of the charges related to the same event of which Petar Mitrović was found guilty.

320. Witness Miladin Stevanović,<sup>171</sup> stated that, on 12 July 1995, around 20 members of the Skelani Platoon, including Željko Ivanović nicknamed Arkan, were ordered to deploy along the Bratunac-Konjević Polje road, in Kravica, and to secure it, which they did.

321. That the accused Željko Ivanović was deployed to the Bratunac-Konjević Polje, at the section where the Bosniak men from the column surrendered, was also confirmed by Witness I-3's evidence. As reasoned in Section VII.A of the Verdict, the Panel has concluded that the evidence of this witness given at the main trial can be credited, more specifically, that there is a reasonable explanation as to why he did not mention the Accused in some of his statements.

322. Considering the consistent statements of the three referenced witnesses heard in relation to the events taking place on 12 and 13 July 1995 along the Bratunac-Konjević Polje road, and corroborated by the other pieces of evidence, the Panel found it proved that, during the critical period, the accused Ivanović, along with Petar Mitrović, Miladin Stevanović, Witness I-3 and some other men, more specifically, with approximately 20 members of the Skelani Platoon, was deployed to secure the section of the referenced road in the place of Sandići.

(b) The Accused participated in the capturing of the Bosniak men from the column

323. As it ensues from the witnesses' consistent evidence, members of the Skelani Platoon, engaged in securing the road between Bratunac and Konjević Polje, were tasked with ensuring the safe and free passage for vehicles, trucks and buses transporting the women, children and elderly from Potočari. The Panel has, however, concluded that members of this Platoon also played an active role in the capturing of the Muslim men and their subsequent escorting to Kravica.

324. On the basis of the consistent statements of witnesses Miladin Stevanović and Petar Mitrović (made during the investigation), and the testimony of Witness I-3, the Panel has inferred that, along with members of his Platoon, Željko Ivanović was deployed to secure the road at the above referenced location.

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<sup>171</sup> Suspect Questioning Record for Miladin Stevanović No KT-RZ-10/05 of 1 July 2005.

325. Even though certain members of the First or Second Platoon of the 2<sup>nd</sup> Detachment urged the Muslims to surrender, and searched the surrendering men from the column, as described by Witness I-3, members of the Skelani Platoon were not excluded from such activities either. In his statement made during the investigation, witness Stevanović described the way in which money and other valuables were seized from the surrendering Muslims. The Prosecutor asked the witness whether the other members of the Skelani Platoon were indeed present at the positions to which they were deployed during his presence at the site. Witness Stevanović responded that “there was money, so they used to come and go”.

326. In addition, witnesses Petar Mitrović and Miladin Stevanović practically identically described the order received by members of the Skelani Platoon, directing them to Sandići, and deploying them at the road. Witness Mitrović testified that: *„...pursuant to the order, we were transferred to Kravica and deployed along the road, with the assignment to accept all Bosniaks who would surrender, as they were allegedly hiding in the woods.”* In the same testimony, the witness further stated that he secured a group of approximately 500 men who had surrendered.

327. Witness Stevanović described that, once the search in the area of the Budak village was completed, commander Trifunović ordered them to *„immediately move further to secure the road between Bratunac and Konjević Polje, or more precisely, to Kravica, because Muslims would pass along this section of the road...”*. Witness Stevanović further testified about the events at Sandići Meadow, including the way in which the Muslims were urged to surrender.

328. Witness I-3's evidence also confirmed that the Skelani Platoon's assignment was to secure the surrendered men, since the Platoon had been deployed to the section of the road immediately by the house where the surrender took place. Witness I-3 stated: *„...We did not personally secured the [surrendered men sitting there], but we did approach them, looking if there were any known (persons)...”*

329. It may be inferred from these witnesses' evidence that, even though members of the Skelani Platoon, were not present in the circle itself formed around the captured men sitting at the Sandići Meadow by the police officers from the 2<sup>nd</sup> Detachment, their role of armed „guards” at this stretch of the road was to secure a successful surrender of the Bosniak men, and to escort them to the meadow where they were guarded by other



members of the 2<sup>nd</sup> Detachment. Acting upon the order described by witnesses Mitrović, Stevanović and I-3 as an order to “accept” the surrendering Muslims, that is, to “secure the road along which the Muslims would pass”, the accused Ivanović was deployed to this site, along with members of the Skelani Platoon. Considering the foregoing, the Panel concluded that the Accused also contributed to the capturing of the Muslims.

330. Given this general context of the events, and the fact that members of the Skelani Platoon, as a unit resubordinated to the VRS in the concrete military action, were deployed to this location exactly with the aim to contribute to the successful capturing of the Muslim men from the column, to their subsequent execution, as well as to securing a free passage of the buses and trucks transporting the Bosniak civilian population, in order to implement the plan of forcible removal of the women, children and elderly from the UN Srebrenica safe area, and their extermination, the Panel concluded that, as a member of the Skelani Platoon police force present at the site, the Accused undoubtedly had knowledge and awareness about the background of these events, wherefore his role cannot be considered as irrelevant in the capturing of these persons, even though he did not urge the men to surrender, did not search them, and even did not stand in the circle around the Sandići meadow, but rather on the road. According to this Panel, each police officer from the Skelani Platoon, deployed to secure the Sandići road, and subsequently to escort the column of men to the FC Kravica, including the accused Ivanović, contributed, in fact, to the capturing of the referenced persons.

(c) The Accused participated in the escort of the column of prisoners and in their liquidations

331. The Panel has concluded, on the basis of witness Petar Mitrović's evidence, corroborated by the evidence of Witness I-3, that the accused Ivanović participated in escorting the column of captured men, along with other members of the Skelani Platoon who secured the road, other than the accused Miladin Stevanović, who had left the site before the column started off towards the hangar.

332. Specifically, in the early afternoon hours, in the way as described in Section IX.B (a) of the Verdict, the column of the captured men was escorted from the Sandići Meadow to the FC Kravica by a certain number of members of the 2<sup>nd</sup> Detachment, mostly comprising members of the Skelani Platoon.

333. In his first statement given on 18 April 2008, Witness I-3 identified the accused Željko Ivanović as a person who had escorted the column. The witness confirmed the foregoing also in the evidence he gave in the capacity of a witness in this case, as well as in the evidence given in other cases, except in the statement of 22 May 2008, and in his testimony in *Petar Mitrović et al.* The Panel has found a reasonable explanation for the foregoing discrepancies in his statements, and accordingly, provided the related reasons in addressing the credibility of this witness.

334. In his statements given during the investigation, witness Mitrović does not directly state that the column was escorted to the Kravica hangar. Identifying, however, the other members of the Skelani Platoon present at the site when the column was brought to the front of the hangar, he mentioned the accused Ivanović too.

335. Considering that the accused Ivanović secured the section of the road at Sandići, from where members of the 2<sup>nd</sup> Detachment, mostly members of his Platoon, escorted the column of captured men towards the hangar, and that he was present inside the FC Kravica compound after the column had been brought there, which is a decisive fact about which witnesses Mitrović and Ivanović consistently testified, the Panel has inferred that Witness I-3 can be credited in the part indicating that the accused Ivanović indeed escorted the column of captured men.

336. The Panel has found, on the basis of Witness I-3's and witness Petar Mitrović's consistent evidence, that the accused Željko Ivanović's role in the concrete action of execution of over 1,000 captured men in the hangar has been proved beyond a reasonable doubt.

337. Specifically, the Panel has concluded that the Accused's role in these acts, namely to guard the rear side of the hangar to prevent the prisoners from fleeing, has been proved beyond a reasonable doubt.

338. In his statement given during the investigation, witness Mitrović described that, after the incident in which Krsto Dragičević was killed, members of his platoon opened fire, and that Mirko Milanović was particularly active in firing at the captured men in the hangar through the hangar door, using a machine gun. Witness Mitrović stated that he himself had fired a round or two in the doorway direction, but that he was thereupon ordered to position himself, together with Željko Ivanović, Branislav Medan and Slobodan Jakovljević, behind the warehouse in order to secure the rear small windows and prevent the prisoners

from jumping through the windows, which they did. The four men stayed at the warehouse rear as long as the shooting and hand grenade explosions lasted inside the hangar.

339. Witness Mitrović confirmed the above referenced sequence of events for the Crime-Scene Investigation and Reconstruction Record, despite changing his first statement in relation to certain details of the concrete event pertaining to the accused Ivanović's role in the criminal act, which was irrelevant. This is so because the witness stood by his submissions that he and three more men, the above mentioned members of the Skelani Platoon, including the accused Ivanović, went behind the warehouse to secure the rear windows, and did not fire (at the prisoners). While they stayed behind the warehouse facility, the witness heard the shooting coming from the asphalt road in front of the warehouse directed at the men held in the warehouse, as well as detonations of hand grenades. Opposite to his statement made during the investigation, the witness now denies seeing anyone, other than Mirko Milanović, shooting at the prisoners. Therefore, while giving two statements during the investigation phase, witness Mitrović remained consistent regarding the acts of the accused Ivanović, and changed no detail relating to his acts.

340. Witness Mitrović's evidence with regard to the accused Ivanović's role and acts in the execution carried out in the Kravica warehouse is consistent with Witness I-3's evidence. Even though, in some of his statements the referenced witness gave different information in relation to the accused Ivanović, mentioning him even as a person who had fired at the captured men from a semi-circle in front of the hangar, he publicly apologized to the Accused at the hearing. Witness I-3 stated he had been mistaken, and described the accused Željko Ivanović's role identically as Petar Mitrović during the investigation phase. Specifically, Witness I-3 testified in direct examination at the main trial, and stood by this testimony both in cross-examination and during his hearing as the Defense witness in this case, that the accused Ivanović was one of the four members of the Skelani Platoon who had left the semi-circle upon Commander Trifunović's order and went behind the warehouse to secure the rear windows and prevent the captured men from fleeing through these windows.

341. In the Panel's view, such an action of the Accused, proved beyond a reasonable doubt on the basis of the referenced consistent testimonies, even though it was not proved (and the Indictment did not charge the Accused either) that he indeed fired even a sole round towards the captured men, or that he had personally killed anyone, contributed to

the killings of the captured men in the hangar. More specifically, the hangar rear windows were the only possible way for the prisoners to flee. This is confirmed by the fact that Witness I-2 succeeded in fleeing exactly in this way. According to this Panel, the sole fact that four armed guards, including the accused Ivanović, consented to, and did nothing to avoid such an assignment, being aware of all the earlier described circumstances, shows that they shared the common intent to kill the prisoners.

(d) Mens rea - awareness of the genocidal intent of others

342. Having determined that the Accused was present at the road section between Bratunac and Konjević Polje, in the place of Sandići, as well as his role in the capturing of the Bosniak men, escorting the column and, ultimately, his contribution to the killing of the majority of over 1,000 captured Bosniak men in the FC Kravica hangar, that is, having concluded that all the elements constituting the *actus reus* of the criminal offense of Genocide were satisfied by the Accused's acts, namely *killing of members of the group*, the Panel has further evaluated if the accused Željko Ivanović indeed had the necessary degree of awareness, or the required *mens rea* to be found guilty as an aider and abettor in Genocide.

