

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine  
Суд Босна и Херцеговине

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Case No. S1 1 K 008728 14 Kžk

Delivered on: 3 March 2015

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Before the Panel of the Appellate Division comprising:

Judge Dr. Miloš Babić, Presiding

Judge Mirza Jusufović,

Judge Mirko Božović

in the case of

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

ŽELJKO JUKIĆ

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SECOND INSTANCE VERDICT

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**Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:**

Ms. Sanja Jukić

**Counsel for the accused Željko Jukić:**

Ms. Irena Pehar, Attorney from Mostar

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## IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel of the Appellate Division, composed of Judge Dr. Miloš Babić, as the Panel President, and Judges Mirza Jusufović and Mirko Božović, as members of the Panel, with the participation of Legal Advisor Lejla Garaplija, as the Minutes-taker, in the criminal case against the accused Željko Jukić, for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in connection with sub-paragraphs a), d), i) and k), as read with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina (CC BiH), acting upon the Indictment brought by the BiH Prosecutor's Office No. T20 0 KTRZ 0002754 of 31 May 2012, having held an oral and public hearing before the Panel of the Appellate Division, in the presence of the Prosecutor of the BiH Prosecutor's Office, Ms. Sanja Jukić, the accused Željko Jukić and his Defense Counsel, Ms. Irena Pehar, Attorney from Mostar, rendered and on 3 March 2015 publicly announced the following:

### VERDICT

#### THE ACCUSED:

**Željko Jukić**, son of Ilija and mother Anica, nee Jonjić, born on 15 January 1970, in the place of Ometala, Prozor Municipality, residing in ..., Personal Identification Number ..., ... by ethnicity, national of ..., holds the Republic of Croatia ID and Bosnia and Herzegovina passport, a bricklayer-plasterer by occupation, unemployed, married, father of three minor children, indigent, served military service in 1988 in Belgrade, Serbia, has no prior convictions, in custody since 2 November 2011,

### IS GUILTY

#### Because:

During the period from July until late September 1993, as part of widespread and systematic attack of the military forces of the Croat Defense Council (HVO) and Croatian Army (HV), targeted against the Bosniak civilian population of the Prozor Municipality,

aware of such an attack and that his actions constituted part of the attack, as a member of the HVO *Rama* Brigade, he persecuted Bosniak civilians on ethnic and religious grounds, participated in the common design and contributed to the implementation of the common plan by way of enforced disappearance of persons and other inhumane acts of similar character intentionally causing great suffering or serious injury to body or to physical or mental health, in as much as he:

1. On 6 July 1993, with a group of HVO members, participated in the attack on the Bosniak civilian population of the village of Duge, Prozor Municipality, on which occasion, he fired several rounds around Galib Sabitović's feet, which caused a severe psychological trauma to the aggrieved party;
2. In mid-July 1993, in the early morning hours, together with Vinko Papak and other members of the HVO, participated in the escort of over several hundred Bosniak men who were transported from prisons located in the area of Prozor town to the *Dretelj* camp near Čapljina, where he, together with Vinko Papak and another member of the HVO, beat Osman Dautbegović, Almin Dautbegović, Alija Šero, Omer Subašić and Zejnil Grcić, using a broomstick to hit Zejnil Grcić all over his body so hard that the broomstick eventually broke; he punched Almin Dautbegović twice in the head so that the aggrieved party fell and lost his consciousness, and he also punched and kicked other aggrieved parties all over their bodies, thereby causing severe physical and mental pain to all of them;
3. In the evening hours of 3 August 1993, together with Vinko Papak and another unidentified HVO member, he came to the Secondary school in Prozor and took out inmate Ibro Pilav from one of the classrooms and brought him to the toilette on the second floor where he beat him up and used glass to cut him all over the body, which caused heavy bleeding, then he returned him to the room from which he was taken out. Then, that same night, he again took out Ibro Pilav, together with Vahid Berić and Mirsad Pilav, brought them to a motor vehicle, and told them to get in, Ibro Pilav and Vahid Berić sat in the back, while Mirsad Pilav was closed in the trunk of a *Lada* motor vehicle and then all of the them were taken to the *Duška kosa* garbage dump, three kilometers from Prozor, where the vehicle

stopped, Ibro Pilav was taken out of the vehicle and told to stand on the edge of ravine, after which Mirsad Pilav was taken out and told to stand beside Ibro, but when Vinko Papak and another unidentified HVO member went back to fetch Vahid Berić, Mirsad Pilav seized a moment of Željko Jukić's distraction, whose rifle was pointed at him, and abruptly jumped down the slope, rolling down through the garbage, he managed to escape the shots fired at him, then he heard gunfire again and the sound of two bodies rolling down the slope. After that incident, Ibro Pilav and Vahid Berić disappeared without a trace. Also, that same night, the Accused Željko Jukić, Vinko Papak and an unidentified HVO member took Edis Omanović and Šefik Čiča out of a classroom of the Secondary School in Prozor and drove them away to an unknown location, those men disappeared without a trace and their bodies have never been found;

4. On an unspecified date in late August 1993, together with other HVO members, he arrived in the village of Gornji Višnjani, went to Mustafa Lulić's house, where he physically ill-treated Ibrahim Lulić and, by firing from his pistol in the ceiling, he attempted to take the money from the aggrieved party, but failing in his attempt to get the money, he went out of the house, where he found Ibrahim Lulić's parents, Mustafa Lulić and Kada Lulić, and told them he would slit Ibrahim's throat unless they gave him money, after which Kada Lulić offered him an unspecified amount of Croatian Dinars. That same day, he approached the aggrieved party Mustafa Lulić on the road between Gornji and Donji Višnjani and asked him for money, but when Mustafa told him he did not have any money, the Accused kicked him in his chest so that he fell on the ground and, after that, Mustafa gave the Accused an unspecified amount of German Marks. All this caused physical and psychological trauma to the aggrieved parties;
5. On an unspecified date in late August 1993, in the village of Donji Višnjani, Prozor Municipality, the Accused took Juso Konjarić out of the house, knocked him down on the ground with the intention to cut his throat with a big knife, but an unidentified HVO soldier stopped him. After that, while participating in the escort of men from the village of Višnjani to the place called Potok, he singled out Amir Konjarić from the column and punched

him in the face, which caused his heavy bleeding, then he singled out Nazif Konjarić from the column and fired above his head from a big black pistol, after that he turned towards Suljo Konjarić and fired from the same pistol below Suljo Konjarić's right arm, at the level of his upper arm, the bullet passed below his arm and hit a big suitcase he carried on his back. All this caused physical and psychological trauma to the aggrieved parties;

6. On an unspecified date in the summer of 1993, in the late afternoon hours, together with other HVO members, he arrived in Lapsunj, Prozor Municipality, where he was involved in the physical and psychological ill-treatment of the remaining Bosniak inhabitants of the village, mainly elderly people, including Zuhra Berić and Mujo Pilav (deceased), by forcing them to sing songs about the HVO. When old woman Zuhra Berić could not pronounce *HVO*, he beat her all over her body so brutally that the aggrieved party Zuhra Berić fell down on the ground. In addition, he hit the aggrieved party Mujo Pilav with his hands and other objects all over his body, and in so doing he caused physical and psychological trauma to the aggrieved parties;
7. On 28 August 1993, together with other HVO members, he participated in the organized, forcible transfer of Bosniak population from the Prozor Municipality, on which occasion, armed with an automatic rifle, he forced Bosniak civilians in the village of Lapsunj to leave their homes and board the trucks previously brought there, in which they were transported to the territory under the control of the Army of BiH. When the aggrieved party Đula Berić asked him from the truck which she had to board, to pass to her a bag with some essentials for her mother, he swore at her and hit her with his rifle butt in the shin, thereby causing physical and psychological trauma to the aggrieved party;
8. On the same day, 28 August 1993, together with another HVO member, he drove in a motor vehicle to the place of Ustirama, Prozor Municipality, where they found a large group of Bosniak men expelled from their homes waiting to be transported to the camp in Prozor. The Accused told a group of those men to get closer to the vehicle, then he opened the trunk where

they saw Kerim Terzić, son of Sadik, who was tied up, and he said „look, we have caught a pig“, then he closed the trunk and left in the car in the direction of Jezero. After some time, gunfire was heard from that direction, the victim Kerim Terzić disappeared without a trace and his body has never been found;

9. On that same day, 28 August 1993, at the same location of Ustirama, Prozor Municipality, upon returning from the direction of Jezero, together with another HVO member, he told Bosniak men to hit each other, and whenever he was dissatisfied with the intensity of blows they exchanged, he would hit them vehemently. On that occasion, he beat up Hamid Kmetaš, punched and kicked him all over his body, and, after that, he participated in the beating of other Bosniak men, including Mujo Perviz, Muho Pilav, Muho Berić and Enes Duvnjak. He tied a rope around the neck of Bajro Pilav a.k.a. Hasić and forced him to bark, then he tied Bajro's legs and forced him to neigh. After beating up those men, he fired from his pistol above their heads, which caused fear, physical and psychological trauma to all the aggrieved parties;
10. On an unspecified date, most probably in September 1993, in the Secondary School Prozor camp, he beat up Mujo Perviz and a certain „Čorbađić“, punched and kicked them all over their bodies, causing physical and psychological trauma to the aggrieved parties;
11. In the evening hours, on or about 7 July 1993, on the premises of the Fire House in Prozor, where the Prozor HVO Military Police HQ was situated, same as the prison in which Bosniaks were detained, he inflicted serious physical and psychological injury to Emir Korman, by burning his face with a lit *Ronhil* cigarette, which he used to make a cross on his left cheek. After that, he told Korman to go to another room, where he had to take off his jacket and bend over the chair, and when the victim did that Jukić took a baton and started to hit him hard in his back, and when his strength failed him, he told the victim to sit in the armchair and asked him “*Balija, why aren't you crying*”, he cursed his Balija mother, then put a pistol-shaped lighter under his chin and started to burn his beard. It was not before the



victim's whole beard caught fire that the Accused allowed him to extinguish the fire, which all caused severe physical and psychological trauma to the aggrieved party;

12. In mid-July 1993, in the *Dretelj* camp near Čapljina, he brought Emir Korman into the hangar, then took a baton and started to hit him in his legs so hard that the victim fell on the floor, then the Accused kicked him twice in the ribs, whereby the aggrieved party suffered severe physical and psychological trauma;

**in so doing**, the Accused committed the criminal offense of War Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, which involves

- inhumane acts in violation of sub-paragraph k) by committing the offenses described under Sections 1, 4, 5, 6, 10, 11 and 12 of the sentencing of the Verdict;

- enforced disappearance in violation of sub-paragraph i) by committing the offenses described under Sections 3 and 8 of the sentencing Verdict, as read with Article 29 of the CC of BiH;

- forcible transfer of population and other inhumane acts in violation of sub-paragraphs d) and k) by committing the offenses described under Section 7 of the sentencing Verdict, as read with Article 29 of the CC of BiH;

- inhumane acts in violation of sub-paragraph k) by committing the offenses described under Sections 2 and 9 of the sentencing the Verdict, as read with Article 29 of the CC of BiH;

therefore, pursuant to the quoted provisions and Articles 39, 42(1) and (2) and Article 48(1) of the CC of BiH, the Court

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

### **THE ACCUSED TO A PRISON TERM OF 15 (FIFTEEN) YEARS**

Pursuant to Article 56(1) of the CC of BiH, the time the Accused Željko Jukić spent in custody from 2 November 2011 onwards shall be credited towards his prison sentence.