343. As already examined and reasoned in detail by the Panel, in explaining the essential elements of the crime of Genocide, an aider and abettor in genocide need not have the required degree of awareness and intent to commit this crime required for the principal perpetrator, or more precisely, the awareness factor is exactly a distinction point between the principal perpetrator of genocide and an aider and abettor in genocide. More specifically, a perpetrator of the crime of Genocide must have the required genocidal intent (defined as an aim: to destroy; in whole or in part; a national, ethnic or religious group), while for an aider and abettor in Genocide it needs to be proved that he was aware of the genocidal intent of others.

344. That the Accused was aware of the genocidal intent of others, more precisely, that he was aware that the VRS and the MUP RS units resubordinated to it had the intent to destroy the Bosniak people of Srebrenica, the Panel inferred from the following facts:

345. It was determined, based on the evidence adduced, that the Accused and his unit were, during 11-12 July 1995 deployed to a field mission in Srebrenica. The consistent evidence of witnesses Mitrović, Stevanović and I-3 showed that, upon their arrival in

Bratunac, the first assignment of the 2<sup>nd</sup> Detachment, including approximately 20 members of their Platoon, was to search the terrain in and around the village of Budak, or the “hillside” up from the Yellow Bridge (as the witnesses explained). Witness I-3 testified that, once they climbed up to the village of Budak, on 12 July 1995, they could see a large group of people, Bosnian Muslims, assembled in Potočari. Significantly diminishing their number, witness Stjepanović also stated that the people gathered in Potočari could be seen from the village of Budak. Considering that the Accused undertook this assignment together with his unit, as consistently confirmed by witnesses Mitrović, Stevanović and I-3, and since at least 20,000-25,000 people<sup>172</sup> were gathered in Potočari, in one place, on the referenced day, it could not have stayed unnoticed by anyone present, even accidentally, at the site. This is so particularly considering the contents of witness Stevanović's evidence. Witness Stevanović testified that the Detachment's assignment was, in case they found any Bosniak civilian in the villages searched, to direct those people to Potočari where the Muslim people had been assembled. Witnesses Mitrović, Stevanović and I-3 consistently testified that no inhabitants were found in the villages, that the houses were open, wherefore any person of average intelligence could conclude that the population was removed.

346. In addition, it was undoubtedly determined that, on 12 and 13 July 1995, the accused Željko Ivanović was present at the Bratunac-Konjević Polje road, namely during the days when the most intensive mass removal of the Bosniaks from Srebrenica was carried out along this road. More specifically, all the witnesses, whose evidence was earlier analyzed, and who were present at the referenced site, consistently testified that, on 12 and 13 July 1995, the traffic on the road between Bratunac and Konjević Polje was busy, and that the majority of this traffic were the buses, trucks and trailer trucks transporting the Muslim civilian population, mostly the women, children and elderly, towards Tuzla and Kladanj.

347. The Accused was, together with his unit, reassigned to Srebrenica at the time when it had already been taken by the Serb authorities, or after its “fall”. Once he arrived there, as an experienced police officer, member of the Special Police Brigade, the Accused must have been clearly aware of certain issues. Specifically, there was no doubt that such a mass-scale removal of the population was not (carried out) on a voluntary basis, particularly for the fact that, until the moment when these events occurred, Srebrenica had

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<sup>172</sup> Established fact No. 65.

held the status of a UN safe area. The facts that a variety of military and police units were withdrawn from other areas to the Srebrenica area, that in such an action the police were resubordinated to the military, and that in all these circumstances villages were ravaged, plundered and that ongoing was an organized mass-scale removal of the population, which had lived in this area during the past 3 years of war, with no intent to leave their homes, are the facts which must have created the awareness, in any sound minded person, particularly in police officers of the Special Police Brigade, that this was an extraordinary situation, that the purpose of concentrating the units of the RS military and police in the territory of the safe area, including the Accused and his unit, was to assist in the process of destroying the Bosniaks.

348. According to the Panel, even if there were any doubts as to who was behind the Srebrenica events during those days, the slightest doubt those present there might have had, including the Accused's doubts, must have been removed through General Mladić's attendance at the Sandići Meadow on 13 July 1995. Despite the Panel's view that, bearing in mind all the other circumstances surrounding both the referenced day and the day before, there could be no dilemma that this was a planned and organized destruction of a group of Bosniaks from Srebrenica, General Mladić's attendance made it crystal clear that the VRS Main Staff was behind all these activities, and that a voluntary and spontaneous movement of the population was certainly out of question. General Mladić's addressing the captured men at the meadow undoubtedly confirmed that the process of removal of the Bosniak civilians was organized and implemented by the Serb authorities.

349. As described above, General Mladić attended the Sandići meadow around noon, on 13 July 1995. At the time, a large number of the captured Bosniak men assembled at the meadow were "encircled" by members of the police and military. The surrender of those men lasted for a longer period of time, or several hours, and it was not a single-action event. In addition, all members of the police force present on the road had to be aware of the heavy artillery firing towards the woods from where the surrendering Bosniak men from the column were emerging. Even though the mass surrender had begun, and the men from the column were approaching, the heavy artillery firing did not cease. According to the Panel, this fact additionally proves the conclusion that the Serb forces had no intent to leave the Bosnian Muslim men alive.

350. Furthermore, all the eyewitnesses, both the injured parties and police officers, members of the 2<sup>nd</sup> Detachment, identically described the condition of the surrendered

men. They were exhausted, tormented, starved, they wore thorn clothing, and many of them were wounded. The Accused, standing in the immediate vicinity of the house by which the surrender was ongoing, and near the very meadow where those men were held, must have been aware of such a condition of theirs. The Accused had undoubtedly seen members of the 2<sup>nd</sup> Detachment searching the surrendering Muslims, seizing their money and other valuables, including their personal documents, and piling them up. Clearly, the surrendered Bosniaks thereby lost their identity indication, and became only nameless individuals among the mass of captives.

351. All the foregoing, viewed in relation to the conditions in which the surrendered men were held, in the direct sun of the July heat, with no food, with insufficient water supply and medical aid, intimidated by sporadic and opportunistic killings of certain prisoners, undoubtedly indicated that these men were not meant to live. Armed members of the police force, as the Accused himself, deployed to secure the road and the prisoners' surrender, holding the destiny of these men in their hands, must have been particularly aware of the foregoing.

352. Further course of the events on this day could have only strengthened the awareness and belief of all the present about the destiny intended for the captured men. First, had the exchange of men captured at the Sandići meadow been planned indeed, as promised by General Mladić, there would have been no need to remove them to the Kravica warehouse. Undoubtedly, the Kravica warehouse was a suitable location for such a mass-scale liquidation: a restricted area, with two doorways, which could be successfully "covered" by approximately 20 armed members of the police force. In addition, the warehouse is located in the direction opposite to Tuzla and Kladanj held by the ARBiH. The way itself in which the men were escorted from the Sandići meadow, lined up in a column, marching towards the hangar, guarded by armed members of the police, including the Accused, in the direction opposite to the direction where the civilian population from Srebrenica was transported, undoubtedly suggests that the prisoners were not taken from the Sandići meadow to be saved, but rather to be liquidated.

353. Ultimately, once he arrived in Kravica, the Accused must have seen the scope of the action and of the Bosniak men detention. These men were packed into the hangar without even the slightest respect for their human dignity, not to mention the rules of international humanitarian law, of which the Accused must have been aware as a police officer. First, the FC Kravica hangar was not a space intended for people. As the survived

witnesses described, it was an empty room with a concrete floor. The surface area of the hangar was not adequate to the number of men detained therein. The Accused could not but notice that the men from the column, around 500 men, in whose escort he participated, were being packed in a rather cramped hangar space. As a result, the hangar was so cramped with the men, already in poor mental and physical state, that they could not even sit down. As the two survivors described, the hangar was so packed that, *if you threw a match or a lighter, it would not have fallen on the concrete, rather it would stay on a shoulder or a lap*.<sup>173</sup> Such conditions per se were inadequate and unsuitable for survival, and whoever saw the way in which these men were forced into the warehouse, must have been clearly aware that there was no intent to leave them alive.

354. Ultimately, the machine gun pointed at the hangar doorway, the semi-circle forming in front of the hangar by the police officers armed with automatic rifles, including the Accused, suggested a sole conclusion that these men would be killed.

355. The way itself, in which the mass-execution was initiated and carried out, speaks about the perpetrators' persistence and perseverance to kill all the men detained in the hangar, leaving no eye-witnesses to the event. It also refutes the Defense's claims that the killings resulted from an incident, as already explained by the Panel. The Panel has no doubts as to the Accused's awareness that the men were being killed in the hangar, even though he himself fired no rounds. Quite certainly, the mass execution of the men in the Kravica hangar would not have been carried out so successfully had the hangar rear windows remained unsecured, and had the prisoners succeeded in fleeing through them. The Panel has noted that the fact that Witness I-2 successfully escaped and survived by fleeing exactly through one of the hangar rear windows, as one of the two survivors of this massacre, in the absence of any other possible escape area, points to the significance and real severity of the action undertaken by the Accused, together with the three other members of the Skelani Platoon.

356. In addition, the Panel has inferred, considering all the above described circumstances, that the Accused must have been aware that both the action of the removal of the Muslim civilian population and the capturing and liquidation of the surrendered men from the column, which cannot be viewed separately, were undertaken

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<sup>173</sup> Transcript of Witness I-1's evidence in the case No. X-KR-06/180-1 of 10 September 2009.



against the Bosniaks from Srebrenica for a single concrete reason – the fact that they were members of a national, ethnic or religious group.

357. There is no doubt that there was indeed the plan to destroy, in whole, the Bosniak population from the Srebrenica municipality, which was carried out through the transfer of the women, children and elderly, and through the execution of men, both able bodied and those still under the required age (the injured parties-witnesses testified that young boys aged 15 were also present at the Sandići meadow), at the execution sites throughout the Srebrenica municipality, the FC Kravica being only one of the mass-scale execution sites.

358. This Panel has concluded that the Accused indeed acted with the intent to kill the captured Bosniak men in the Kravica hangar, and that, despite possessing no personal intent to destroy the Bosniaks as a national, ethnic or religious group, he was aware, based on all the above described circumstances, that the massacre in Kravica formed a part of the crime of genocide committed in the Srebrenica municipality area. Therefore, the act of the accused Željko Ivanović in the commission of the crime of Genocide may be subsumed under the definition of aiding and abetting under Article 31 of the CC of BiH.

359. Specifically, this Panel has ultimately inferred that, acting with the intent to deprive the life of the captured Bosniak men in the Kravica hangar, being aware of the scope of the wider genocidal design envisaged by the superior structures of the Serb authorities, both civilian and military, the accused Ivanović consented to serve as an instrument which contributed to the eradication of the protected group – a group of the Bosniak people from the Srebrenica area, and that, by his acts in the killing of the captured men, he aided and abetted in the implementation of the intent to destroy, in whole, the Bosniaks from the Srebrenica enclave, and thereby, to destroy, in part, the Bosniak people from eastern Bosnia.

360. These acts of the Accused have satisfied all the elements of aiding and abetting in Genocide under Article 141, as read with Article 24 of the adopted CC of SFRY.

## **X. AMENDMENTS TO THE FACTUAL DESCRIPTION OF THE INDICTMENT**

361. The Panel has made certain changes to the factual description of the Indictment, but no interventions were made into the objective identity of either the Indictment or the

Verdict. Specifically, the Panel has adjusted the findings of facts described in the Indictment to the evidence adduced at the main trial, and to the findings of fact resulting from the examination of evidence. The Panel has thereby only specified the acts taken by the Accused and reduced, rather than increased the degree of criminal activity charged against the Accused. The Appellate Panel has relied on the position that the Court's interventions in the factual description of the crime are allowed if directed at a more specified determination of the crime.

362. The Panel has evaluated the acts factually described in the Indictment, legally qualified by the Prosecution as the acts of aiding and abetting in Genocide committed through killing and causing serious bodily and mental harm. The Panel has noted that, as a whole, these acts constitute an act of commission of the crime of Genocide by killing, namely by aiding and abetting in killing, and that all the acts, taken prior to the act of killing itself, determine and describe the referenced act, and, in parallel, qualifies it as the *actus reus* of Genocide, rather than of some other war crime. Considering both the foregoing and the overall line of arguments provided by the Panel in Chapter VI(a)ii of this Verdict, the Panel has not found the Accused guilty of the act of Genocide by causing severe bodily and mental harm to members of a group of people.

363. Furthermore, certain parts of the factual substratum of the Indictment were also omitted, namely the following: „...due to the fear caused by the separation of men, terror, active threats and by causing injuries by the members of VRS and RS MoI...“, wherein the Panel found the Accused's participation unproved, or the parts of the Indictment factual substratum that were found unproved „...by the Commander of the 3<sup>rd</sup> Skelani Platoon, the convicted person Milenko Trifunović“, „seriously“ wounded. Also, in mentioning in the factual substratum of the enacting clause of the Verdict the members of the 2<sup>nd</sup> Detachment who fired from the semi-circle at the prisoners inside the hangar, the Panel omitted the name of Zoran Tomić, who was, under a final verdict, acquitted of charges that he participated in the concrete event.<sup>174</sup> Other, smaller interventions made to the factual substratum of the enacting clause of the Verdict in relation to the amended Indictment were solely aimed to specifying certain acts, while their essence remained unchanged.

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<sup>174</sup> Final Verdict of the Court of BiH No. S1 1 K 006124 11 Kžk of 25 January 2012.

364. Since the omitted parts of the Indictment constituted no separate criminal offense, there was no need to render an acquitting verdict for the parts of the Indictment omitted from the enacting clause of the Verdict.

## **XI. SENTENCING**

365. In meting out the sentence for the accused Željko Ivanović, the Panel was first mindful of the legal framework of the sentence prescribed for the offense of which the Accused was found guilty (prison sentence not exceeding five years, or the death penalty). Considering that, on 28 May 2003, Bosnia and Herzegovina ratified Protocol No. 13 to the ECHR abolishing the death penalty in all circumstances, the Panel was also mindful of Article 38(2) of the adopted CC of SFRY according to which a 20-year prison sentence may be imposed for the criminal offenses carrying the death penalty. In addition, the Panel has relied on Articles 33 and 41(1) of the adopted CC of SFRY defining the purpose of punishment and the general rules in fashioning a sentence. The Panel has also taken into account all the circumstances that may affect imposing a more or less stringent punishment (extenuating and aggravating circumstances), particularly the degree of criminal liability, motives for which the offense was committed, the degree of risk or violation of the protected value, the circumstances under which the offense was committed, the perpetrator's previous life, his personal situation and his conduct after the commission of crime, as well as the other circumstances related to the perpetrator's personality. Considering that the Accused was found guilty of aiding and abetting, the Panel was also mindful of Article 24(1) of the adopted CC of SFRY, pursuant to which an aider and abettor shall be punished as if he personally committed the crime, while he may also receive a more lenient sentence.

366. In evaluating the degree of risk and of violation of the protected value, the Panel has taken into account that this Verdict found the Accused guilty of a crime that constitutes the most serious violation of both the provisions of national law and international humanitarian law. The number of the slain Bosniak civilians, the way in which the referenced crime was committed, namely the escorting of the captured men to the execution point in the farming cooperative hangar, detaining these men in the hangar with minimum possibility to flee, the Accused's task to prevent any flight, and the fact that due to its gravity, the consequences of the crime for members of the families of those killed and for the few survivors of this horrific crime have not ceased even after so many years since its

commission, were all considered as the aggravating circumstances.

367. Among the extenuating circumstances on the part of the Accused, the Panel has evaluated the facts that he has no earlier convictions and that at the time when he committed the crime he was relatively young, aged 23. The Panel has further taken into account that the Accused's acts were aimed at guarding and preventing the captured Bosnian men from fleeing, rather than at firing at them, and that these acts were qualified as aiding and abetting.

368. In view of all the aforesaid, the Panel has concluded that, within the statutory range of sentences, the purpose of punishing would be, in the concrete case, achieved by no other sentence but the maximum sentence of twenty years in prison, that it is proportionate with the gravity of the crime and the degree of the Accused's criminal liability, and that the goal of both individual and general deterrence may only be achieved with such a sentence.

## **XII. DECISION ON THE COSTS OF CRIMINAL PROCEEDINGS**

369. Considering the Accused's personal and family situation, as well as his material situation, the Panel has decided, pursuant to Article 188(4) of the CPC of BiH, to relieve the Accused of the duty to reimburse the costs of criminal proceedings.

## **XII. DECISION ON CLAIMS UNDER PROPERTY LAW**

370. Applying Article 198(2) and (3) of the CPC of BiH, the Panel has instructed the injured parties that they may pursue their possible claims under property law in a civil action. The Panel rendered this decision considering that, upon reviewing the case record, it was noted that the injured parties heard during the first instance proceedings had filed no claims under property law, and that the information related to the current criminal proceedings offered no reliable grounds to adjudicate, in whole, or in part, on the claims under property law had such claims been filed at all.

**RECORD-TAKER**

**Nevena Aličehajić**

**PANEL PRESIDENT**

**JUDGE**

**Redžib Begić**

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

## **XIV. ANNEX 1**

### **G. EVIDENCE ADDUCED**

#### **1. Trial evidence**

##### **(a) Evidence for the Prosecution**

<b>T1</b>	CD – Film by Zoran Petrović;
<b>T1a</b>	Transcript of the film under T1 - VRS approaching Srebrenica (10 or 11 July 1995) – filmed by the Reuters Agency;
<b>T2</b>	Photograph tendered at the hearing of Witness I-1
<b>T2a</b>	Photograph tendered at the hearing of Witness I-1
<b>T3</b>	Photograph tendered at the hearing of witness Jovan Nikolić
<b>T4</b>	Photograph tendered at the hearing of witness Jovan Nikolić
<b>T5</b>	Witness Examination Record for Jovan Nikolić, BiH Prosecutor's Office, No. KT-10/05 of 10 October 2005
<b>T6</b>	SIPA-Witness Examination Record for Miladin Nikolić, No. 17-04/2-6-04-2-441/09 of 12 May 2009
<b>T7</b>	Photograph tendered at the hearing of witness Zoran Erić
<b>T8</b>	Photograph tendered at the hearing of witness Ilija Nikolić
<b>T9</b>	Photograph tendered at the hearing of witness Ilija Nikolić
<b>T10</b>	Crime-scene Investigation and Reconstruction Record of 4 October 2005
<b>T10a</b>	DVD - Reconstruction Ilija Nikolić of 4 October 2005
<b>T11</b>	Photograph tendered at the hearing of witness Dragomir Stupar
<b>T12</b>	Photograph tendered at the hearing of witness Dragomir Stupar
<b>T13</b>	Order of the MUP RS – Office of the Minister No. 64/95 of 10 July 1995
<b>T14</b>	Dispatch Note No. k/p -1-407/95 of 12 July 1995
<b>T15</b>	Dispatch Note No. 281/95 of 12 July 1995
<b>T16</b>	Dispatch Note No. 282/95 of 13 July 1995
<b>T17</b>	Dispatch Note No. 283/95 of 13 July 1995
<b>T18</b>	Dispatch Note No. 12-6/08-508/95 of 14 July 1995
<b>T19</b>	Dispatch Note No. 01-16-02/1-205/95 of 15 July 1995
<b>T20</b>	Dispatch Note No. 01-16-0211-206/95 of 17 July 1995
<b>T21</b>	Dispatch Note No. 12-6/08-534/95 of 19 July 1995
<b>T22</b>	Review of the events in the „Srebrenica 95“ operation

<b>T23</b>	Dispatch Note No. 01-16-02-1-221/95 of 22 July 1995
<b>T24</b>	Information concerning the incident with General Mladić, No. 01-16-02/1-231/95 of 28 July 1995
<b>T25</b>	Photograph tendered at the hearing of witness Krsto Simić
<b>T26</b>	Photograph tendered at the hearing of witness Krsto Simić
<b>T27</b>	Photograph tendered at the hearing of witness Krsto Simić
<b>T28</b>	Photograph tendered at the hearing of witness Ostoja Stanojević
<b>T29</b>	Photograph tendered at the hearing of witness Ostoja Stanojević
<b>T30</b>	SIPA, Witness Examination Record for Predrag Čelić of 27 October 2005
<b>T31</b>	Photograph
<b>T32</b>	SIPA, 2 Witness Examination Records for Milenko Pepić of 26 October 2005
<b>T33</b>	SIPA, Witness Examination Record for Slobodan Stjepanović, No. 14-04/2-393/05, of 27 October 2005
<b>T34</b>	Photograph tendered at the hearing of witness Miladin Stevanović
<b>T35</b>	Photograph tendered at the hearing of witness Miladin Stevanović
<b>T36</b>	Suspect Questioning Record for Miladin Stevanović, No. KT-RZ-10/05 of 1 July 2005
<b>T37</b>	Photograph of a meadow
<b>T38</b>	Photograph of a meadow 1,2,3,4.
<b>T39</b>	Suspect Questioning Record for Petar Mitrović, BiH Prosecutor's Office No. KT-RZ-10/05 of 21 February 2005
<b>T40</b>	Crime-scene and Reconstruction Record (Petar Mitrović) of 4 October 2005
<b>T41</b>	Picture with the drawing of Witness I-3
<b>T42</b>	Official Note, No. KT-RZ-10/05 of 4 July 2005
<b>T43</b>	Decision of the Court of BiH, No. X-KR-05/24, of 18 April 2007
<b>T44</b>	Part of the transcript in Mitrović et al., No. X-KR-05/24 of 11 May 2006
<b>T45</b>	Photograph marked by witness Enver Husić
<b>T46</b>	SIPA, Witness Examination Record for Luka Marković, No. 14-04/2-2990/05 of 20 September 2005
<b>T47</b>	Record by MUP RS (CJB Bijeljina) on taking statements from Luka Marković, No. 12-02/04 of 20 June 2005
<b>T48</b>	Crime-scene and Reconstruction Record, No. KT-RZ-10/05 of 29 September 2005 with a CD (Luka Marković)