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

Pursuant to Article 198(2) and (3) of the CPC of BiH, the injured parties are referred to pursue their potential property law claims by taking civil action.

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

### **I – PROCEDURAL HISTORY**

1. The Trial Verdict of the Court of Bosnia and Herzegovina (Court of BiH) No. S1 1 K 008728 12 Kri of 15 January 2014 found the accused Željko Jukić guilty of committing, in the way as described in the operative part of the Verdict, the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) of the CC BiH, in connection with inhumane acts under sub-paragraph k) by the acts described in Sections 1, 4, 5, 6, 10, 11 and 12 of the Verdict, enforced disappearance of persons under sub-paragraph i) by the acts described in Sections 3 and 8 of the Verdict, in connection with Article 29 of the CC BiH, forced removal of the population and inhumane acts under sub-paragraphs d) and k) by the acts described in Section 7 of the Verdict, in connection with Article 29 of the CC BiH, inhumane acts under sub-paragraph k) by the acts described Sections 2 and 9 of the Verdict, in connection with Article 29 of the CC BiH, all in connection with Article 180(1) of the CC BiH, wherefore the Court, applying the above referenced provisions, and Article 39, 42(1) and (2) and Article 48(1) of the CC BiH, sentenced him to 13 (thirteen) years in prison. At the same time, the accused Željko Jukić is, pursuant to Article 284(c) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH) acquitted of the charges that he committed the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH, in connection with depriving another person of his life under sub-paragraph a) by the acts described in Section 1 of the acquitting part of the Verdict, and inhumane acts under sub-paragraph k) by the acts described in Section 2 of the acquitting part of the Verdict, all in connection with Article 180(1) of the CC BiH.

2. The Verdict of the Panel of the Appellate Division, No. S1 1 K 008728 12 Krž 9 of 29 September 2014 granted the appeal filed by the Defense for the accused Željko Jukić, revoked the Trial Verdict of the Court of BiH No. S1 1 K 008728 12 Kri of 15 January 2014 in its acquitting part, and ordered a hearing before the Panel of the Appellate Division of Section I for War Crimes of the Court of BiH.

#### **A. EVIDENTIARY PROCEEDINGS BEFORE THE PANEL OF THE APPELLATE DIVISION**

3. A hearing was held before the Panel of the Appellate Division of the Court of BiH (Appellate Panel/Panel) pursuant to Article 317 of the CPC BiH. On the same day, 10 December 2014, prior to the opening of the hearing, a status conference was held where the parties and the Defense Attorney for the accused Željko Jukić gave their comments on the witnesses proposed for examination, the proposal to present new evidence relating to the appellate arguments, and the proposal of evidence which might be reproduced, or which, in their opinion, should be accepted as already adduced.

4. The Prosecution submitted their proposal containing a list of the witnesses to be heard. The Prosecution argued that the right to a defense was undoubtedly violated in the first-instance proceedings, and proposed that the witnesses, who gave evidence at the disputable hearings, be examined both in direct and cross-examination.

5. At the status conference, the Defense submitted there was no legal grounds to re-examine the witnesses heard during the trial proceedings, and that thereby the unlawful actions of the accused Jukić cannot be convalidated. The Defense therefore moved the Court to dismiss the Prosecution's proposal to present evidence anew, that is, to re-examine the proposed witnesses, who gave evidence during the first-instance proceedings.

6. The Appellate Panel dismissed the referenced appellate complaint and decided to examine the proposed ten witnesses. The Appellate Panel indicated it was impossible to remove, in any other way, certain procedural flaws that occurred in the course of the first-instance proceedings, as the appeal of the accused Jukić's Defense filed from the Trial Verdict indicated. Specifically, in the second instance decision No. S1 1 K 008728 12 Krž 9 of 29 September 2014, the Appellate Panel concluded that the right to a defense was violated in the first-instance proceedings because, during the period from 1 November 2012 through 31 January 2013, the accused Željko Jukić was represented by the attorney

who should not have acted as his defense attorney. The omission of the Trial Panel is apparent from the fact that, after attorney Milović's dismissal, the accused Željko Jukić and his Defense were not provided with an opportunity to present again the evidence adduced during the period when the Accused was represented by a person removed from the Attorneys Register, which would have secured adequate formal defense of the Accused in this criminal case. In the renewed proceedings, the Appellate Panel decided to provide the Accused's Defense Attorney with an opportunity to examine the witnesses heard at the disputed hearings and thereby remove the violation made in the course of the first-instance proceedings. For these very reasons, the Panel rendered a decision dismissing the Defense's complaint that there was no legal ground to examine anew the witnesses heard in the first-instance proceedings. This is because the established procedural omissions, made during the first-instance proceedings, indicated exactly by the appeal of the accused Jukić's defense filed from the Trial Verdict, can only be removed by hearing these witnesses again.

7. At the status conference, the Defense for the accused Željko Jukić proposed examination of two new witnesses in relation to both the Accused' alibi and the existence of a widespread and systematic attack. The Panel has evaluated this proposal and examined the reasons for which the hearing of witnesses Ivan Čališ and Drago Zrinušić was proposed, and concluded that this proposal was ill-founded. In the Panel's view, the circumstances about which the proposed witnesses were to testify, do not constitute the evidence which, despite due diligence and caution, the Defense could not have presented at the main trial during the trial proceedings, and whose testimony certainly would not lead to a different evaluation of the same circumstances about which a sufficient number of witnesses testified in the trial proceedings. Therefore, the Panel has concluded that, pursuant to Article 263(2) of the CPC BiH, the proposed Defense's evidence by hearing new witnesses is unnecessary and non-functional. Specifically, the Panel concluded that, even without its presentation, a sufficient number of other relevant pieces of evidence was offered to result in drawing the same, essential factual conclusions, and that the circumstances, about which the proposed witnesses would testify, have been sufficiently clarified.

8. At the pre-trial hearing before the Panel of the Appellate Division, held on 13 January 2015, no opening statements were presented by the parties and the Defense Attorney for the Accused Željko Jukić. Rather, the evidentiary proceedings were immediately opened, during which the following proposed Prosecution witnesses were

examined: Dževad Kovačević, Munib Bečirević, Ibrahim Grcić, Šemsa Bećirović, Enisa Pilav, Muharem Konjarić, Ibrahim Lulić, Amir Konjarić, Đula Berić-Sultanić and Mujo Perviz. In addition, it was accepted, upon the Prosecution's proposal pursuant to Article 273(2) of the CPC BiH, that the investigative statement of the deceased witness Zlata Omanović be read out, for which the Prosecution submitted an Extract from the Register of Deaths too. Pursuant to Article 317(2) of the CPC BiH, the Appellate Panel accepted all other evidence given by the witnesses for both the Prosecution and the Defense, which was adduced in the course of the trial proceedings. The Appellate Panel decided to accept as adduced the total of 142 documentary exhibits presented by the Prosecution and 95 documentary exhibits presented by the Defense for the accused Željko Jukić, as listed in Annex I, which forms part of this Verdict.

## **B. CLOSING ARGUMENTS**

### **1. BiH Prosecutor's Office**

9. The Prosecution tendered sufficient evidence before both the Trial Court and the Appellate Panel of the Court of BiH based on which the Court can render a lawful and fair decision relating to the criminal offense and the criminal responsibility of the Accused Željko Jukić, and find him guilty as charged. This is so particularly given the fact that the examined witnesses and expert witnesses confirmed that the actions the Accused undertook have completely satisfied all the essential elements of the criminal offense of Crimes against Humanity under Article 172(1) of the CC BiH.

10. The Prosecution stated in its closing argument that the existence of a widespread and systematic attack in the territory of the Prozor municipality, in which the HV and HVO were participants, was established beyond a doubt, and that the first general element of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH was thus satisfied. The existence, organized nature and the scope of the widespread and systematic attack (or ethnic cleansing) was confirmed by the evidence the witnesses gave before the Court of BiH again in the re-examination before the Appellate Panel. The tendered documentary evidence, such as is the List of missing, exhumed and identified persons from the territory of the Prozor municipality, also confirmed the existence of the widespread and systematic attack. The referenced documentary evidence has proved that several hundred persons are in question, and it covers the period between June and

December 1993. The list of missing and exhumed persons includes full names of the victims with whose disappearance the Accused is directly charged, including Edis Omanović, Ibro Pilav, Vahid Berić, and Šefko Čiča.

11. Hundreds of Muslim civilians, persons of different age and women, were exhumed from mass and single graves found in the territory of the Prozor municipality. The expert witness, Dr. Vedo Tuco, clearly explained the cause of their deaths, as also indicated by Exhibit T-21 tendered at the main trial, and marked in the Indictment as Exhibit No. 125. At the main trial, Dr. Vedo Tuco gave an oral presentation of his Findings and Opinion. The Accused's actions were correlated with either the disappearance or the death of all the victims mentioned in the referenced Findings and the Indictment too. The deaths of other persons, whose names were unmentioned in the Indictment, only confirm the wide nature of the attack targeted against the non-Croatian civilian population of the Prozor municipality. The very fact that the crime is well concealed because searching for the clues of the crime and the bodies of the missing persons is still ongoing confirms that the crime committed against the Bosniak people in this territory was systematic and planned.

12. The Prosecution's closing argument emphasized that the attack was directed against the civilian population, as ensues from all the testimonies of the examined witnesses and the documentary evidence. This is so because the sole reason for which men were detained at camps, and women, children and the elderly (military fit) expelled from their homes and transported to the territory controlled by the Army BiH, was their different religion and nation, namely because they were Bosniaks-Muslims.

13. The acts of the crime commission, presented in the Indictment, are not the actions planned by individuals, but rather formed part of a widespread and systematic attack of the HVO military forces, within which the unit whose member the accused Željko Jukić was, and known among the population as the 'Kinder platoon', particularly stood out. This unit, and the accuse Željko Jukić himself, took part in the persecution of the Bosniak population from the following villages: Podaniš, Duge, Gornje Višnjani, Donji Višnjani, Varvara, Lapsunj, and from the town of Prozor. The Accused was present at Ustirama too, where all Bosniaks were rounded up before being expelled to the territory held by the Army BiH, where he particularly stood out by his cruelty and the lack of scruple. Considering the time-span within which the referenced actions occurred (4-month period), their diversity and cruelty with which they were committed, and the Accused's continued presence in the commission thereof, it is completely clear that the accused Željko Jukić consented to their

execution, and that as a member of the HVO he committed all the unlawful acts charged against him with direct intent and full awareness, with a view of ethnic cleansing of a particular religious and national group of people from the territory of the Prozor municipality. The Accused was informed of the attack taking place in Prozor, in the period between July and September 1993, and he knew that he contributed to this attack by his acts.

14. The Prosecution's witnesses, who gave evidence about the circumstances surrounding the acts of commission described in Counts of the Indictment, are mostly the eye-witnesses to the events, and some of them even the direct victims thereof. According to the Prosecution, it is established beyond a doubt that, during the critical period, the Accused was part of the armed formation of the HVO *Rama* Brigade, whose members apprehended the arrested persons to the camp located in the Secondary School Center Prozor (SSC Prozor), and the other camps in the town of Prozor too, from which they were taken out to perform (forced) labor, after which a large number of persons have never returned. The confinement – deprivation of liberty was carried out with the knowledge and consent of the highest authorities in the Prozor municipality, as apparent from the documentary evidence tendered by the Prosecution. The Prosecution argues it was proved that the accused Željko Jukić took part in the abduction of the aggrieved parties from the SSC, that he was (present) in the vehicle by which Mirsad Pilav, Vahid Berić and Ibro Pilav had been transported to the site of Duška kosa – the garbage dump, that he thereupon returned to the SSC and, together with other members of the HVO, took outside Edis Omanović and Šefik Čiča. It is clearly apparent from the foregoing that the Accused is aware of the destiny of these men, but he has never provided any piece of information about them.