<b>T49</b>	Laboratory Report of 24 February 2000 (automatic ballistic comparison)
<b>T50</b>	Report by Crime Technique Experts
<b>T51</b>	Estimate of a minimum number of persons exhumed by the ICTY during 1996-2001 period
<b>T52</b>	Report on recoveries and exhumations from Glogova1 grave site in 2000 - Richard Wright
<b>T55</b>	U.S. Naval Crime Investigation Service of 16 January 1998
<b>T56</b>	Annex to the Report on the Number of Missing and Dead Persons from Srebrenica of 12 April 2003 - Helge Brunborg
<b>T57</b>	Report on the Number of Missing and Dead Persons from Srebrenica of 12 February 2000 - Helge Brunborg
<b>T58</b>	Report on the Review and Taking Evidentiary Material from the Kravica Warehouse, BiH, September/October 2000 - Michael J. Hedley
<b>T59</b>	Witness statement of 20 December 1999 – Human blood detection in the samples collected from the Grbavci School, in Bosnia and Herzegovina, 1996
<b>T60</b>	Report on the missing persons from Srebrenica of 2 May 2000
<b>T61</b>	Summary of Forensic Evidence from the mass graves exhumed during 2000 – Lažete 1, Lažete 2C, Ravnice, Glogova 1 - Dean Manning, February 2001
<b>T62</b>	Report on the excavations at the Glogova 2 site, Bosnia and Herzegovina 1999 – 2001 - Jose Pablo Baraybar
<b>T63</b>	Summary of Forensic Evidence – Execution Points and Mass Grave of 16 May 2000 – Dean Manning
<b>T64</b>	Chief Pathologist Report – Dr. John Clark
<b>T65</b>	ICRC Report on Missing Persons in BiH
<b>T66</b>	ICTY investigation into Srebrenica – Summary of Forensic Evidence – Exhumation of Human Remains from Mass Graves, 2007
<b>T67</b>	Grave sites in Srebrenica
<b>T68</b>	Photographs from the <i>Obrenović</i> case
<b>T69</b>	Suspect Questioning Record, BiH Prosecutor's Office, No. KT-RZ-17/09 of 4 March 2009
<b>T70</b>	Suspect Questioning Record for Željko Ivanović, BiH Prosecutor's Office, No. KT-RZ-17/09 of 4 March 2009
<b>T71</b>	Šekovići Special Brigade – Second Detachment
<b>T72</b>	Letter of the MUP RS of 22 November 2005

<b>T73</b>	Letter of the MUP RS of 26 October 2005
<b>T74</b>	List of members of the Skelani Special Police Brigade of 15 May 1995
<b>T75</b>	List of the Skelani Unit members
<b>T76</b>	Structure of the Special Police Brigade of the MUP RS
<b>T77</b>	RS Police composition in the Drina Corps zone of 12 July 1995
<b>T78</b>	Excerpt from the hospital protocol for 13 July 1995
<b>T79</b>	Guidelines to determine the criminal prosecution criteria from 1992, issued by the Military Prosecution Office of the RS Main Staff
<b>T80</b>	Order to apply the rules of international war law in the RS Army, Official Gazette of the Serb People, 13 June 1992
<b>T81</b>	Directive Op. No. 4 of 19 November 1992
<b>T82</b>	Combat Readiness Status Report of 17 June 1993
<b>T83</b>	Security Council Resolution 819/1993
<b>T84</b>	Directive for further activities op. 7/1 No. 2/2 – 11 of 8 March 1995
<b>T85</b>	Directive for further activities op. 7/1 No. 02/2-15 of 31 March 1995
<b>T86</b>	Order by Radovan Karadžić to introduce the highest combat readiness measures No. 01-1118/95 of 16 June 1995
<b>T87</b>	Drina Corps Order No. 04/156-2 of 2 July 1995
<b>T88</b>	Semi-annual Report by the MUP RS, Special Police Brigade, Second Detachment of 5 July 1995
<b>T89</b>	Mobilization Order of 10 July 1995
<b>T90</b>	Events Security Bulletin No. 200 of 12 July 1995
<b>T91</b>	Order to secure buses of 12 July 1995
<b>T92</b>	Order to prevent passage of the Muslim groups towards Tuzla and Kladanj of 13 July 1995
<b>T93</b>	Regular Combat Report No. 03/2-214 of 13 July 1995
<b>T94</b>	MUP Special Brigade Report of 13 July 1995
<b>T95</b>	Regular Combat Report No. of 14 July 1995
<b>T96</b>	Data delivery to the RS Deputy Minister of Interior of 14 July 1995
<b>T97</b>	Regular Combat Report of 17 July 1995
<b>T98</b>	Report on the security situation in the Šekovići Police 2nd Detachment of 3 August 1995



<b>T99</b>	Treatment of Prisoners of War of 13 July 1995
<b>T100</b>	Crime-scene drawing No. 14-13/1-7-243/05 of 4 October 2005
<b>T101</b>	Photograph of Srebrenica and Žepa, July 1995
<b>T102</b>	Photograph of Bijela kuća – ICTY
<b>T103</b>	Aerial image of Potočari of 13 July 1995
<b>T104</b>	Aerial image – Potočari od 13.7.1995
<b>T105</b>	Map – the column movement and Serb forces position, ICTY
<b>T106</b>	Photograph – the hill and the forest where the Muslim columns marched – ICTY
<b>T107</b>	Chart indicating the movement of column
<b>T108</b>	Chart indicating the movement of column, broken towards the North and South
<b>T109</b>	Aerial image – Nova Kasaba, football playground of 13 July 1995
<b>T110</b>	Photographs of the Sandići Valley 13 July 1995
<b>T111</b>	Photographs of the Sandići Valley – zoom in
<b>T112</b>	Photograph made from the Bratunac direction, with the area between Kravica and Sandić, and marked warehouse
<b>T113</b>	Photograph of the Kravica warehouse, 13 July 1995
<b>T114</b>	Video-photos of the bodies in front of the Kravica house 13 July 1995
<b>T115</b>	Photos of the west room ceiling with blood traces
<b>T116</b>	Photos of the interior west part of the warehouse with blood stains on the wall
<b>T117</b>	Photo of a secured, enlarged crime-scene shoe print
<b>T118</b>	Photo of a secured, enlarged crime-scene shoe print
<b>T119</b>	Photographs of Konjević Polje of 14 August 1995
<b>T120</b>	Photograph of Glogova, 5 July 1995, with a note
<b>T121</b>	Aerial image of Glogova, with a note
<b>T122</b>	Photograph of an ID in the name of Dahmo Kadrić, from Glogova
<b>T123</b>	Aerial images dated 27 July 1995 and 20 October 1995 – Tatar Bratunac, ICTY
<b>T124</b>	GL 1 – Photograph
<b>T125</b>	Photograph of disturbed earth, Glogova, 30 October 1995
<b>T126</b>	Photograph of disturbed earth, Glogova, 9 September 1995
<b>T127</b>	Zeleni Jadar grave site – ICTY
<b>T128</b>	Aerial image– Zeleni Jadar, ICTY
<b>T129</b>	Aerial image– Zeleni Jadar, disturbed earth of 7 September and 2 October 1995, ICTY

<b>T130</b>	Zeleni Jadar – grave site, disturbed earth of 24 August 1995 and 2 October 1995
<b>T131</b>	Zeleni Jadar – grave site, disturbed earth of 20 October 1995 and 23 October 1995, ICTY
<b>T132</b>	Chart depicting the village of Kravica and the road in Kravica
<b>T133</b>	Kravica Chart
<b>T134</b>	Srebrenica grave sites, primary and secondary, graph
<b>T135</b>	Brochure – photographs from the Srebrenica trial video recording
<b>T136</b>	Additional forensic expert analysis of 14 May 2010
<b>T137</b>	Witness Examination Record for Marko Aleksić of 27 June 2006
<b>T138</b>	Witness Examination Record for Marko Aleksić, No. 14-04/2-327/05 of 12 October 2005
<b>T139</b>	<ul style="list-style-type: none"> <li>• Dialogue among Bruce Bursik, Peter McClosky and <b>Momir Nikolić</b> held in the period between 28 May and 12 June 2003</li> <li>• Dialogue between Jean Rene Rues with Momir Nikolić held on 15 December 1999</li> <li>• Informative report on the dialogue with Momir Nikolić, 23 June 2003</li> <li>• Cross-examination of witness by the Defense for Momir Nikolić of 1 October 2003 in the cases of <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i></li> <li>• Witness Momir Nikolić examination by the judge in <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i>, 1 October 2003</li> <li>• Defense's cross-examination in <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i>, witness Momir Nikolić of 30 September 2003</li> <li>• Defense's cross-examination in <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i>, witness Momir Nikolić of 29 September 2003</li> <li>• Transcript of 23 September 2003 in <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i>, dated 23 September 2003, witness Momir Nikolić</li> <li>• Transcript of 22 September 2003 in <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i>, witness Momir Nikolić;</li> <li>• Transcript of 19 September 2003 in <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i>, witness Momir Nikolić</li> </ul>
<b>T140</b>	<ul style="list-style-type: none"> <li>• Direct examination by Prosecution of witness <b>Dragan Obrenović</b> of 2 October 2003 in <i>Vidoje Blagojević</i> and <i>Dragan Jokić</i> No. IT-02-60-T</li> <li>• Statement given to the ICTY's investigators on 4 June 2003</li> <li>• Statement of Dragan Obrenović given to the ICTY's investigators on 4 and 5 February 2004</li> <li>• Statement of facts as presented by Dragan Obrenović</li> <li>• Cross-examination of witness Dragan Obrenović of 8 October 2003 in <i>Vidoje Blagojević</i></li> <li>• Statement given to the ICTY's investigators on 2 April 2000</li> <li>• Statement of Dragan Obrenović of 7 October 2003 in <i>Vidoje Blagojević</i> i <i>Dragan Jokić</i></li> </ul>

<b>T141</b>	<ul style="list-style-type: none"> <li>• Statement of Ljubomir Borovčanin given to the ICTY's investigators on 20 February 2002</li> <li>• Statement of Ljubomir Borovčanin given to the ICTY's investigators on 11 and 12 March 2002</li> </ul>
<b>T143</b>	<ul style="list-style-type: none"> <li>• Transcript of Joseph Kingori's testimony of 31 March 2000 in <i>Krstić</i></li> <li>• Transcript of Joseph Kingori's testimony of 3 April 2000 in <i>Krstić</i></li> </ul>
<b>T146</b>	<p>Transcript of the hearing of witness Dean Manning of 12 March 2008 in <i>Miloš Stupar et al.</i></p> <p>Transcript of the hearing of witness Dean Manning, 10 December 2007 in <i>Vujadin Popović</i></p> <p>Transcript, 11 December 2007 – <i>Popović</i> case</p> <p>Transcript, 12 December 2007 – <i>Popović</i> case</p>
<b>T148</b>	Statement of witness Jean Rene Ruez of 15 May 2003 in <i>Blagojević</i>
<b>T149</b>	<p>Transcript of the testimony of witness Miroslav Deronjić in <i>Momir Nikolić</i> of 28 October 2003</p> <p>Statement of 16 December 1997 (part of the statement P3142, <i>Popović et al.</i>)</p> <p>Statement of 4 February 1998 (part of the statement P3144, <i>Popović et al.</i>)</p> <p>Statement of 21 October 1999 (part of the statement P3146, <i>Popović et al.</i>)</p> <p>Statement of 25 November 2003 (P693, <i>Blagojević</i>)</p>
<b>T152</b>	Transcript of the testimony of witness Miloš Stupar of 28 April 2004
<b>152a</b>	Photograph
<b>152b</b>	Photograph taken during the hearing of witness J.R. Ruez