15. The Prosecution argues that, by his conduct, the Accused showed the intent to permanently remove Muslims from the territory of the Prozor municipality, as confirmed by the witnesses who testified that they had no rights in choosing whether to stay in their homes or not, as they were simply forced to leave.

16. The Prosecution ultimately concluded that the testimonies of all the witnesses have satisfied the criteria concerning the reliability of their evidence, namely the criteria involving the analysis of their contents, continuity/constancy and homogeneity. The witnesses' testimonies were completely objective and aimed at ensuring that their evidence forms the basis for rendering a fair court's decision.

## 2. Defense for the Accused Željko Jukić

17. The Defense Attorney stood entirely by her closing argument presented in the first-instance proceedings before the Court of BiH. According to the Defense, the Prosecution failed to prove any of the essential elements of the criminal offenses charged against the Accused Željko Jukić. The Prosecution failed to prove, beyond a reasonable doubt, that the Accused Željko Jukić, together with other co-perpetrators, acted in furtherance of the HVO and HV common design, with the criminal intents, apparent from the killings, enforced disappearances, persecution and other inhumane acts, as presented in the enacting clause of the Indictment/ contested Verdict. The Defense argued that it was an attack launched by the Territorial Defense, or by the Army BiH against the HVO in the Prozor municipality, rather than the opposite, an attack of the HVO targeting the Army BiH and the civilian Bosniak population.

18. The Defense argued it had proved that there was no widespread and systematic attack of the HVO directed against the civilian Bosniak population in the period indicated in the Indictment. Starting from the fact that, at the time when the conflict broke out in the territory of the Prozor municipality, the Croatian population formed majority of the population, the Defense considers unreasonable the theory that the HVO launched a widespread and systematic attack on the Prozor municipality and its majority Croatian population. The Prosecution adduced no direct evidence in relation to the Accused Jukić, leading to the conclusion that the Accused would be aware of such an attack, that his actions would form part of such an attack, and the lack of the Accused's awareness that such an attack existed implies that he cannot be held criminally responsible for individual charges in terms of the criminal offense at issue. Since the existence of such an attack by the HVO on the Prozor municipality was not proved, the individual acts unreasonably charged against the Accused do not form part of such an attack.

19. With regard to the identification of the Accused Željko Jukić as the perpetrator of the crime at issue, the Defense argued that the Prosecution's evidence was not of such a quality so as to ensure establishing a reliable footing for the Accused's identification. The Defense argued that, due to the inconsistencies and discrepancies in the Prosecution witnesses' testimonies, the participation of the Accused Željko Jukić in the mentioned acts was not proved beyond a reasonable doubt, which ensues from the construed and



coached testimonies of the Prosecution witnesses, and their inconsistencies and discrepancies too.

20. The testimonies of the witnesses describing the physical appearance of Željko Jukić, the uniform he had worn and his family situation, differ to such an extent that it can be said with certainty that not even two identical testimonies describing the Accused's physical appearance, or his uniform or family situation, exist.

21. The Defense, on the other hand, argued that the testimonies of the Defense's witnesses brought into doubt the testimonies of the Prosecution witnesses. This is because the Defense witnesses confirmed that, during the wartime, Željko Jukić was present at quite a different location, with his hair always neatly and shortly cut, wearing a green uniform, as a member of the *Marinko Beljo* Special Purposes Unit.

22. The Defense therefore argued that the evidence, available in the concrete case, was insufficient for the Panel to be satisfied that the relevant facts indeed existed or exist, but it rather so doubted, and applied the principle of *in dubio pro reo*.

23. For all the foregoing reasons, the Defense contests and brings into doubt all the factual averments relating to the Accused's identity and the alleged commission of the incriminating acts too.

24. The Defense argued, in its closing argument, that Article 300(1) of the CPC was misapplied in deciding on the criminal sanction, provided it was proved that the Accused Jukić indeed committed the actions as charged. The Defense argued that the sentence is too stringent, that the Court took into account no extenuating circumstances, particularly that the Accused had no prior convictions, that he is a father of three minor children, that he expressed his regret over the suffering those people experienced, but that it was not proved that he had indeed committed the actions charged against him, which is why the Accused did not admit the commission thereof.

25. The Defense argued that the CC BiH should not have been applied to the Accused Željko Jukić but rather the CC SFRY, as the more lenient law and the law which was in force at the critical time, and that the criminal sanction should have been imposed pursuant to it, if the actions charged against the Accused were proved. Ultimately, the Defense argued that the Court should render a proper and lawful verdict and acquit the accused Željko Jukić of the charges by applying the principle of *in dubio pro reo*.

## II – FACTUAL FINDINGS OF THE APPELLATE PANEL

### A. GENERAL ELEMENTS OF THE CRIMINAL OFFENSE OF CRIMES AGAINST HUMANITY

26. The accused Željko Jukić was found guilty of the commission of the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH, in connection with sub-paragraphs d), i) and k) of the CC BiH. Pursuant to the referenced legal qualification, the relevant Article 172(1) of the CC BiH reads as follows:

“Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

- d) Deportation or forcible transfer of population;
- i) Enforced disappearance of persons; and
- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health,

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.“

27. It ensues from the quoted legal provision that the general elements of the criminal offense of Crimes against Humanity are the existence: (a) a wide(spread) or systematic attack directed against any civilian population, and (b) awareness or knowledge (legal term) of the accused of such an attack, namely that the accused is aware of the character of the attack, or that he had knowledge of such a widespread, systematic or organized activity, and that he undertakes his actions as part of the attack. These are the two *cumulative general requirements*, the *objective* and *subjective* one, without which this offense does not exist. The existence of this crime could not be subsumed to the existence of one or several isolated actions undertaken by an individual independently from the official military, political or state structure that instigates, propagates or organizes such an activity. If any of the acts of the offense were undertaken beyond this context, or without the knowledge and the intent to commit it within this context, then it would not be the criminal offense of crimes against humanity but rather an „ordinary“ criminal offense, such as murder, rape or any other criminal offense. An attack in terms of the referenced crime

needs not necessarily be a military in nature, but rather needs to meet the requirements set forth in paragraph 2, sub-paragraph a), namely that it is not an isolated and individual act, but is rather committed as a part of this systematic and organized plan in furtherance the state or organizational policy whose aim to launch such an attack. It follows from the foregoing that the key characteristic of the crime is its large scale, a multiplicity of victims, multiple perpetrations, a large number of participants in the plan or organized activity. This also ensues from paragraph 2, sub-paragraph a) which *explains the notion of an attack* directed against any civilian population, and highlights that its „a course of conduct involving the multiple perpetrations of acts referred to in paragraph 1 of the this Article against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an act“. Notably, this is a determinant that characterizes the attack as a general element, but does not require, at the same time, that the accused's acts must be committed on a large scale; thus this offense will exist even without this requirement, provided that the accused was aware or had knowledge that the acts were undertaken in that context, that is, within a widespread or systematic attack.

28. To qualify the acts of which the Accused Željko Jukić is found guilty as crimes against humanity it was necessary to establish the existence of the referenced elements. Having evaluated the evidence, individually and in combination, the Appellate Panel concluded, along this line, that the general elements of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH were proved, including the existence of the Accused's awareness or knowledge that such an attack existed, or that the act is being committed within a planned and organized undertaking. To prosecute this crime, it is not necessary to prove whether the Accused was aware of or knew all the characteristics of the attack, or the details of the official policy design.

### **1. The existence of a wide(spread) or systematic attack**

29. The widespread characteristic refers to the “scale of the acts perpetrated and the number of victims“<sup>1</sup>, while the systematic nature refers to the existence of the „pattern of crime“, that is, organized nature of the acts of violence and the improbability of their random occurrence.<sup>2</sup>

30. The Panel has also taken into account the positions the ICTY has taken in its judgments, defining the factors relative to the evaluation of a widespread or systematic

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<sup>1</sup> ICTY, Judgment of the Trial Chamber in *Blaškić*, 3 March 2000, para. 206.

<sup>2</sup> ICTY, Judgment in *Kunarac et al.*, Appeals Chamber, 12 June 2002, para 94.

nature of the attack. Thus, “the assessment of what constitutes a “widespread” or “systematic” attack is essentially a relative exercise in that it depends upon the civilian population or which, allegedly, was being attacked. A Trial Chamber must therefore “first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic”. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a “widespread” or “systematic” attack vis-à-vis this civilian population”.<sup>3</sup>

31. The element “*widespread*” refers to the large-scale nature of the attack and the number of the victims. Moreover, a crime may be widespread or committed on a large scale by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude. The element “*systematic*” requires an organized nature of the acts and the improbability of their random occurrence.<sup>4</sup>

32. The testimonies of the examined Prosecution witnesses show that the referenced circumstances, indicating that the attack was widespread and systematic, indeed existed. These witnesses confirmed the factual allegations of the Indictment that there was a widespread action of disarmament of Bosniak civilians, not only in the territory of the town of Prozor, but rather in the whole municipal territory held by the HVO, plunder and destruction of their property, unauthorized restriction of movement and deprivation of other rights, confinement of men at the camps in both the Prozor area, and all over Herzegovina, and persecution of women, children and the elderly men to the territory held by the Army of the Republic of Bosnia and Herzegovina (ARBiH). The foregoing conclusion ensues from the contents of the following witnesses’ testimonies: Zejnil Grcić, Galib Sabitović, Almin Dautbegović, Arif Pilav, Izet Pilav, Džafer Kaltak, Hamdo Kaltak, Alija Hujdur, Esad Beganović, Esad Brkić, Esad Vugdalić, Mirza Bektaš, Avda Husić, Munib Bećirović, Dževad Kovačević, Ibrahim Grcić, Šemso Bećirović, Zlata Omanović, Enisa Pilav, Ibrahim Lulić, Amir Konjarić, Muharem Konjarić, Mujo Perviz, Đula Berić-Sultanić, Hamid Kmetaš, Dervo Kmetaš, Ibro Selimović, Esmā Bekrić, Hajrudin Bektaš, Armin Pračić, Ibrahim Husić, Hazim Hodžić, Numo Kovačević, Fadil Zec, Zahid Zec, Ekrem Hubijar and Emir Korman,

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<sup>3</sup> ICTY, Judgment of the Appeals Chamber in *Dragoljub Kunarac et al.*, para. 95.

<sup>4</sup> ICTY, Judgment of the Trial Chamber in *Mladen Naletilić et al.*, para. 236; Judgment of the Trial Chamber in *Dario Kordić et al.*, para. 179.

the protected witnesses S2, S7, A1, A2, A3 and A4, and the presented documentary evidence as well.

33. ***With regard to the existence of a widespread and systematic attack***, the Appellate Panel took into account the testimonies of the examined witnesses that were, in this context, properly evaluated by the Trial Panel too. Witness **Zejnir Grcić** testified that, the conflict between the ARBiH and HVO broke out in October 1992, when the Prozor town fell, more precisely, it was taken by the HVO. At that time, the witness was in the village of Duge and, after the fall of the Prozor town, Bosniak population first came to Duge, and then to the villages of Here, Klek and Parcani. The witness stayed in Duge until July 1993, when he was captured by the HVO. He explained that all people who left the Prozor town after the attack and the fall of the town were invited to return to their homes, so that he too went back to Duge. Three days after his return, four men from the neighboring village of Perići came there and gave the inhabitants an ultimatum to surrender all weapons they had, including even hunting weapons for which they had proper licenses, so that everyone who had pistols and rifles surrendered them. After that, they started being called up to go to the front line against the Serbs, which they did until July 1993. They were issued with weapons, but had to give them back upon return from the frontline.

34. It followed from the testimony of this witness that the village of Duge was populated exclusively by Muslims, and it had around 70 households in 1992 and 1993. When describing the events of July 1993, the witness said that two days prior to his capture, Croats had opened fire from the direction of the village of Krančiči, when some hay and one stable caught fire and burned down, but two days later the situation escalated into a real chaos. He escaped to a hill from where he could see HVO soldiers who arrived in the village, more precisely, it was a so-called *Kinder Platoon*, whose members started shooting around the village and arresting Muslims, so the people began to flee. The soldiers came from three directions and encircled the village. Bosniaks offered no resistance since they were unarmed, they were civilians. When he saw a neighbor of his who started to flee, but got wounded, the witness too attempted to escape, but he was captured and ill-treated, beaten up and subjected to insults. All men were rounded up and assembled in one place – under a lime-tree, where they were lined up awaiting trucks in which they were transported to the Secondary School in Prozor, where the witness spent 10-15 days, after which he was transferred to the *Dretelj* camp. During the HVO attack, the witness recognized some members of the *Kinder Platoon*, including the accused Željko

Jukić, Goran Papak, Vinko Papak, Robert Meštrović aka Robo and many others who went to school with him. When describing the Accused Željka Jukić, whom he recognized and identified in the courtroom, he said that *he was not corpulent, he was slim, had blondish-blond hair and looked very nice.*

35. According to witness **Galib Sabitović**, who testified about the same circumstances, the Prozor town came under the HVO control in October 1992. He lived in the village of Duge with his father, wife and three children until 6 July 1993, when he was expelled and imprisoned in the camp. That day, at around 11-12 a.m., he saw a group of soldiers coming from the direction of Prozor, and four or five vehicles going from Podhum towards Duge. The group entered the village, causing panic among the inhabitants, the witness saw people who worked in the fields being rounded up, forced to the village and assembled under a lime-tree, men were being apprehended, women fled. While he hid in the wood from where he watched all that, he decided to surrender because his father, wife and three children stayed in the village and he feared that they would be killed.

36. It follows from the testimony of this witness that the Bosniak men assembled under the lime-tree were lined up and then transported in a truck to the Secondary School in Prozor, the collection center for apprehended Muslims, who were subsequently transferred to the *Dretelj* camp. As stated by the witness, those people were apprehended only because they were Muslims and nothing else.

37. After the fall of Prozor, there were no ARBiH members not only in his village, but most probably in the entire municipality, apart from Here, Kute and Šćipe. All people were civilians and all of them were farmers. He did not know if anyone had weapons, but he knew that all weapons issued to the people, were duly returned, since, as the witness explained, both ARBiH and HVO members were issued with weapons when they went to the frontline together, and it went on like that until the fall of Prozor. At the time when relevant incidents took place, no resistance was offered, no shooting occurred and the only victim, as the witness said, was his father. A stable and some haystacks were set on fire, while 21 people were killed in Klek, 20 in Lapsunj, the Selimović family was slaughtered in Skrobučani, in Prajina, Munikoze. A huge number of people were killed in Munikoze, at Paroš. When the witness arrived in the lower village, by the mosque, he recognized the Accused Željko Jukić, a person whose nickname was “Šiša“, Nikola Marić a.k.a. “Niđo“ and some other young men he knew by sight, but he did not know their names. Speaking about Željko Jukić, whom he identified and recognized in the courtroom,

the witness said he had known him before the war, when he was a fairly young man, had a light, blondish, medium length hair and lived with his grandmother in Ometala. The witness used to see him in the town on a daily basis.

38. Testifying about those circumstances, witness **Almin Dautbegović** stated that the conflict between the ARBiH and HVO broke out on 23 October 1992. Before that, members of the two armies used to go together to the front line at Kupres. That day, HVO and HV forces stormed the town of Prozor and occupied it, while Muslim population fled via Duge to Klek and further to Jablanica. At that time, the witness was in the village of Duge, which was populated exclusively by Bosniaks and had around 50 households. After the fall of Prozor, HVO members visited local communities, assembled local people, telling them that no one would harm them, and that they should surrender their weapons. It went on like that all the way through 6 July 1993, when HVO units raided Duge, rounded up all men, loaded some 30 to 50 men on trucks and took them to the Secondary School in Prozor. Some men were brought there later because they were threatened that all detained men would be killed unless they surrendered. When he arrived in the Secondary School, he found people there who were arrested in other villages. When he was released from the *Dretelj* camp, he found his mother and sister in Jablanica, and they told him that women and children had stayed in the village until 28 August 1993, when they too were rounded up. His mother and sister told the witness that the Police had come to the village, rounded up all of them, including the people from other villages who were there – from Lapsunj, Varvare – they transported them by truck to Jablanica, hitting them on the way there. Nikola Marić, a member of the *Kinder Platoon*, came to the village, told the witness to get dressed and join other men on the way to Prozor. Several days later, the prisoners were loaded onto buses and taken to the *Dretelj* camp. The witness stayed there until 9 September 1993, when he was released. Those people were abducted solely because they were Muslims, all the more so because Duge was not a hostile village and no resistance was offered since the inhabitants had surrendered all weapons they had.

39. Protected **witness “S7”** supported the testimony of these witnesses by stating that the conflict between the HVO and ARBiH broke out in August 1993, prior to which all their weapons were seized. The witness was in Lapsunj at that time, hiding in the woods and/or in the village, together with Ibro Pilav, while other men from the Lapsunj village were confined in the Secondary School and Fire House building in Prozor. Those men were incarcerated only because they were Muslims, there was no other reason for that. The witness explained why he was not arrested together with the other men by stating that

he was in Omer Pilav's house, Omer heard someone coming and went out, but he did not say who it was. When he heard those people calling themselves by their names: Željko, Ljuban, Željko, Ljuban, he realized that they were in trouble, so that he got out and ran towards Omer's orchard down the house, then the shooting started and he was wounded in the leg, but he stayed calm, in hiding, until Željko and Ljuban left. The witness clarified that "Željko" was the Accused Željko Jukić, whom he did not see, but he recognized his voice for he had known him since childhood, they went to primary school together. After that, the witness and Ibro Pilav stayed hidden, then a man came, whose name was also Ibro or Ibrahim Pilav, told them to go to the Secondary School to give a statement, and they would be released afterwards. According to the witness, when they arrived at the Secondary School, they saw it was packed with incarcerated Muslims from the villages of Varvare, Kovačevo Polje, Lapsunj, from the town of Prozor and from the surrounding villages. He was examined by a doctor, and sent home after that. When he returned to Lapsunj, he again saw Željko Jukić, and HVO trucks which arrived to round up all remaining Muslims, they drove women and children to Uzdol and Ustirama, so that only one Croat who lived in the village stayed there.

40. Witness **Izet Pilav** too corroborated the testimony of the above mentioned witnesses by submitting that the conflict between the ARBiH and HVO broke out in October 1992, which is when the HVO occupied the whole town of Prozor, some Bosniak houses were burned, but members of the ARBiH had already left the town by that time. After that, the witness and his family went to Lapsunj, where he stayed until June 1993, when he was disarmed together with other Muslims who were at the front line and taken to the Fire House in Prozor. After the outbreak of the conflict in October 1992 up to their arrest, Bosniaks again went to the front lines together with Croats, they would be issued with weapons upon arriving at the front line, but had to surrender them when they left the front line.

41. When he came to the Fire House and found other Muslims there, he realized they were all imprisoned. The witness was taken to forcible labor with a group of people, and spent some 10 days there. After that, they were taken to the Secondary School, where he found other Muslims from Prozor and the surrounding villages.

42. According to the witness, his family was brought to the Secondary School in early August 1993 with other Bosniaks, then they were taken to the village of Pograđe where they stayed some 7-10 days, and after that, their transport by trucks was organized via



Gračac to the territory controlled by the ARBiH. On that occasion, the entire population of the Muslim villages around Prozor was expelled, from the villages of Lapsunj, Varvare, Paroš, Skrobučani, Gorica, Duge, Lug Donji – Gornji, Kranjčiči. Almost all members of his family were expelled, while some other members of his family were never found.

43. He claimed to have known the Accused Željko Jukić very well, when he was still a young boy, he was his neighbor and at that time “he was a big shot in Prozor” because Jukić raided Muslim houses, seized vehicles from people and everything else of value. He added that he had seen Željko Jukić in the town during those war-related events, incessantly running around, both around the town and the Muslim villages, he sometimes wore black, sometimes camouflage uniform, but he was always armed with a rifle and a pistol. In early August, more precisely on 2 or 3 August 1993, the witness saw Željko Jukić in the Secondary School, entering the rooms, including the room in which the witness was incarcerated.

44. Witness **Arif Pilav** was consistent with other witnesses in confirming that the conflict between ARBiH and HVO broke out in October 1992 and the HVO took over the control of Prozor. After that, the situation calmed down and Muslims again started to go to the front lines with HVO members, they were issued with weapons on those occasions but had to surrender them upon return from the frontline. It went on like that until May 1993, when men were loaded onto a truck and taken to the *UNIS* premises for questioning, and after that to the Fire House. According to the witness, there were other Bosniaks in the Fire House who were incarcerated only because they were Muslims. He spent 10 days there, and was then released and went home. After that, he was taken to dig trenches for some 20-25 days, and he eventually ended up in the Secondary School where he also found a lot of Muslims.

45. As stated by the witness, there were other places in Prozor where Muslims from the villages of Varvare, Kovačevo Polje, Lug, Duge and Višnjani were imprisoned. In addition to the Fire House and the Secondary School, those places included the *UNIS* atomic shelter.

46. His family stayed in Lapsunj throughout August 1993, when HVO members arrived there, and all inhabitants of the Lapsunj village and other Muslims were expelled to the territory under the control of the ARBiH.

47. The witness had known the Accused Željko Jukić since before the war. He saw him in the Secondary School when Jukić entered the room in which the witness was incarcerated.

48. Protected witness “S2” also confirmed that the conflict between the ARBiH and the HVO broke out in October 1992 which is when the HVO took over the control of Prozor. After that, Muslims went with HVO members to the front line with Serbs, but without weapons.

49. In the summer of 1993, the witness was arrested by the HVO Military Police at the Idovac front line and was taken to the Fire House with his brother and other people. He was arrested, as he said “*most probably because I was a Muslim*”. He stayed 10-15 days at the Fire House, but he was also imprisoned in other camps in Prozor where Bosniaks were incarcerated: Secondary School, atomic shelter, MUP /*Ministry of the Interior*/, more precisely, the premises behind the MUP, the bakery. Bosniaks from the villages of Gračanica, Varvare, Lapsunj, Duge, Skrobučani, Orašac were imprisoned in those camps, namely, Bosniaks from all Muslim villages of the Prozor municipality.

50. During his imprisonment in the camps, his entire family was expelled. While he was in the bakery, he could see trucks transporting Muslims from the village of Lapsunj, which was the collection point for the people from Varvare, Gluvačevo Polje, Skrobučani and Lug.

51. The witness stated he knew Željko Jukić personally, and that he was a member of the “Kinder” Platoon. The witness saw him in the Secondary School Center in early August 1993.

52. It follows from the testimony of witness **Džafer Kaltak** that he fled to a garage on 29 July or 1 August 1993 with his mother and father, while their house was set on fire. When *Kinder Platoon* arrived, its members ill-treated them, beat them up and forced his mother to leave with other civilians. Later on, he and his father were taken to the Secondary School.