(b) Evidence for the Defense

<b>O1</b>	Photograph
<b>O2</b>	Photograph of the School in Bjelovac
<b>O3</b>	Photograph of the facility where Dragičević's body was held before the funeral
<b>O4</b>	Photograph of the Krsto Dragičević's monument
<b>O5</b>	Expert witness, Findings and Opinion on Petar Mitrović's health condition
<b>O6</b>	Transcript of the questioning of a suspect, No. KT-RZ-10/05 of 18 April 2008;
<b>O7</b>	Transcript of the Witness's examination, KTA-RZ-100/08 of 22 May 2008 in the BiH Prosecutor's Office

<b>O8</b>	Transcript of the trial in the case No. X-KR-05/24 of 29 May 2008
<b>O9</b>	Transcript of the trial in the case No. X-KR-05/24 of 11 June 2008
<b>O10</b>	Transcript of the trial in the case No. X-KR-05/24-1 of 11 June 2008
<b>O10A</b>	CD – reconstruction, Ilija Nikolić, 4 October 2005
<b>O11</b>	Witness Examination Record, No. KTA-RZ100/08 of 18 August 2008 - witness hearing transcript
<b>O12</b>	Witness Examination Record, No. KTA-RZ-100/08 of 28 August 2008 in the BiH Prosecutor's Office
<b>O13</b>	Transcript of the testimony before the Court of BiH of 11 February 2009, No.X-KR-06/180-2
<b>O14</b>	Transcript of the testimony before the Court of BiH of 11 March 2009, No. X-KR-06/180-2
<b>O15</b>	Transcript of the testimony before the Court of BiH of 13 March 2009, No. X-KR-06/180-2
<b>O16</b>	Witness Examination Record, BiH Prosecutor's Office, No. KT-RZ-17/09 of 26 March 2009 + Transcript of the Witness Examination Record
<b>O17</b>	Plea Agreement No. KT-RZ-43/08 of 16 October 2008
<b>O18</b>	Statement of facts and guilty plea No. KT-RZ-43/08 of 16 October 2008
<b>O19</b>	Indictment No. KT-RZ-43/08 of 27 May 2008 confirmed on 3 June 2008
<b>O20</b>	Verdict of the Court of BiH of 22 October 2008
<b>O21</b>	Report by the Physician of the Belgrade District Prison on the witness's health condition, No. 713 -1-1605/08-04 of 30 May 2008
<b>O22</b>	Drawing of the FC Kravica Warehouse with the initials of participants in the semi-circle near the FC Kravica, drawn and signed by the protected Witness I-3 at his testimony on 8 July 2010
<b>O23</b>	CD – Audio recording of the hearing held on 26 March 2009
<b>O24</b>	Photograph with 22 members of the II Detachment of the Šekovići Special Police
<b>O25</b>	Photograph with 20 members of the II Detachment of the Šekovići Special Police
<b>O26</b>	Photograph with 14 members of the II Detachment of the Šekovići Special Police
<b>O27</b>	Photograph
<b>O28</b>	CD – contents of the video tape "Sanja" replica

<b>O29</b>	Operative Report Str. Conf. No. 04-114/95 of 30 June 1995
<b>O30</b>	Information from the session of the Presidency of the Srebrenica Municipality held on 9 July 1995
<b>O31</b>	War Criminals List
<b>O32</b>	Report on Provision of Weapons and Material and Technical Equipment (MTS) of 28 May 1996
<b>O33</b>	Introductory remarks by the Army BiH of 30 July 1996
<b>O34</b>	Information upon the document of the GSS Army BiH of 29 June 1995
<b>O35</b>	Information about combat results of the units and Command of the 28 <sup>th</sup> dkov. of the 2 <sup>nd</sup> Corps of the Army BiH dated 8 July 1995
<b>O36</b>	Statement of the Civilian Affairs Commissioner No. 07-27,95 of 17 July 1995
<b>O 37</b>	Preparations for offensive combat operations of 17 June 1995
<b>O38</b>	Notice of the negotiations results on demilitarization of Srebrenica of 20 April 1993
<b>O39</b>	Analysis of the security situation in the "Srebrenica safe area" by the 2 <sup>nd</sup> Corps Command of 1 September 1995
<b>O40</b>	Statement of Ramiz Bećirović of 11 August 1995
<b>O41</b>	Success and tasks of the Army BiH units of 2 July 1995
<b>O42</b>	Letter of the Assistant Commander, General – Major Zdravko Tolimir of 13 July 1995
<b>O43</b>	Letter of the Command of the 2 <sup>nd</sup> Corps of 28 June 1995
<b>O44</b>	Report on Work Unit Recruitment, 28 <sup>th</sup> Division of 1 July 1995
<b>O45</b>	Extraordinary Report of 13 July 1995
<b>O46</b>	Report on the partial restoration of the Srebrenica terrain, Kravica area of 29 May 1997
<b>O47</b>	Order of 15 July 1995
<b>O48</b>	Statement of witness Mevludin Olić of 28 August 2006
<b>O49</b>	Findings and Opinion by expert witness Svjetlana Radovanović of 1 August 2009
<b>O50</b>	CD of 1 November 2011 from the Nešković case
<b>O51</b>	Review of 11 January 1995
<b>O52</b>	Weekly Report of 2 June 1995

<b>O53</b>	Weekly Report of 2 June 1995
<b>O54</b>	Statement of Witness I-3 of 2 March 2012 - confidential

## **2. Evidence presented in the proceedings before the Appellate Panel**

### **(a) Evidence for the Prosecution**

<b>A-T-1</b>	Transcript of Witness I-2's evidence in <i>Krstić</i> IT-98-33-T of 10 April 2000
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### **(b) Evidence for the Defense**

<b>A-O-1</b>	Statement of Witness I-3 of 8 June 2012 given to Attorney Suzana Tomanović
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## XV. ANNEX 2

371. The Panel has accepted as proved the adjudicated facts accepted by the Trial Panel's Decision of 20 April 2011, namely the facts adjudicated by the International Criminal Tribunal for the Former Yugoslavia (ICTY), in the case of *Prosecutor v. Krstić*, No. IT-98-33-T, ICTY's Trial Judgment of 2 August 2001 (*Krstić*), confirmed by the Appeals Chamber in the case No IT-98-33-A of 19 April 2004; and in *Prosecutor v. Blagojević and Jokić*, case No IT-02-60, Trial Judgment of 17 January 2005 (*Blagojević*), confirmed by the Appeals Chamber in the same case No IT-02-60-A of 9 May 2007, pursuant to Article 4 of the Law on Transfer of Cases. The facts concerned are the following:

4. The attack, carried out by the VRS and MUP, was planned and defined in the "Krivaja 95" order. (*Blagojević*, Trial Judgment, para. 551)
5. The attack continued after the fall of Srebrenica and affected approximately 40,000 people who lived within the Srebrenica enclave at the time of the attack. (*Blagojević*, Trial Judgment, para. 551)
8. Over 7,000 Bosnian Muslim men from Srebrenica were massacred. (*Blagojević*, Trial Judgment, para. 671)
9. In July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number is likely to be within the range of 7,000 and 8,000 men. (*Krstić*, Trial Judgment, para. 84)
22. ...the massacred men amounted to about one fifth of the overall Srebrenica community. (*Krstić*, Appeals Judgment, para. 28)
28. Their death precluded any effective attempt by the Bosnian Muslims to recapture territory. (*Krstić*, Trial Judgment, para. 595)
32. ...the killing was engineered and supervised by some members of the Main Staff of the VRS. (*Krstić*, Appeals Judgment, para. 35)
33. 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. (*Krstić*, Trial Judgment, para. 28)

34. Just as envisaged in this decree, by mid-1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic. (*Krstić*, Trial Judgment, para. 28)

35. 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, and when this failed, the tragedy of civilians dying from starvation. (*Krstić*, Trial Judgment, para. 28)

36. On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladic. Directive 7.1 was issued “on the basis of Directive No. 7” and directed the Drina Corps to, *inter alia*, conduct “active combat operations...around the enclaves”. (*Krstić*, Trial Judgment, para. 29)

37. On 31 May 1995, Bosnian forces captured OP Echo, which lay in the Southeast corner of the enclave. In response to this aggression, a raiding party of Bosniacs attacked the nearby Serb village of Višnjica, in the early morning of 26 June 1995. (*Krstić*, Trial Judgment, para. 30)

38. Although a relatively low intensity attack, some houses were burned and several people were killed. (*Krstić*, Trial Judgment, para. 30)

39. Following this, the then-commander of the Drina Corps, General-Major Milenko Živanović, signed two orders, on 2 July 1995, laying out the plans for the attack on the enclave and ordering various units of the Drina Corps to ready themselves for the combat. The operation was code-named “Krivaja 95”. (*Krstić*, Trial Judgment, para. 30)

40. The VRS offensive on Srebrenica began in earnest on 6 July 1995.



(*Krstić*, Trial Judgment, para. 31)

41. In the following days, five UNPROFOR observation posts, in the southern part of the enclave, fell one by one in the face of the Bosnian Serb forces advance. (*Krstić*, Trial Judgment, para. 31)

42. 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. (*Krstić*, Trial Judgment, para. 31)

43. Simultaneously, the defending ABiH forces came under heavy fire and were pushed back towards the town. (*Krstić*, Trial Judgment, para. 31)

44. Once the southern perimeter began to collapse, about 4,000 BOSNIAN Muslim residents, who had been living in a Swedish housing complex for refugees, fled north into Srebrenica town. Dutch Bat soldiers reported that the advancing Bosnian Serbs were "cleansing" the houses in the southern part of the enclave. (*Krstić*, Trial Judgment, para. 32)

45. By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometers deep into the enclave, halting just one kilometer short Srebrenica. (*Krstić*, Trial Judgment, para. 33)

46. 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. (*Krstić*, Trial Judgment, para. 33)

47. On the morning of 10 July 1995, the situation in Srebrenica town was tense. Residents, some armed, crowded the streets. (*Krstić*, Trial Judgment, para. 34)

48. 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. (*Krstić*, Trial Judgment, para. 34)

49. NATO planes also attempted to bomb VRS artillery positions overlooking the town, but had to abort the operation due to poor visibility. (*Krstić*, Trial

Judgment, para. 34)

50. NATO plans to continue the air strikes were abandoned following VRS threats to kill Dutch troops being held in the custody of the VRS, as well as threats to shell the UN Potočari compound on the outside of the town, and surrounding areas, where 20,000 to 30,000 civilians had fled. (*Krstić*, Trial Judgment, para. 34)

51. Late in the afternoon of 11 July 1995, General Mladic, 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. (*Krstić*, Trial Judgment, para. 36)

52. The moment was captured on film by Serbian journalist Zoran Petrović. (*Krstić*, Trial Judgment, para. 36)

53. 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 (para. 121). (*Krstić*, Trial Judgment, para. 429)

55. In July 1995, following the take-over of Srebrenica, Bosnian Serb forces devised and implemented a plan to transport all of the Bosnian Muslim women, children and elderly from the enclave. (para. 52) (*Krstić*, Trial Judgment, para. 425)

56. In July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number of victims is likely to be within the range of 7,000 and 8,000 men (para. 84). (*Krstić*, Trial Judgment, para. 426)

57. A concerted effort was made to capture all Muslim men of military age. IN fact, those captured included many boys well below that age and elderly men several years above that age that remained in the enclave following the take-over of Srebrenica. (*Krstić*, Trial Judgment, para. 85)

58. These men and boys were targeted regardless of whether they choose to flee to Potočari or join the Bosnian Muslims column. (*Krstić*, Trial Judgment,

para. 85)