53. Witnesses **Hamdo Kaltak, Alija Hujdur and Esad Brkić** were consistent with other witnesses when they testified about being taken to the Secondary School, Fire House and MUP premises by the HVO. According to them, there were around 250 Bosniaks imprisoned there, while other people were collected in the villages of Pograđe,

Lapsunj and Duge, where they stayed until August 1993, when they were eventually expelled from the municipality.

54. In his testimony, witness **Esad Vugdalić** described the situation in Prozor after November 1992, stating that Croats had full control over the town, while Bosniaks became second-class citizens, first they were forced to go to the front lines with Serbs, and later on, in June, July and August 1993, they were arrested and imprisoned in the camps, in the Fire House, *Dekorativa* factory, atomic shelter and other prisons.

55. It follows from the testimony of witness **Šemsa Bećirović** that HVO members raided the village of Lug on 17 July 1993 and took away her husband and other men who were over the age of 15–16. She saw her husband 2–3 days later in the Secondary School, where he was held together with Bosniaks from other villages. According to her, Nikola Marić, his brother and other HVO members participated in the expulsion of people from the village of Lug to the village of Duge. She stayed in Duge some 7 to 10 days, then she went to Borovnice, where she stayed until 28 August 1993, when “*the expulsion of Muslims*” took place.

56. The testimony of witnesses **Dževad Kovačević, Amir Konjarić, Muharem Konjarić, Esad Vugdalić and protected witness “A2”** also showed that Muslims were expelled to the territory under the ARBiH control on 28 August 1993, and that men were imprisoned in camps by the HVO.

57. As said by the **protected witness “A3”**, women and children from Skorobučani were taken away, HVO soldiers rounded them up and took them to Lapsunj. All of those people were civilians.

58. According to a number of prosecution witnesses, in October 1992, **Croatian Army military formations** participated in the attacks on Prozor and on Bosniak villages in the period relevant to the Indictment. Also, many prosecution witnesses testified about their presence in the territory of Prozor municipality.

59. As stated by witness **Esad Brkić**, while he was in the Secondary School and when he went to perform labor in Jurići, Crni Vrh and Pidriš, in addition to HVO soldiers, he saw HV soldiers who had “HV” insignia on in their shoulders, in his opinion, they could have been from Split.

60. Witness **Hamid Kmetaš** stated that the HVO occupied Prozor, the HV soldiers were also there, they had “HV” insignia and spoke with a different accent.

61. Witness **Hajrudin Bektaš** was consistent with other witnesses about the insignia worn by members of the Croatian Army. He also mentioned an incident of May 1993 when the mosque was broken into, and when he arrived in the mosque he found two half-drunk soldiers unknown to him who wore the “HV” insignia on their sleeves.

62. The factual allegations about the presence of the Croatian Army in the area of Prozor municipality were corroborated by witness **Hazim Hodžić**. He was captured, and while he was transported by truck, he saw both HVO and HV soldiers whom he identified by the insignia they wore on their sleeves.

63. Witnesses **Almin Dautbegović, Izet Pilav, Arif Pilav, Džafer Kaltak, Esad Beganović, Dževad Kovačević, Šemsa Bećirović, Ibro Selimović and Armin Pračić** were consistent in confirming the presence of HV units in the territory of Prozor municipality and their participation in the attack. Witness Armin Pračić stated that he was captured by members of the HV *Velebitska Brigade*, while **Dula Berić-Sultanić** said that two soldiers came to search her apartment in June 1993, and their accent told her they were from Croatia.

64. The Appellate Panel entirely accepts the testimony of the above mentioned witnesses, who, as the participants in the events, provided a clear and consistent account of the circumstances surrounding the attack, places which were targets of the attack, participants in the attack and the actions taken against civilians. Following a detailed analysis of the testimony of the above stated witnesses, examined individually and collectively and in correlation with relevant admitted documentary evidence<sup>5</sup>, the Appellate Panel concluded beyond a reasonable doubt that the HVO and HV military formations launched an attack during the period stated in the Indictment which was targeted against Bosniak civilians of the town of Prozor and the surrounding villages within the Prozor municipality (Duge, Lapsunj, Klek, Skrobučane, Klek, Munikoze, Varvare, Kovačevo polje, Uzdol, Ustirame, Poroš, Gorica, Kranjčići, Lug Donji - Gornji, Višnjani, Orašac, Gluvačevo polje, Pograđe). Prior to the attack, weapons were seized from people, then Bosniak men were rounded up and imprisoned in the camps in the territory of Prozor Municipality (Secondary School, Fire House, atomic shelter, MUP...) and in Herzegovina (*Dretelj*),

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<sup>5</sup> Prosecution Exhibits T-59, T-62, T-63, T-66, T-92, T-104, T-108, T-125, T-132 and T-133.

while the remaining Bosniak population was expelled to the territory under the control of the ARBiH.

65. In addition to the testimony of the witnesses, Prosecution Exhibit **T-57**, or Situation Report dated 24 October 1992 drafted by the HVO *Rama* Brigade which states "... the town of Prozor and the Rama Lake are under the control of HV Prozor" also shows that the HV units participated in the attack on the Prozor municipality together with the HVO military formations. This also follows from Paragraph 3 of the Order issued by the Zenica Armed Forces HQ dated 26 November 1992 which was forwarded to all HVO units (**T-62**). It states: "*HV members who are present in the area and wear HV insignia have to be warned to remove the insignia, otherwise, the RoC would be implicated.*" Similarly, Exhibit **T-63** - the Order issued by the HVO Mostar Municipal Staff dated 9 December 1992, states in Paragraph 3: "*HV members should be asked /and explained why/ to wear the HVO insignia while they are in our territory.*"

66. The involvement of the HV in the conflicts in Prozor Municipality is supported by Exhibits **T-108, T-132 and T-133**: Request to save the Muslim population of Prozor and villages in Prozor Municipality of 17 August 1993, sent to the International Red Cross by the Committee for the Return of Legal Organs and Displaced Persons of Prozor-Jablanica (T-108), Brief Situation Report in Prozor Municipality of 10 April 1994 drafted by the Municipal Center for Investigating Crimes against Humanity and International Law - Prozor (T-132), and Information on the situation in Prozor Municipality before and after the brutal HVO and HV aggression of 23/24 October 1992 and the status of Muslim population with regard to the events of 20 April 1994, drafted by the Municipal Center for Investigating Crimes against Humanity and International Law - Prozor (T-133), which all mention the HV involvement in the armed conflicts in the area of the Prozor Municipality, on the HVO side.

67. The conclusion about the presence of HV members in the Prozor Municipality follows also from the Information of SIS Rama Sub-center dated 12 January 1994, which indicates that an incident occurred on 11 January 1994 between members of the *Marija Vlačić* HV unit and members of MP Prozor, when several MP Prozor members beat up one member of the HV unit (**T-125**).

68. Having evaluated all the referenced documentary evidence, the Panel reached a clear and firm conclusion that HV units were present in the Prozor Municipality at the relevant period.

69. Based on the subjective and objective evidence, presented both by the Prosecution and the Defense, the Appellate Panel concluded that tensions gradually rose between the Croat and Bosniak military components in the Prozor Municipality during the second half of 1992, which culminated when an HVO member, Frano Zadro, was killed at Crni Vrh by the ARBiH on 23 October 1992. The situation developed into an open conflict and the HVO eventually took the town of Prozor and the major part of the Municipality. Also, there was a plan "B"<sup>6</sup> which anticipated the activities of the ARBiH, and/or Territorial Defense (TO), to be carried out independently or in coordination with TO units from the neighboring municipalities. However, it does not expressly follow from Exhibit O-34 that the activities of the ARBiH foreseen in plan "BE" were targeted precisely against the HVO. The Defense argued that the opposite party was responsible for the outbreak of the hostilities, more precisely, that it was the attack of the ARBiH on the HVO and that the HVO only defended themselves. However, this allegation cannot disprove that there was an attack against a civilian population<sup>7</sup>, nor can it be used as an excuse to attack certain population. It undeniably follows from the Prosecution evidence, both from witnesses' testimony and from the documentary evidence admitted in the case file, that there was a widespread and systematic attack of HVO units on Bosniak civilians of the Prozor Municipality at the relevant period. Therefore, each attack against other's civilian population would be equally illegitimate and crimes committed as part of such an attack could, all other conditions being met, amount to crimes against humanity.<sup>8</sup>

70. The testimony of the prosecution witnesses about the outbreak of the conflict between the ARBiH and HVO in October 1992 in Prozor Municipality, the attack on Bosniak villages, disarmament of Bosniak population who lived in the area under the HVO control, destruction and looting of their property, restriction of movement, the existence of camps in which Bosniaks were imprisoned and the expulsion of Bosniak population from the Prozor Municipality was corroborated by the Prosecution documentary evidence admitted in the case file<sup>9</sup>.

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<sup>6</sup> Defense Exhibit O-34.

<sup>7</sup> ICTY, Appeals Judgment in *Dragoljub Kunarac et al.*, paragraph 88: "Evidence of an attack by the other party on the accused's civilian population may not be introduced unless it tends "to prove or disprove any of the allegations made in the indictment", notably to refute the Prosecutor's contention that there was a widespread or systematic attack against a civilian population. A submission that the other side is responsible for starting the hostilities would not, for instance, disprove that there was an attack against a particular civilian population."

<sup>8</sup> ICTY, Appeals Judgment in *Dragoljub Kunarac et al.*, paragraph 87: "As noted by the Trial Chamber, when establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent's civilian population. The existence of an attack from one side against the other side's civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side's forces were in fact targeting a civilian population as such. Each attack against the other's civilian population would be equally illegitimate and crimes committed as part of this attack could, all other conditions being met, amount to crimes against humanity."

<sup>9</sup> Prosecution of BiH Exhibits from T-57 to T-61, T-76, T-81, T-82, T-84, T-87, T-88 T-97, T-98, T-100, T-105, T- 106, T-111, T-114, T-126, T-133 and T-134.

71. Having examined both subjective and objective evidence, the Panel also concluded that the attack, at the time relevant to the sentencing part of the Verdict, was widespread, since it included a number of prohibited actions targeted against a huge number of Bosniak civilians of both Prozor and the broader area, who were subjected to expulsion, physical ill-treatment, forcible disappearance and other forms of inhumane treatment, whose totality and effects make the attack widespread. Furthermore, having examined the nature and circumstances of the attack itself, the Panel concluded that the attack on Bosniak civilians was not launched inadvertently since the inhumane acts were committed on a large scale and repeatedly, following the same or similar crime patterns in that area. Such conclusion clearly follows from the consistent testimony of prosecution witnesses, both those who lived in the town of Prozor, and those who lived in the same or other villages of Prozor Municipality. All of them gave almost identical accounts of the disarmament of civilians in Bosniak villages, destruction and looting of property, the manner in which civilians in some villages were rounded up and deported to the territory under the control of the ARBiH, apprehension and imprisonment of men in the camps created there, enforced disappearances, other inhumane acts, and so on.

72. Therefore, having evaluated the testimony of all witnesses who testified about the above stated circumstances and the evidence admitted in the case file, the Appellate Panel is satisfied that there was an attack in the area of Prozor Municipality at the time relevant to the sentencing part of the Verdict, that it was carried by HVO and HV military formations, that it was a widespread and systematic attack and targeted against civilian population.

## **2. The attack must be directed against the civilian population**

73. The second general element of the criminal offense of Crimes against Humanity that must be proved is that an attack is “directed against” a civilian population.

74. As for the status of people who were victims of the offenses, the Panel considers proper the Trial Panel's reference to the general provision of Article 3 common to the Geneva Conventions, which defines civilians as “*Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those*

*placed 'hors de combat' by sickness, wounds, detention, or any other cause.*<sup>10</sup> In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

75. Based on the facts which are thoroughly examined and reasoned in determining the existence and nature of the attack, the Panel is satisfied beyond any doubt that all the people against whom the attack was targeted were civilians, including those named in the sentencing part of the Verdict, that the men were taken to the camps, while women, children and elderly people were expelled from the territory of Prozor Municipality which was under the HVO control, only because they were Muslims - Bosniaks, so that the Panel concludes that the attack was discriminatory in nature. All prosecution witnesses confirmed that, following the conflict between the ARBiH and HVO of October 1992, the major part of Prozor Municipality came under the HVO control. The attack was directed exclusively against civilians who had no weapons or uniforms, nor were involved in combat, which leads to the conclusion that the civilian population was not the secondary, but the primary target of the attack. No evidence was presented which could produce a different conclusion of the Panel.

76. The subjective evidence clearly shows that after the conflict between the ARBiH and HVO in October 1992, there were no Bosniak military formations in the Prozor Municipality under the HVO control who offered organized armed resistance to the HVO. Furthermore, Bosniak population was unarmed and did not fight, nor did they offer any armed resistance to the HVO armed forces. When the HVO units attacked Bosniak villages, rounded up Bosniak men and separated them from other inhabitants, again no resistance was offered, nor were those people armed.<sup>11</sup>

77. Therefore, taking into account the means and methods used during the attack, the status of victims, their number, discriminatory character of the attack and the nature of the criminal offenses committed during the attack, the Panel is satisfied that the attack was widespread and systematic and targeted against the civilian population of the Prozor Municipality.

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<sup>10</sup> Article 3(1) of the Geneva Convention relative to the Protection of Civilian Persons prescribes that this category of people shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

<sup>11</sup> Witnesses Zejnil Grcić, Galib Sabitović, Almin Dautbegović, Arif Pilav, "S2", Esma Bekrić, Armin Pračić, Ibrahim Husić, Numo Kovačević, Ekrem Hubijar, Fadil Zec.



### **3. Awareness of the Accused of the existence of the armed conflict and that his acts constituted part of the attack**

78. The awareness (legal term “knowledge”), as an element of this criminal offense, implies a subjective dimension of its statutory essence and means that the perpetrator “knew about such an attack.” Despite being expressed in a rather general formulation requiring the existence of awareness in the form of “knowledge”, it implies, in fact, the existence of the awareness that an attack of such nature exists, and that his actions are being undertaken within that attack. In the concrete case, it was necessary to prove if the accused Željko Jukić was aware, at the time when he undertook the incriminating acts, that the attack was widespread, systematic or organized in nature, that he undertakes the acts within such an attack with the discriminatory intent, or on discriminatory grounds. In the process, the accused need not know the details of the attack or approve of the context in which his or her acts took place.<sup>12</sup> The accused merely needs to understand the overall context in which his or she acted.<sup>13</sup>

79. The Panel reached the conclusion about the nexus between the specific offenses of which the Accused is found guilty and the above described and established attack on the civilian population after examining the following: the presence of the Accused in Prozor Municipality at the relevant time, his awareness of the events in the Municipality at the relevant time, and his direct participation in some acts that were part of the attack on civilians, like unlawful abduction and imprisonment of Bosniak civilians in camps and other acts of inhumane treatment described above.

80. Considering the type of the criminal offense of which the accused Željko Jukić is found guilty under this Verdict, it clearly follows from the testimony of witnesses, residents of the same municipality, that the accused Željko Jukić, as a member of the HVO *Rama* Brigade, a member of the *Kinder Platoon* and resident of the Prozor Municipality (Ometala village), was present in the broader area of Prozor Municipality from July to end September 1993, where the witnesses used to see him. The Accused was *aware of the attack*, since, in the context of the criminal offense charged against him, he, alone or with other HVO members, participated in the rounding up of inhabitants of the Prozor Municipality and their deportation to the territory under the ARBiH control, in the arrests

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<sup>12</sup> ICTY, Judgment of the Trial Chamber in *Fatmir Limaj*, para. 190.

<sup>13</sup> ICTY, Judgment of the Trial Chamber in *Dario Kordić*, para. 185.

and imprisonment of men in the camps created for that purpose in the same municipality, took part in the deportation of men to camps in Herzegovina, enforced disappearances, physical ill-treatment and in the commission of other inhumane criminal acts.

81. The Accused *was aware of his acts* and that his acts were part of a widespread and systematic attack, he wanted their perpetration and committed them in such a manner that caused terror among the victims who feared for their lives and lives of their families, exposing them to pain and suffering, which is proved by the plurality of offenses committed over a fairly short time period and the number of civilians against whom those actions were committed. He wanted their commission, he was aware and knew that his actions were directed against unarmed Bosniak inhabitants of the town of Prozor and the surrounding villages, as follows from the testimony of a number of witnesses examined during the proceedings. Prosecution witnesses confirmed that the Accused Željko Jukić was a member of the HVO *Rama* Brigade and the unit known as the *Kinder Platoon*<sup>14</sup> when they testified about the relevant incidents in which Željko Jukić actively participated. Their testimony is corroborated by the Prosecution's documentary evidence<sup>15</sup>, which removes any doubt about the Accused's belonging to the HVO formations present in the Prozor Municipality.

82. Relying on the established account of facts, the Appellate Panel is satisfied beyond doubt that the Accused Željko Jukić *was aware* of or knew about a number of widespread and systematic crimes directed against Bosniak civilians of the Prozor Municipality Željko Jukić. Also, there is no doubt that he was aware and wanted his acts to be part of the attack, thereby contributing to such attack against civilians.

83. Therefore, based on the presented evidence, the Appellate Panel has concluded that the existence of general elements of the criminal offense under Article 172 of the CC BiH is proved, namely it has concluded beyond a doubt that a widespread and systematic attack was carried out in the Prozor Municipality from July to end September 1993, it was directed against Bosniak civilians, and included detention in camps, intentional and severe deprivation of liberty, inhumane acts, looting of property, intentional and severe deprivation of fundamental rights as a result of belonging to a particular group of people. All that was done with the aim of expelling the Bosniak population from the territory of the Prozor

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<sup>14</sup> BiH Prosecution witnesses: Zejnil Grcić, Esad Brkić, Avdo Husić, Ibrahim Grcić, Amir Konjarić, Mujo Perviz, Dervo Kmetaš, Ibro Selimović, Hajrudin Bektaš, protected witnesses "A1", "A3" and "S2" expressly stated that the Accused was a member of the Military Police *Kinder Platoon* which was composed of young members of the HVO *Rama* Brigade.

<sup>15</sup> BiH Prosecution Exhibits T-34, T-35 and T-84.

Municipality under the HVO control, while the attack itself was carried out by the HVO and HV formations.

#### 4. Identity of the Accused and his presence at crime scenes

84. As in the first-instance proceedings, the Defense raised the issue of identification of the accused Željko Jukić as the perpetrator of the crime, as a decisive fact. The Defense argued that the testimony of the Prosecution witnesses was not such so as to serve as a reliable basis for the Accused's identification.

85. The Appellate Panel has in this part, evaluated and accepted the criteria established by the Trial Panel. The Appellate Panel has noted that, upon a careful examination of all the adduced evidence, individually and in combination, the disputed issue of the identity of the perpetrator of the crime, was analyzed and evaluated through the physical appearance of the perpetrator of the crime, the Accused's identification by the witnesses, his uniform and weapons appearance, presence of the Accused at the crime scene.

86. Testifying *about the perpetrator's physical appearance*, both Prosecution and Defense witnesses described the color and length of his hair, his height, build, age, and other physical characteristics before and at the time of perpetration of the prohibited acts. According to witnesses **Zejnir Grcić, Galib Sabitović, Avdo Husić, Ibrahim Lulić, Hajrudin Bektaš i Emir Korman**, the person who perpetrated the offenses at the relevant period was blond, more precisely his hair was light. Witnesses **Almin Dautbegović, Šemsa Bećirović, Hamid Kmetaš** (when he was examined in the Prosecutor's Office of BiH) and **Ekrem Hubijar** stated that the person had light hair, but they did not mention any specific color.<sup>16</sup> As opposed to these witnesses, Defense witnesses **Slavko Sićaja and Božo Beljo** said that Željko Jukić had black hair, while **Danko Čališ** said that he had dark brown, almost black hair. All Prosecution witnesses<sup>17</sup> who testified about this fact were consistent in stating that the perpetrator had moderately long hair, but they were not specific about its length. Testifying about the same circumstance, Defense witnesses<sup>18</sup> consistently stated that Željko Jukić always had short and clean-cut hair.

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<sup>16</sup> Witness Examination Record for Hamid Kmetaš No. T20 0 KTRZ 0000663 10 of 17 November 2011.

<sup>17</sup> BiH Prosecution witnesses Galib Sabitović, Šemsa Bećirović, Ibrahim Lulić, Hajrudin Bektaš and Armin Pračić.

<sup>18</sup> Defense witnesses Mate Zelić, Nenad Meter, Slavko Sićaja, Božo Beljo, Danko Čališ, Pero Kovačević, Josip Jukić and Ante Pavlović.

87. The comparison of the above stated descriptions, features and characteristics with the Accused Željko Jukić's height, build, physical and other characteristics, and with the relevant Exhibits<sup>19</sup>, specifically the photographs of the Accused Željko Jukić, undoubtedly shows that the description of the perpetrator provided by the witnesses, with small divergences, corresponds to the appearance of the Accused Željko Jukić at the photographs admitted in the case file and with his present appearance. Certain discrepancies in the description occur as a result of subjective experience and different perception of every individual, so the Panel finds them quite logical and expected, in particular in view of the trauma associated with the events. A number of other factors, such as the distance, light intensity, the time which had lapsed since the events in question took place, can affect the witnesses and result in their different perception of a certain person. As the Defense witnesses were consistent with Prosecution witnesses in stating that the Accused had short hair (haircut) at the relevant time, but as opposed to the Prosecution witnesses, they said that the Accused had black hair, with the exception of Danko Čališ, who said that he had *dark brown, almost black hair*. In view of the foregoing, the Panel has concluded that the referenced Defense witnesses, who are either Željko Jukić's relatives or friends, were interested in giving such evidence that would alleviate the position of the Accused in the criminal proceeding, so that their assertions about a different hair color stood in contrast with many, basically consistent, Defense witnesses.

88. Taking into account other perpetrator's features described by the witnesses – his thinness, short or medium height, broad forehead and nose, and a birthmark on the right side of his face, the Appellate Panel concludes that the description entirely corresponds to the present appearance of the Accused Željko Jukić, as well as to his appearance at the relevant period. Also, the Appellate Panel concludes that the lighter and a bit longer hair, as the Prosecution witnesses described it, corresponds more closely to the Accused's appearance than black and short hair.

89. Therefore, in the Appellate Panel's view too, the person whom these witnesses described and saw perpetrating the relevant offenses is undeniably the Accused Željko Jukić.

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Defense Exhibits O – 10 and O – 12.