59. The operation to capture and detain the Bosnian Muslim men was well organized and comprehensive. (*Krstić*, Trial Judgment, para. 85)

60. 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. (*Blagojević*, Trial Judgment, para. 71)

61. The Special Police Brigade was a combat unit of the MUP. Colonel Goran Savić was the commander and Colonel Ljubiša Borovčanin was the deputy commander (*Blagojević*, Trial Judgment, para. 75)

63. Members of the detachments were armed with automatic and semi-automatic weapons and were trained differently than the regular police force. (*Blagojević*, Trial Judgment, para. 75)

64. The detachments also had heavy weapons and vehicles, such as tanks, armored personnel carriers and Pragas. (*Blagojević*, Trial Judgment, para. 75)

65. By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari. (*Krstić*, Trial Judgment, para. 37)

66. Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighboring factories and fields. (*Krstić*, Trial Judgment, para. 37)

67. Though the vast majority was women, children, elderly or disabled, witnesses estimated that there were at least 300 men inside the perimeter of the UN compound and between 600 and 900 in the crowd outside. (*Krstić*, Trial Judgment, para. 37)

68. Though the vast majority was women, children, elderly or disabled, witnesses estimated that there were at least 300 men inside the perimeter of the UN compound and between 600 and 900 in the crowd outside. (*Krstić*, Trial Judgment, para. 37)

69. Conditions in Potočari were deplorable. (*Krstić*, Trial Judgment, para. 38)

70. There was very little food or water available and the July heat was stifling. (*Krstić*, Trial Judgment, para. 38)

71. From 11 to 13 July 1995 the temperature was very high, reaching 35 degrees centigrade and this small water supply was insufficient for the 20,000 to 30,000 refugees who were outside the UNPROFOR compound. (*Blagojević*, Trial Judgment, para. 147)

73. On 12 July 1995, as the day wore on, the already miserable physical conditions were compounded by an active campaign of terror, which increased the panic of the residents, making them frantic to leave. (*Krstić*, Trial Judgment, para. 41)

74. The refugees in the compound could see Serb soldiers setting houses and haystacks on fire. (*Krstić*, Trial Judgment, para. 41)

75. On 12 and 13 July, upon the arrival of Serb forces in Potočari, the Bosnian Muslim refugees taking shelter in and around the compound were subjected to a terror campaign comprised of threats, insults, looting and burning of nearby houses, beatings, rapes and murders. (*Krstić*, Trial Judgment, para. 150)

89. 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) (*Krstić*, Trial Judgment, para. 432)

90. On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of the VRS forces, to Bosnian Muslim held territory near Kladanj. (*Krstić*, Trial Judgment, para. 48)

91. Some soldiers were hitting and abusing the refugees as they boarded the buses. (*Krstić*, Trial Judgment, para. 48)

92. The buses were overcrowded and unbearably hot. (*Krstić*, Trial Judgment, para. 49)

93. 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, but thereafter, they were stopped along

the way and their vehicles were stolen at gun point. (*Krstić*, Trial Judgment, para. 50)

94. The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 20:00 hours. (*Krstić*, Trial Judgment, para. 51)

95. 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. (*Krstić*, Trial Judgment, para. 56)

96. 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). (*Krstić*, Trial Judgment, para. 431)

97. General Krstić was in Potočari for about 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. (*Krstić*, Trial Judgment, para. 465)

98. As a result of his presence in Potočari, General Krstić must have known of the appalling conditions facing the Bosnian Muslim refugees and the general mistreatment inflicted by VRS soldiers on that day. (para. 354) (*Krstić*, Trial Judgment, para. 465)

100. On 12 and 13 July 1995, the Drina Corps personnel knew that Bosnian Muslim men were being separated from the women, children and elderly in Potočari, taken from buses passing through Tišća and detained, and that there was a real question as to what the fate of these men would be. (*Krstić*, Trial Judgment, para. 295)

101. 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) (*Krstić*, Trial Judgment, para. 432)

102. 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) (*Krstić*, Trial Judgment, para.

433)

103. The Drina Corps personnel involved in the transportation operation knew that the Bosnian Muslim population was being forced out of the area by the VRS. (para. 149) (*Krstić*, Trial Judgment, para. 433)

104. An officer in the Drina Corps Command was still involved in directing the movement of buses in the area of the former enclave where the prisoners were being held, despite the fact that the transportation of the Bosnian women, children and elderly out of the enclave on the evening of 13 July 1995 had already been completed an hour earlier. (*Krstić*, Trial Judgment, para. 178)

105. Drina Corps personnel present in the Potočari compound, on 12 and 13 July 1995, must have been aware of the catastrophic humanitarian situation confronting the Bosnian Muslim refugees, as well as the general mistreatment being inflicted by Serb forces, but took no action in response. (para. 155) (*Krstić*, Trial Judgment, para. 435)

107. 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. (*Blagojević*, Trial Judgment, para. 168)

108. The separations continued throughout 12 and 13 July. (*Blagojević*, Trial Judgment, para. 168)

109. Drina Corps personnel present in the Potočari compound, on 12 and 13 July 1995, knew that the Bosnian Muslim men who were separated from the women, children and elderly were not treated in accordance with accepted practice of war crimes screening, and that there was a terrible uncertainty about the fate of these men. (para. 161) (*Krstić*, Trial Judgment, para. 435)

110. From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potočari and holding them in separate locations. (*Krstić*, Trial Judgment, para. 53)

111. The Bosniak Muslim men were directed to various locations, but most were sent to the White House near the UNPROFOR headquarters. Shouts,

sometimes shots, were heard from the White House.<sup>175</sup> (*Blagojević*, Trial Judgment, para. 169)

113. As the Bosnian Muslim refugees began boarding the buses, Bosnian Serb soldiers systematically separated out men of military age who were trying to clamor aboard. (*Krstić*, Trial Judgment, para. 53)

114. 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. (*Krstić*, Trial Judgment, para. 58)

116. 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. (*Krstić*, Trial Judgment, para. 59)

117. The VRS soldiers prevented women and children from following their separated husbands and male relatives. (*Blagojević*, Trial Judgment, para. 174)

118. The Bosnian Muslim men, who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000), were transported to Bratunac, and subsequently joined by Bosnian men captured from the column. (*Krstić*, Trial Judgment, para. 66)

119. No discernible effort was made to keep the prisoners from Potočari and the men captured from the column in woods separate. (*Krstić*, Trial Judgment, para. 66)

120. 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. (*Krstić*, Trial Judgment, para. 66)

121. Drina Corps officers were present in Potočari on 12 and 13 July 1995, and...Drina Corps units were seen in the vicinity of Potočari on 12 and 13 July 1995. (*Krstić*, Trial Judgment, para. 150)

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<sup>175</sup> The last sentence of fact 111 indicated in the Prosecution's motion was not accepted considering that it does not form a part of the stated paragraph of the Judgment.

122. 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. (*Krstić*, Trial Judgment, para. 151)

123. ...Drina Corps officers were heavily involved in organizing and monitoring the transportation of the Bosnian Muslim women, children and elderly from Potočari. (*Krstić*, Trial Judgment, para. 155)

124. 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. (*Krstić*, Trial Judgment, para. 156)

125. Plans to support the Bosnian Muslim civilians out of the enclave crystalized at this second meeting. (*Krstić*, Trial Judgment, para. 129)

126. Further, it was General Mladić who initiated the meetings at the Hotel Fontana when he made it abundantly clear that he wanted the Bosnian Muslims out of the area. (*Krstić*, Trial Judgment, para. 147)

127. On 12 July 1995, as the bus convoys were being organized, General Mladić was heard to say during an intercepted conversation: "They've all capitulated and surrendered and we'll evacuate them all – those who want and those don't want to". (*Krstić*, Trial Judgment, para. 147)

128. Certainly, the Bosnian Muslim refugees were not consulted or given a choice about their final destination. (*Krstić*, Trial Judgment, para. 147)

129. 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. (*Krstić*, Trial Judgment, para. 148)

130. The Drina Corps Command also knew that the separated men from Potočari were bussed out to the detention sites in Bratunac using buses that had been diverted from the transportation of the women, children and elderly, which the Drina Corps was overseeing (para. 161). (*Krstić*, Trial Judgment, para. 435)

131. General Krstić ordered the procurement of buses for the transportation of the Bosnian Muslim population out of Potočari on 12 and 13 July 1995, issued orders to his subordinates about securing the road along which the



buses would travel to Kladanj and he generally supervised the transportation operation. (para. 347) (*Krstić*, Trial Judgment, para. 464)

133. The presence of armed soldiers from the 2<sup>nd</sup> and 3<sup>rd</sup> Battalion in uniform and 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. (*Blagojević*, Trial Judgment, para. 214)

134. The evidence establishes that the Bosnian Muslim refugees in Potočari did not have a genuine choice of whether to remain in or leave the Srebrenica enclave. This lack of genuine choice was a result of the actions and behavior of the officers and soldiers of the VRS towards the refugees. (*Blagojević*, Trial Judgment, para. 617)

135. 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. (*Blagojević*, Trial Judgment, para. 216)

136. Occasionally, younger and older men were stopped as well. These men were taken to a building in Potočari referred to as the "White House". (*Krstić*, Trial Judgment, para. 53)

137. ... the men and boys in Potočari were separated from the women, children and elderly and taken to the "White House" for interrogation. (*Krstić*, Trial Judgment, para. 157)

139. Contrary to the claims made by General Mladić and other Serb soldiers that these men would be screened and ultimately exchanged for Bosnian Serb prisoners of war, when they were taken to the White House, they were forced to leave their belongings, including their wallets and identification papers, in a large pile outside the building prior to entering. (*Krstić*, Trial Judgment, para. 157)

140. ...Some of the men detained in the "White House" were killed and mistreated in sporadic attacks and, more generally, that all of the Bosnian Muslim men who were separated were held in appalling conditions. (*Krstić*, Trial Judgment, para. 157)

141. Drina Corps officers were involved in procuring the buses and

overseeing their journey out of the enclave, giving rise to an inference that they also played a part in boarding the Bosnian Muslim refugees onto buses. (*Krstić*, Trial Judgment, para. 158)

142. Drina Corps officers were also seen in the vicinity of the White House during the time the separated men were detained there. (*Krstić*, Trial Judgment, para. 158)

143. Beginning on the afternoon of 12 July 1995 and continuing throughout 13 July 1995, men detained in the White House were bussed out of the Potočari compound to detention sites in Bratunac. (*Krstić*, Trial Judgment, para. 159)

144. 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. (*Krstić*, Trial Judgment, para. 160)

145. ...the separated men from Potočari were bussed out to detention sites in Bratunac using busses that had been diverted from the transportation of women, children and elderly, which the Drina Corps was overseeing... (*Krstić*, Trial Judgment, para. 161)

146. Most of the Bosnian Muslim men separated at Potočari and captured from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites. (*Krstić*, Trial Judgment, para. 179)

147. 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 28<sup>th</sup> 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. (*Blagojević*, Trial Judgment, para. 218)

148. 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. (*Krstić*, Trial

Judgment, para. 60)

149. Immediately following the take-over of Srebrenica, the whereabouts of the 28<sup>th</sup> Division of the ABiH were unknown. This was of great concern to the VRS, as was the possibility that forces of the 2<sup>nd</sup> Corps of the ABiH attacking from the direction of Tuzla and Kladanj would link up with elements of the 28<sup>th</sup> Division. (*Krstić*, Trial Judgment, para. 162)