90. Testifying about *Željko Jukić's clothing and weapons*, prosecution witnesses<sup>20</sup> stated at the main trial that they used to see the Accused in a military uniform<sup>21</sup>, multi-colored-camouflage<sup>22</sup>, black<sup>23</sup> uniform, with a white belt<sup>24</sup>, while witness "A1" stated that that the Accused and other HVO members who were with him had several uniforms, so they sometimes wore black, sometimes camouflage uniforms, and they had at least those two uniforms, but they might also have had green uniforms. Defense witnesses<sup>25</sup> also stated that the Accused wore a green uniform. In his investigative statement<sup>26</sup>, witness **Galib Sabitović** said that HVO soldiers wore green military uniforms, but when he testified at the main trial, the witness was not sure or he could not remember if the Accused wore a black or camouflage uniform when he saw him in the village of Duge. Speaking about the discrepancies between his investigative statement and his testimony at the main trial, the witness explained that he was examined about Nikola Marić during the investigation and he was focused on details relevant to Marić. Witness **Avdo Husić** also spoke about different uniforms worn on different occasions, and stated that the Accused wore a black uniform and an automatic rifle on one occasion, while he had a military camouflage uniform on another occasion. As for the weapons they saw, witnesses stated that Željko Jukić had an automatic rifle<sup>27</sup>, a rifle<sup>28</sup> and a pistol<sup>29</sup>.

91. The Appellate Panel examined and evaluated the testimony of the witnesses who identified the Accused and explained how they had known him, both individually and in correlation with other presented evidence, taking into account how familiar those witnesses were with the Accused, with his personal circumstances and his whereabouts, The Panel also bore in mind that some witnesses were of the same or similar age as the Accused, and the fact that Prozor is a fairly small town, with relatively small population, where people see and know each other, although they have no family, friendship or other ties. The Panel relied on these facts in concluding that the witnesses referred to in the Verdict knew the Accused Željko Jukić sufficiently to recognize him and to point at him in the courtroom, but also took into account the Defense averments that some witnesses were unable to answer the questions about Željko Jukić's personal circumstances, or gave

<sup>20</sup> BiH Prosecution witnesses Zejnil Grcić, Galib Sabitović, "S7", Izet Pilav, Arif Pilav, "S2", Džafer Kaltak, Hamdo Kaltak, Alija Hujdur, Esad Beganović, Mirza Bektaš, "A1", Avdo Husić, Dževad Kovačević, Ibrahim Grcić, Ibrahim Lulić, Đula Berić – Sultagić, Mujo Perviz, Hamid Kmetaš, Hajrudin Bektaš, Emir Korman and Ekrem Hubijar.

<sup>21</sup> BiH Prosecution witnesses Galib Sabitović, "S2" and Hamdo Kaltak.

<sup>22</sup> BiH Prosecution witnesses Zejnil Grcić, Arif Pilav, Alija Hujdur, Esad Beganović, Mirza Bektaš, Ibrahim Grcić, Ibrahim Lulić, Đula Berić – Sultagić, Hamid Kmetaš, Hajrudin Bektaš, Emir Korman and Ekrem Hubijar.

<sup>23</sup> BiH Prosecution witnesses "S7", Izet Pilav, Džafer Kaltak, Mujo Perviz and Hamid Kmetaš.

<sup>24</sup> BiH Prosecution witnesses Ibrahim Grcić and Ibrahim Lulić.

<sup>25</sup> Defense witnesses Mate Zelić, Nenad Meter, Božo Beljo, Danko Čališ and Ante Pavlović.

<sup>26</sup> BiH Prosecution – Witness Examination Record for Galib Sabitović, No. KT – RZ – 100/05 of 9 July 2009.

<sup>27</sup> BiH Prosecution witnesses Zejnil Grcić, Galib Sabitović, Mirza Bektaš, Ibrahim Grcić and Hajrudin Bektaš.

<sup>28</sup> BiH Prosecution witnesses Izet Pilav, Arif Pilav, "S2", Džafer Kaltak, Dževad Kovačević, Ibrahim Grcić, Ibrahim Lulić, Đula Berić – Sultagić, Mujo Perviz, Hamid Kmetaš and Emir Korman.

<sup>29</sup> BiH Prosecution witnesses Izet Pilav, Arif Pilav, Ibrahim Grcić, Ibrahim Lulić, Hamid Kmetaš and Emir Korman.

incorrect answers thereto. However, although the Panel holds that familiarity with the personal circumstances of the Accused can be a very important factor, it nevertheless cannot be taken as a sole indicator of someone's familiarity with the Accused and his identification, in particular bearing in mind other factors that the Panel already examined and reached conclusions in that respect. A number of witnesses had known the Accused from his school days, and they said what they knew about him, while other witnesses used to see the Accused in the town, knew him only superficially or had not seen him for a long time after the war, but this fact. For these very reasons, in the Panel's view, the facts of whether the Accused was in Germany, the persons with whom he had associated before the war, the school he completed, on which the Defense insisted during witness cross-examination, do not undermine the credibility and reliability of the testimony of those witnesses.

92. *As to the Accused's military uniform and weapons*, the Appellate Panel also credited the Prosecution witnesses. Evaluating their evidence given with regard to this fact, the Panel took into account the time elapsed since the moment when the incriminating acts were undertaken and the consistency of the witnesses' evidence regarding the fact that, at the time, members of the HVO wore different uniforms. The foregoing neither precludes the credibility of Defense witnesses' evidence that the Accused wore a green uniform, nor a possibility that, at the time covered by the conviction, the Accused was present at the front line towards Kupres. The referenced option remains open, particularly considering the fact that the incriminating acts occurred during a several-month period, that there was sufficient time between certain acts to move from one place to another, including the defense-line towards Kupres, considering that all the events occurred within a range of several dozen kilometers, and that, over a relatively short period of time, one could move from one site to another within the territory of the Prozor Municipality.

93. In view of the foregoing, considering the descriptions of physical features of the perpetrators of the criminal acts, the fact that the descriptions match the physical appearance of the accused Željko Jukić, and that a large number of witnesses who had known the accused Željko Jukić from before the war, or had met him during the war, directly or indirectly, confirmed that the accused Željko Jukić had undertaken unlawful acts, the Defense's theory that the accused Željko Jukić was at the defense line against the Serbs at Kupres during the period when prohibited actions were taken against the civilian Bosniak population in the territory of Prozor Municipality and the theory of

construed and unconvincing assertions of the witnesses claiming to have known the Accused, and inability to identify the accused Željko Jukić as a perpetrator of the prohibited acts, proved as ill-founded.

94. Applying the above referenced factors on the finding of facts, relevant to evaluating whether a testimony forms a sufficient ground to identify a perpetrator of crime, as identified through the ICTY case law, the Panel concluded that the evidence concerning the circumstances important for identification was sufficient to establish beyond a reasonable doubt that the perpetrator of acts outlined in the convicting part of the Operative Part of the Verdict was exactly the accused Željko Jukić.

## **B. INDIVIDUAL CHARGES UNDERLYING CRIMES AGAINST HUMANITY**

95. Having established that the general elements of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH, **common to all forms of this offense**, were satisfied, the Appellate Panel has also proved, based on the tendered evidence, the existence of special forms of this offense, namely that the Accused is guilty of their commission, as stated in the Operative Part of the Verdict. The Appellate Panel will further below explain how the elements underlying the crime, under subparagraph h), as read with sub-paragraphs d), i) and k), were also satisfied, that is, how persecution was committed by: forcible transfer of population under Section 7, enforced disappearance of persons under Sections 3 and 8, and other inhumane acts under Sections 1, 2, 4, 5, 6, 7, 9, 10, 11 and 12 of the Operative Part of the Verdict.

96. Pursuant to Article 172(1)(h), this underlying element of the crime means persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sexual or other grounds that are universally recognized as impermissible under international law, in connection with any offense listed in this paragraph of this Code, any offense listed in this Code or any offense falling under the competence of the Court of Bosnia and Herzegovina. Paragraph 2, sub-paragraph g) of the same Article, defines the meaning of this term, that is, the requirements that must be satisfied in order that the foregoing acts of persecution constitute this underlying element of crime against humanity. Thus, in addition to the above referenced common elements relating to all forms of the crime (widespread and systematic attack directed against any civilian population and the awareness of the character of such an attack), special (underlying) elements to be

satisfied for the existence of persecution, as a special form of the crime, are the following: the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity; against a group or collectivity on political, racial, national ethnic, cultural, religious, sexual gender or other grounds that are universally recognized as impermissible under international law; the acts related to any criminal offense under this paragraph of this Article of the law, or any criminal offense provided for in this law, or any criminal offense under jurisdiction of the Court of Bosnia and Herzegovina.

97. It follows from the foregoing that **the crime of persecution** includes all the acts by which other persons are being persecuted on *discriminatory grounds* and with the *intent to discriminate against others*, namely such acts by which others are being deprived of certain rights intentionally and to a large extent because they belong to a group or a specific community. The objective element of persecution (*actus reus*) as crime against humanity is a *gross and flagrant deprivation*, on discriminatory ground, of any of the fundamental rights guaranteed under international customary or convention law, the quality of which reaches the same degree of gravity or criminal activity as other offenses covered by this section of Article 172. To sum up the foregoing, for the purpose of existence and application of this element of crime against humanity, the following elements must be *cumulatively* satisfied: 1) already mentioned elements that are *common to all* forms of the crime; 2) *gross and flagrant deprivation* of the fundamental rights in violation of international law, and 3), *discriminatory ground*. Concrete forms of manifestation of this crime may indeed vary as: infringements of the elementary and inalienable rights of men which are the right to life, liberty and the security of a person, the right not to be held in slavery or servitude, the right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment, and the right not to be subjected to arbitrary arrest, detention or exile. The actions of intentional causing serious injury to body or to physical or mental health or deprivation of liberty, if committed on the referenced discriminatory ground, may qualify as this form of crime (also see the Trial Judgment in the *Blaškić* case, No. IT-95-14-T.3.3.2000, para. 220).

98. In addition to the above mentioned, persecution may also be committed by other actions and offenses appearing as less severe, such as the acts targeted against the property, deprivation of the right to work and education, economic and property rights, etc., if committed with the existing discriminatory intent, or on discriminatory ground. This means that those actions need not necessarily constitute an attack on the victim's physical



or mental integrity, but rather an attack on their political, social and economic rights, provided that these are such offenses *by which the fundamental human rights are being deprived, on discriminatory grounds, in violation of international law* (Article 172(2)(g)).

It ensues from the foregoing that one of the key elements of persecution, as a form of crime against humanity, is that the acts are being undertaken with the discriminatory intent, or on discriminatory ground. In the concrete case, it was proved, based on the presented evidence, that by the acts undertaken, the Accused Željko Jukić committed persecution intentionally, being aware that he did it on religious and ethnic grounds, which he wanted to commit by the acts that included physical abuse, forcible transfer of population, enforced disappearance of persons and other inhumane acts.

### **1. Forcible transfer of the population**

99. By the acts described in Section 7 of the operative part of the Verdict, the accused Željko Jukić committed persecution by forcible transfer of Bosniak population from the territory of Prozor Municipality. Article 172(2)(d) of the CC BiH defines deportation or forcible transfer of population as *“forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”*

100. Deportation or forcible transfer of population exists *“when the perpetrator deported or forcibly transferred, without grounds permitted under international law, one or a number of persons to another state or location by expulsion or other coercive acts.”*<sup>30</sup> *Such person or persons were lawfully present in the area from which they were expelled or transferred, the perpetrator was aware of the realistic circumstances on the basis of which their presence was lawful. The conduct was committed within a widespread and systematic attack directed against the civilian population, and the perpetrator was aware of such nature of the attack.*<sup>31</sup>

101. In this regard, the Panel bore in mind the ICTY’s case law and its position taken in *Tihomir Blaškić*. The ICTY has noted that: *„The deportation or forcible transfer of civilians (as a form of the crime of persecution), means displacement of persons concerned by*

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<sup>30</sup> *Commentary on the Criminal Codes in BiH, Council of Europe, 2005, p. 566.*

<sup>31</sup> *Ibid.*

*expulsion or other coercive acts from the area in which they are lawfully present, without grounds legally permitted under international law.*<sup>32</sup>

102. Therefore, the constitutive elements of the crime are the following: displacement of persons by expulsion or other coercive acts, from the area in which they are lawfully present, without grounds legally permitted under international law.