150. By the evening of 11 July 1995, 10,000 to 15,000 Bosnian Muslim refugees gathered near the villages of Jaglići and Šušnjari and began to trek north. (*Blagojević*, Trial Judgment, para. 219)

151. At around midnight on 11 July 1995, the column started moving along the axis between Konjević Polje-Bratunac. (*Krstić*, Trial Judgment, para. 62)

152. The Bosnian Muslim group consisted predominantly of boys and men who were between the ages of 16 and 65, although a small number of women, children and elderly people were also present. While at least some of the men were armed and were wearing uniforms, the majority of men were civilians. (*Blagojević*, Trial Judgment, para. 220)

153. About one third of the Bosnian Muslim column was comprised of soldiers from the 28<sup>th</sup> Division, and about two-thirds were Bosnian Muslim civilian men from Srebrenica. (*Krstić*, Trial Judgment, para. 163)

154. The head of the column was comprised of units of the 28<sup>th</sup> Division, then came civilians mixed with soldiers and the last section of the column was the Independent Battalion of the 28<sup>th</sup> Division. (*Krstić*, Trial Judgment, para. 61)

155. 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. He was, however, unsuccessful and, in the ensuing days, VRS units, including units of the Drina Corps that were not engaged in the Žepa campaign, were assigned to block the column. (*Krstić*, Trial Judgment, para. 162)

157. Over the course of 12 and 13 July 1995, a series of intercepted conversations track the developing knowledge of the Drina Corps, and the VRS generally, about the column. (*Krstić*, Trial Judgment, para. 162)

158. Later in the day of 12 July heavy shooting on the column began. The Bosnian Serb armed forces, including many MUP units, who were patrolling the road between Kravica and Konjević-Polje and the road between Konjević-Polje and Nova Kasaba, started firing at the column, using artillery, machine guns and hand grenades. (*Blagojević*, Trial Judgment, para. 221)

159. Heavy shooting and shelling continued against the remainder of the column throughout the day and during the night. (*Krstić*, Trial Judgment, para. 62)

160. During the period of 12 to 17 July, members of the Drina Corps and its subordinate brigades carried out searches of the area with the purpose of capturing the men from the column. (*Blagojević*, Trial Judgment, para. 222)

161. A small number of women, children and elderly travelled with the column in the woods. When subsequently captured by Bosnian Serbs forces, they were put on passing buses from Potočari heading towards Kladanj. (*Krstić*, Trial Judgment, para. 61)

162. By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear. (*Krstić*, Trial Judgment, para. 63)

163. Men from the rear of the column who survived this ordeal described it as a "man hunt". (*Krstić*, Trial Judgment, para. 62)

165. 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. (*Krstić*, Trial Judgment, para. 63)

166. In some places, Bosnian Serb forces fired into the woods with anti-aircraft guns and other weapons or used stolen UN equipment to deceive the Bosnian Muslim men into believing that the UN or Red Cross was present to monitor the treatment accorded to them upon capture. (*Krstić*, Trial Judgment, para. 63)

167. In fact, Bosnian Serb forces stripped the captured Muslim men of their personal belongings and, in some cases, carried out random summary executions. (*Krstić*, Trial Judgment, para. 63)

168. The largest groups of Bosnian Muslim men from the column were captured on 13 July 1995; several thousand were collected in or near the Sandići Meadow and on the Nova Kasaba football field. (*Krstić*, Trial Judgment, para. 64)

169. Aerial reconnaissance photos tendered into evidence by the Prosecution confirm the presence of masses of people in these locations on 13 July 1995. (*Krstić*, Trial Judgment, para. 64)

170. From 12 July 1995, Drina Corps Command knew Bosnian Muslim prisoners were being taken from the column by Bosnian Serb forces within its zone of responsibility. (para. 170) (*Krstić*, Trial Judgment, para. 437)

171. The Drina Corps Command knew that, on 13 July 1995, thousands of Bosnian Muslim prisoners had been captured along the Bratunac-Konjević Polje road. (para. 178) (*Krstić*, Trial Judgment, para. 439)

172. The Drina Corps Command was further informed of the Main Staff policy of blocking and capturing the Bosnian Muslim men in the column, and the Main Staff directed the deployment of Drina Corps units in setting ambushes for the column (para. 170). (*Krstić*, Trial Judgment, para. 437)

173. Between 12 and 18 July 1995, Drina Corps Brigades, particularly the Bratunac and Zvornik Brigade, were engaged in combat with the Bosnian Muslim column as it attempted to break-through to Bosnian Muslim held territory. (*Krstić*, Trial Judgment, para. 436)

174. These Brigades were continuously reporting to the Drina Corps Command about matters relating to the column. (para. 166) (*Krstić*, Trial Judgment, para. 436)

175. Only about one third of the men successfully made it across the asphalt road and the column was split in two parts. (*Krstić*, Trial Judgment, para. 62)

176. The head of the column waited to see what would happen to the second part of the column. (*Krstić*, Trial Judgment, para. 65)

177. Heavy shooting and shelling continued throughout the day of 12 July 1995 and into the night, and ultimately the head of the column abandoned hope. (*Krstić*, Trial Judgment, para. 65)

178. By the morning of 13 July, a group of approximately 2,000 to 3,000 people from the column had reached an area between Konjević-Polje and Nova Kasaba. They could not cross the road as it had been blocked by Bosnian Serb units. At around 13:00, the Bosnian Serb forces surrounded the large group. The large group was then forced down to the asphalt road. (*Blagojević*, Trial Judgment, para. 238)

179. Between 1,000 and 4,000 Bosnian Muslim men captured from the column were detained in the Sandići Meadow, located on the Konjević-Polje-Bratunac on 13 July. The majority of men were civilians. The soldiers guarding the men forced them to drop their belongings into big piles and to hand over any valuables they might still have. (*Blagojević*, Trial Judgment, para. 240)

180. During the course of the day those who were wounded or injured were sent to a house close to the meadow and were later executed. There is evidence that throughout the day prisoners were beaten and some were killed. (*Blagojević*, Trial Judgment, para. 242)

181. On 13 July 1995, they continued their journey up along the Kalesija-Zvornik road, where they too were caught in ambushes and suffered further casualties. (*Krstić*, Trial Judgment, para. 65)

182. After one unsuccessful attempt to move forward to the Bosnian Muslim front lines on 15 July 1995, the head of the column finally managed to break through to the Bosnian Muslim-held territory on 16 July 1995. (*Krstić*, Trial Judgment, para. 65)

183. ABiH forces attacking from the direction of Tuzla assisted by piercing a line of about one-and-a-half kilometers for the emerging column. (*Krstić*, Trial Judgment, para. 65)

184. On 12 and 13 July 1995, the Drina Corps Command must have been informed about diversion of the busses from the original task of transporting the Bosnian Muslim women, children and elderly into transporting men from Potočari to Bratunac. (*Krstić*, Trial Judgment, para. 184)

185. The transport out of Potočari of the Bosnian Muslim men started in the afternoon on 12 July. (*Blagojević*, Trial Judgment, para. 266)

186. By 19:00 or 20:00 that night, all-in-all 9,000 to 10,000 Bosnian

Muslim men, women, children and elderly had left Potočari on buses and trucks. (*Blagojević*, Trial Judgment, para. 266)

187. While the buses with the women, children and elderly continued from Bratunac town towards Kladanj, the buses containing the Bosnian Muslim men stopped in Bratunac town. As a result, during the night of 12 July large numbers of men were detained on buses parked along the streets in the town center. (*Blagojević*, Trial Judgment, para. 266)

189. Approximately 80-120 buses and trucks were parked in Bratunac town on the night of 13 July and it is estimated that between 3,500 and 4,500 Bosnian Muslim men were detained in these buses. (*Blagojević*, Trial Judgment, para. 267)

190. The buses in Bratunac town were guarded by members of the Republika Srpska armed forces, including by several members of the Bratunac Brigade Military Police, the civilian police of the MUP, as well as by armed civilians who volunteered.

(*Blagojević*, Trial Judgment, para. 268)

191. However, it quickly became apparent that this was not the case. Bosnian Serb plans for the Bosnian Muslim men were radically revised in the light of the knowledge that, on 12 and 13 July 1995, some 6,000 prisoners had been taken from the column fleeing through the woods. (*Krstić*, Trial Judgment, para. 295)

192. The Drina Corps Command must also have known that the remainder of the Bosnian Muslim men were not transferred to regular prisoner of war facilities but instead was detained in Bratunac without any provisions made for food, water or other necessities. (*Krstić*, Trial Judgment, para. 295)

193. For thousands of prisoners, arranging such provisions would have been no small task. Yet, there was no evidence of any steps being taken in this regard, nor inquiries made by the Drina Corps Command about what plans were being made for the Bosnian Muslim prisoners. (*Krstić*, Trial Judgment, para. 295)

194. It is also apparent that, by 13 July 1995, when a vehicle began scouting for detention sites, the Zvornik Brigade was aware of plans to transport the Bosnian Muslim prisoners northward, to sites within its zone of

responsibility. This decision to transport them to remote locations up north (again with no provision made for food or water), rather than to recognize prisoner of war facilities, amounted to an unequivocal signal that a mass executions plan was in operation. (*Krstić*, Trial Judgment, para. 295)

195. Bratunac Brigade military police were engaged in escorting these prisoners to northern detention sites on 14 and 15 July 1995. (*Krstić*, Trial Judgment, para. 181)

196. ...The buses procured by the Drina Corps were used for the transportation of Bosnian Muslim prisoners to detention and execution sites. (*Krstić*, Trial Judgment, para. 184)

197. ... The Drina Corps Command had knowledge of both the fact that Bosnian Muslim men were being detained in Bratunac between 12 and 15 July 1995 and that, from the evening of 13 July 1995, they were transported to detention sites in the north, following the completion of the removal of the Bosnian Muslim women, children and elderly. (*Krstić*, Trial Judgment, para. 186)

198. A series of intercepted conversations show close co-operation and coordination between MUP units and Drina corps units, particularly the Engineers Battalion, who were jointly engaged in action to block the Bosnian Muslim column. (*Krstić*, Trial Judgment, para. 176)

199. The Drina Corps Command was also in contact with the MUP unit along the Bratunac-Konjević Polje road, monitoring their progress. (*Krstić*, Trial Judgment, para. 176)

200. A conversation, intercepted on 13 July 1995 at 20:40 hours, reveals that General Krstić spoke to Colonel Borovčanin, the Deputy Commander of the MUP unit, asked how things were going and stated that he would be in touch. (*Krstić*, Trial Judgment, para. 176)

202. A transfer of men after screening for war criminals-the purported reason for their separation from the women, children and elderly at Potočari to Bosnian Muslim held territory or to prisons to await a prisoner exchange was at some point considered an inadequate mode for assuring the ethnic cleansing of Srebrenica. (*Krstić*, Trial Judgment, para. 619)

203. Identification papers and personal belongings were taken away from



both Bosnian Muslim men at Potočari and from men captured from the column; their papers and belongings were piled up and eventually burnt. (*Krstić*, Trial Judgment, para. 547)

204. The strength of the desire to capture all the Bosnian Muslim men was so great that Bosnian Serb forces systematically stopped the buses transporting the women, children and the elderly at Tišća and checked that no men were hiding on board. (*Krstić*, Trial Judgment, para. 547)

220. On the evening hours of 13 July, Colonel Beara, together with Miroslav Deronjić and others, began organizing the burials of the Bosnian Muslim men killed at the Kravica Warehouse. (*Blagojević*, Trial Judgment, para. 304)

224. Between 14 and 16 July, the bodies of the Bosnian Muslim men were taken in trucks from the Kravica Warehouse to be buried at grave sites in Glogova and Ravnice. (*Blagojević*, Trial Judgment, para. 306)

262. Concern grew within the International Community as vast numbers of Bosnian Muslim men remained unaccounted for and the VRS continued to prevent access to the Srebrenica region. (*Blagojević*, Trial Judgment, para. 380)

263. A series of meetings were held with President Slobodan Milošević and General Ratko Mladić between 14 July and 19 July to negotiate access for UNHCR and the ICRC to the area. (*Blagojević*, Trial Judgment, para. 380)

264. Despite an agreement being reached, the VRS continued to refuse entry to the areas where the Bosnian Muslim men were being detained. (*Blagojević*, Trial Judgment, para. 380)

265. Around 17 or 18 July, the first reports the executions and detention centers came as some of the Bosnian Muslim men who had survived from the column arrived in Tuzla. (*Blagojević*, Trial Judgment, para. 380)

266. On 10 August 1995, the Security Council was briefed by the United States representative, who showed the Council aerial photographs indicating the existence of mass graves near Konjević-Polje and Nova Kasaba. (*Blagojević*, Trial Judgment, para. 380)

267. On the same date, the Security Council passed Resolution 1010, demanding that the Bosnian Serb authorities allow UN and ICRC observers

to enter into Srebrenica. (*Blagojević*, Trial Judgment, para. 380)

268. Investigators of the Office of the Prosecutor were first allowed to visit the area in January 1996. (*Blagojević*, Trial Judgment, para. 381)

269. In April 1996 they commenced forensic examination of suspected execution points and exhumation of mass graves. (*Blagojević*, Trial Judgment, para. 381)

270. Forensic evidence showed that there were two types of mass graves, „primary graves” in which individuals were placed soon after their deaths and „secondary graves” into which the same individuals were later reburied. (*Blagojević*, Trial Judgment, para. 381)

271. It became apparent to the investigators from an analysis of tire tracks and soil composition, that the mass graves had been disturbed. (*Blagojević*, Trial Judgment, para. 381)

272. This disturbance of the primary graves "seriously hampered the investigations" into the executions. (*Blagojević*, Trial Judgment, para. 381)

273. Exhumations conducted between 7 August and 20 October 2000 at the primary gravesite of Glogova 1 also revealed matches between broken masonry and door frames, and other artefacts found at both the gravesite and at the Kravica Warehouse execution site, suggesting that some of the victims from the Kravica Warehouse were buried there. (*Krstić*, Trial Judgment, para. 210)

276. The bodies in the primary graves in Glogova contained the bodies of victims from the Kravica Warehouse massacre, and the bodies of these victims were subsequently moved to graves in the area around Zeleni Jadar. (*Blagojević*, Trial Judgment, para. 382)

277. The bodies in the graves at Branjevo Military Farm and Kozluk were taken to secondary graves along the Čančari road. (*Blagojević*, Trial Judgment, para. 382)

278. The bodies from the graves near Orahovac were moved to smaller graves near the Hodžići road. (*Blagojević*, Trial Judgment, para. 382)

279. The bodies in the grave at the Dam near Petkovci were reburied at a

location near Liplje. (*Blagojević*, Trial Judgment, para. 382)

280. The reburial operation, which took place some time in September and October 1995, was ordered by the VRS Main Staff. (*Blagojević*, Trial Judgment, para. 383)

281. Colonel Beara, Chief of Security of the Main Staff, and Lieutenant Colonel Popović, Assistant Commander for Security of the Drina Corps, directed this operation. The operation was carried out on the ground by the Bratunac and Zvornik Brigades. (*Blagojević*, Trial Judgment, para. 383)

282. Within the Bratunac Brigade, Captain Nikolić, the Chief of Security and Intelligence, was tasked with the organization of the operation. (*Blagojević*, Trial Judgment, para. 383)

283. Within the Zvornik Brigade the Assistant Commander for Security, 2<sup>nd</sup> Lieutenant Drago Nikolić, was responsible for the operation. (*Blagojević*, Trial Judgment, para. 383)

284. In September or October 1995, members of the Civilian Protection of Bratunac were tasked by Captain Momir Nikolić to go to Glogova. (*Blagojević*, Trial Judgment, para. 385)

285. The Bratunac Brigade Military Police, following orders by Captain Nikolić, provided security for these workers at the primary and secondary grave sites, and also secured traffic along the road from Bratunac to Srebrenica and Zeleni Jadar. (*Blagojević*, Trial Judgment, para. 385)

286. During the reburial operation, which lasted a couple of nights, the members of the Civilian Protection used at least one loader and an excavator for the exhumations at the Glogova grave site. (*Blagojević*, Trial Judgment, para. 386)

287. Trucks were used for transportation of the bodies to the new burial locations. (*Blagojević*, Trial Judgment, para. 386)

288. Some of the trucks used in this operation had been used during the initial burial operation. (*Blagojević*, Trial Judgment, para. 386)

372. In addition, the Appellate Panel decided, under Decision No. S1 1 K

003442 12 Kžk of 19 March 2013, on the accused Željko Ivanović's Motion of 7 December 2010 to accept as established the facts adjudicated in the ICTY cases: *Prosecutor v. Krstić* No: IT-98-33-T and IT-98-33-A, and the Trial Judgment in *Prosecutor v. Blagojević* No: IT-02-60-T and IT-02-60-A, and on the Motion of 29 December 2012 to accept as established the facts adjudicated in *Prosecutor v. Vujadin Popović et al.* and, pursuant to Article 4 of the Law on Transfer of Cases accepted as established the following facts:

i. Facts from the *Krstić* case

2. "From the outset, both parties to the conflict violated the "safe area" agreement." (para. 22, *Krstić* Trial Judgment)

5. "Immediately following the take-over of Srebrenica, the whereabouts of the 28<sup>th</sup> Division of the ABiH were unknown. This was of great concern to the VRS, as was the possibility that forces of the 2<sup>nd</sup> Corps of the ABiH attacking from the direction of Tuzla and Kladanj would link up with elements of the 28<sup>th</sup> Division. Radio intercepts indicate that the VRS first became aware of the formation of the column around 03:00 hours on 12 July 1995." (para. 162, *Krstić* Trial Judgment)

7. "Indeed, the Drina Corps Command received direct orders from the Main Staff to take prisoners from the Bosnian Muslim column..."(para. 169, *Krstić* Trial Judgment)

ii. Facts from the *Popović et al.* case

1. PW-111 and PW-156 were among other Bosnian Muslim men detained in Sandići Meadow who were taken by unidentified members of Bosnian Serb Forces to Kravica Warehouse on 13 July on foot or by bus. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 426)
2. PW – 156 and many other Bosnian Muslim men were ordered to form a column and march from Sandići Meadow to Kravica, arriving in front of Kravica Warehouse between 3 and 5 p.m. The Bosnian Serb Forces accompanying them were in military uniform, with automatic rifles and wearing ammunition belts. A Bosnian Serb man in civilian clothes and accompanied by a German shepherd dog headed the column as it walked to Kravica Warehouse. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 426)
3. PW – 111 was one of the first Bosnian Muslim prisoners to arrive at Kravica Warehouse. He was taken to the East Room of Kravica Warehouse. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 427)
4. Meanwhile, PW-156 was detained in the West Room. Kravica Warehouse was packed

with Bosnian Muslim men who were guarded by members of Bosnian Serb Forces, including members of the SBP 2nd Šekovići Detachment, and members of the Military Police, the 1st Infantry Battalion and the Red Berets of the Bratunac Brigade, wearing green camouflage, multi-colored uniforms. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para.427)

5. The members of the Bosnian Serb Forces guarding them also looked frightened. Two of them—the one in the blue UN helmet and another one with curly, shoulder-length hair and black-glasses wanted to shoot at the prisoners. They were stopped by a third who told them that these prisoners were not to blame for anything. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para. 429)
6. Meanwhile, Borovčanin arrived at Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m., after receiving a message from Stupar to go there urgently. Borovčanin saw a pile of bodies in front of the West and Centre Rooms of the Kravica Warehouse and a large number of bullet holes on the outside walls. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para. 432)
7. Miroslav Stanojević, a member of the Red Berets of the Bratunac Brigade was also injured in this “burnt-hands” incident. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para. 433)
8. Throughout the night between 13 and 14 July, members of the Bosnian Serb Forces would periodically enter Kravica Warehouse, shoot, and throw hand grenades through the windows. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para. 435)
10. During the time relevant to the Indictment, BOROVIČANIN was Deputy Commander of the SBP MUP RS. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para.1434)
11. On 10 July 1995, BOROVIČANIN was appointed Commander of a joint force of MUP units which was sent to Bratunac. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 1434)
12. BOROVIČANIN received this order issued by Tomislav Kovač, Deputy Minister of the Interior, in the afternoon on 10 July, while he was in battle in Trnovo on the Sarajevo front. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para. 1434)

13. BOROVIČANIN arrived at the Bratunac Police Station around noon on 11 July and headed to the Pribičevac IKM to speak to Krstić. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para. 1437)
14. At the time, in response to information received on the movement of the ABiH 28<sup>th</sup> Division, Bosnian Serb Forces were ordered to block the withdrawal of the ABiH from the Srebrenica enclave by ensuring control over the territory along the defense lines of the VRS in the Bratunac area. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para. 1442)
15. Following Mladić's order on 12 July, BOROVIČANIN left Potočari at around 1:30 p.m. and went to the Bratunac Police Station to organize the deployment of the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment. (*Popović et al*, ICTY Trial Judgment of 10 June 2010, para.1449)
16. As described above, around dusk, the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment were deployed along the Bratunac – Konjević Polje from Kravica – Sandići – Pervani up to Hrnčići. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 1449)
17. Their task was to assist in securing the Bratunac-Konjević Polje Road against the column which was trying to break through the VRS defense lines. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 1449)
18. While at Sandići Meadow, BOROVIČANIN spoke with his subordinate commanders, their subordinate officers and platoon commanders, including Pantić, Čuturić and Stupar, who complained to him about the increasing number of surrendering Bosnian Muslim men and expressed concern on how to detain the prisoners overnight. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 1453)
19. Some time around 4 p.m., Mladić arrived at Sandići Meadow with a number of officers and gave a speech to the Bosnian Muslims, detained there, telling them that the transportation to ABiH-held territory was under way and that they would be exchanged as prisoners of war. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 1453)
30. In the early morning of 12 July, BOROVIČANIN and his units arrived in Potočari after they took over OP Papa without any fighting. (*Popović et al.*, ICTY Trial Judgment of 10

June 2010, para. 1486)

31. BOROVIČANIN and the MUP units had been brought to the area to assist in the military operation which was ongoing at that time. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para. 1486)

43. The Bratunac-Konjević Polje Road was busy and it needed to be secured for the column of prisoners to pass. (*Popović et al.*, ICTY Trial Judgment of 10 June 2010, para.1514)