103. It may be concluded from the essential elements of the above referenced crime that it suffices that persons are expelled from the territory in which they are lawfully present, without grounds permitted under international law. In this context, it is noteworthy to refer to Article 17 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Victims of Non-International Armed Conflicts (Additional Protocol II) which provides as follows:

*“The displacement of the population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, and safety and nutrition.*

*Civilians shall not be compelled to leave their own territory for reasons connected with the conflict”.*

104. Deportation and forcible displacement of persons across internationally recognized borders, like forcible transfer and displacement within the state boundaries, also constitute crimes against humanity pursuant to international customary law, and in general, it is absolutely prohibited, unless in certain limited circumstances. Even in such instances, however, Article 49(2) of the Fourth Geneva Convention provides that *“Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”*, from which it ensues that evacuated persons must be transferred back to the place from which they were evacuated immediately upon the cessation of the circumstances due to which they had been initially evacuated.

105. Subjective element (*mens rea*) of this crime is the intent to remove the victims and to prevent them from returning to the place from which they were removed. Through his conduct, the accused Željko Jukić showed a clear intent to permanently remove the

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<sup>32</sup> ICTY, Trial Judgment in *Tihomir Blaškić*, para 234.

Bosniak population from the area of Prozor Municipality held by the HVO, which he confirmed by his active participation in the acts undertaken along this line, making it clear to the population that their stay in Prozor was unwanted. It was concluded beyond a doubt, in relation to section 7 of the operative part, that, in addition to the general requirements of the criminal offense of Crimes against Humanity and the persecutory acts, all elements of *forcible transfer of population* were also satisfied, namely that the Bosniak population from the Prozor Municipality, present in the village of Lapsunj on 28 August 1993, both persons who had resided the area before the conflict and refugees from the town of Prozor and other villages in the Prozor Municipality who had been found or brought there, had no right or free will to choose whether to leave or stay in the area, that the Accused was aware of the consequences of his acts and that he wanted the occurrence of those acts.

## 2. Enforced disappearance of persons

106. By the acts described in sections 3 and 8 of the operative part of the convicting part of the Verdict, the accused Željko Jukić committed persecution by enforced disappearance of persons. Article 172(2)(h) of the CC BiH describes the referenced offense as “*the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of a State or political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate of whereabouts of those persons, with an aim of removing them from protection of the law for a prolonged period of time.*”

In 1992, the UN General Assembly adopted a Declaration on the Protection of All Persons from Enforced Disappearance, and Paragraph 3 of its Preamble, provides that “*enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of the crime against humanity.*”<sup>33</sup> In addition, Article 2 of the International Convention for the Protection of all Persons from Enforced Disappearance, also signed by BiH<sup>34</sup>, provides that: “*enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty,*

<sup>33</sup> Resolution 47/133 of the General Assembly, UN Doc. A/RES/47/133, 18 December 1992.

<sup>34</sup> The International Convention for the Protection of All Persons from Enforced Disappearance was signed by BiH on 6 February 2007, and ratified on 30 March 2012.

*or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.*

The above referenced position has also been adopted by the national criminal legislation. Thus, Article 172(1)(i) (of the CC BiH) provides for the offense of “*enforced disappearance of persons*” within the scope of Crimes against Humanity, whose elements are apparent from the following: *there is an act of arrest/abduction of persons*; the act was committed with the authorization or support by the State or political organization; *the perpetrator refused to give information on the fate or whereabouts of those persons, the perpetrator aims to remove such persons from protection of the law for a prolonged period of time.*

107. The finding of facts, presented in Sections 3 and 8 of the enacting clause of the Verdict, from the aspect of enumerated elements of the offense of *enforced disappearance of persons*, has showed beyond a doubt that by the acts described in Sections 3 and 8 of the enacting clause of the Verdict the Accused committed *persecution by enforced disappearance of persons*.

### 3. Other inhumane acts

108. Other inhumane acts of a similar character are those committed with the aim of intentionally causing great suffering or serious injury to body or to physical or mental health for which the existence of act or omission of similar gravity like for the other crimes enumerated in Article 172(1) of the CC BiH, needs to be proved: an act or omission causing serious injury to body or to physical or mental health, or outrages upon human dignity, an act or omission intentionally committed by the accused and a person or persons for whose acts the accused is held criminally responsible.

109. Examples for inhumane acts under Article 172 of the CC BiH from the ICTY case law are as follows: mutilation and other types of bodily harm<sup>35</sup>; beating and other acts of violence<sup>36</sup>; infliction of injuries<sup>37</sup>; serious mental and physical injury<sup>38</sup>; a serious attack on human dignity<sup>39</sup>; forced labor which caused serious mental harm or physical suffering or

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<sup>35</sup> See *Kvočka et al.*, ICTY, Trial Chamber Judgment, para. 208.

<sup>36</sup> *Ibid.*, para. 208.

<sup>37</sup> See *Kordić and Čerkez*, ICTY, Appeals Chamber Judgment, para. 117.

<sup>38</sup> ICTY, Trial Chamber Judgment in *Blaškić*, para. 239. Trial Chamber Judgment in *Krstić*, para. 523.

<sup>39</sup> ICTY, Trial Chamber Judgment in *Vasiljević*, para. 239-240.

injury, or the act was serious attack on human dignity<sup>40</sup>; deportation or forcible transfer of groups of civilians<sup>41</sup>; enforced prostitution<sup>42</sup> and enforced disappearance of persons<sup>43</sup>.

110. *Mens rea* for the inhumane acts under this Article has been satisfied when, at the moment of act or omission, the perpetrator had the intent to cause great physical or mental suffering, or to seriously attack victims' human dignity, or if he knew that his act or omission would likely cause great physical or mental suffering or a serious attack on human dignity but anyway acted with callous carelessness<sup>44</sup>.

111. On the basis of the adduced evidence, analyzed in detail and described further in the reasoning, the Appellate Panel has established the state of facts described in sections 1, 2, 4, 5, 6, 7, 9, 10, 11 and 12 of the enacting clause of convicting part of the Verdict. In the light of the enumerated elements of the *other inhumane acts* under Article 172(1)(k) of the CC BiH, the Panel found beyond a doubt that the acts of which the accused Željko Jukić was found guilty under the referenced Sections of the enacting clause of the Verdict have satisfied all the essential elements on the basis of which they qualify as *other inhumane acts*.

### **C. INDIVIDUAL CHARGES UNDER PARTICULAR SECTIONS OF THE OPERATIVE PART OF THE VERDICT**

112. In addition to the evaluation of the testimony of the examined witnesses, the Appellate Panel has also reviewed the case record, and accepted as proper, to the largest extent, the evaluation of the testimony of the witnesses examined during the trial before the Trial Panel, for each Section of the operative part of the Verdict individually.

#### **1. Section 1 of the Operative Part of the Verdict**

*The Indictment of the BiH Prosecutor's Office charged the accused Željko Jukić that, on 6 July 1993, together with a group of HVO members, he participated in the attack on Bosniak civilian population of the village of Duge, Prozor Municipality, on which occasion he killed Uzeir Sabitović, a seventy-years-old man whom he found in front of his family*

<sup>40</sup> ICTY, Trial Chamber Judgment in *Naletilić & Martinović*, paras. 271, 289, 303.

<sup>41</sup> ICTY, Trial Chamber Judgment in *Kupreškić et al.*, para. 566.

<sup>42</sup> *Ibid.*, para. 566.

<sup>43</sup> *Ibid.*, para. 566.

<sup>44</sup> *Ibid.*, para. 132.

house, and fired several rounds in the old man from his firearm, thereby causing the death of victim Uzeir Sabitović (of which the Accused Željko Jukić was legally acquitted since the acquitting part of the Trial Verdict was upheld by the Verdict of the Appellate Panel, No.: S1 1 K 008728 12 Krž 9 of 29 September 2014)

1.a) and on the same day, in the same place, he fired several rounds around Galib Sabitović's feet, which caused a severe psychological trauma to the aggrieved party.

## Conclusions of the Appellate Panel

113. It ensues from the testimony of the aggrieved party Galib Sabitović, and the witnesses Zejnil Grcić and Almin Dautbegović that the Accused Željko Jukić, on 6 July 1993, together with a group of HVO members participated in the attack on Bosniak civilian population of the village of Duge, on which occasion he committed persecution by inhumane acts targeted against the aggrieved party Galib Sabitović by firing several rounds around his feet.

114. Witness **Zejnil Grcić**<sup>45</sup> testified that, in early July 1993, a special HVO "Kinder platoon" entered the village of Duge. The witness identified Goran Papak, Vinko Papak, Robert Meštrović and the accused Željko Jukić from among the soldiers who had entered the village on the referenced day. The witness described the Accused as skinny, short and blondish, and he identified him in the courtroom. Witness Grcić also stated he had known the accused very well from before the war and that they attended the same elementary school.

115. Witness **Almin Dautbegović**<sup>46</sup>, testified that the village of Duge was attacked on 6 July 1993, and that, on that occasion, a soldier and Nidžo Marić forced him out of his house. Bosniak men were on that day rounded up and transported by trucks to the Secondary School Center.

116. Witness **Galib Sabitović**<sup>47</sup> recalled it was 6 July 1993 when he was collecting hay at his neighbor's place, some 600-700m far away from his village of Duge, and saw soldiers entering the village from Prozor direction. Soldiers stopped in the middle of the road and opened fire, which is why he hid in the woods. When Nihad Grcić came to fetch him, he (the witness) decided to surrender being in fear for the lives of his family members

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<sup>45</sup> Witness Zejnil Grcić was heard at the hearing held on 7 July 2012.

<sup>46</sup> Witness Almin Dautbegović was heard at the hearing held on 16 August 2012.

<sup>47</sup> Witness Galib Sabitović was heard at the hearing held on 12 July 2012.

who had stayed in the village. Witness Sabitović explained that, because of the distance of the place where he had stood when soldiers entered the village, he could not identify any of them. However, when witness Sabitović came down to the village to surrender, he identified Nikola Marić, a soldier nicknamed Šiša and the accused Željko Jukić in camouflage uniforms and with automatic rifles standing near a mosque. The witness described the Accused as a young man, with blondish, slightly shaggy hair at the time. Witness Sabitović identified the Accused in the courtroom, and he had known him from before.

117. Witness Galib Sabitović further testified that, when he came down to surrender, the Accused asked him if he possessed any weapons. The witness stated he had lied having a hand-grenade at his house in order to obtain information about his wife and children. The witness explained that thereupon, the accused Jukić *escorted him in front of himself, pointed his rifle at his back and pushed him through the village*, insulted him along the way on ethnic grounds, swore Alija's mother, fired shots around his feet, and sadistically abused him. At one moment, the witness turned back to Jukić, telling him to stop doing that and asking him what he was doing, but that the Accused just snapped at him. In those dramatic moments, the witness only cared about staying alive. The witness further stated that, while Jukić was escorting him, some 20m from his father's house they encountered a soldier unknown to him, and that Jukić ordered this soldier to escort him further away.

118. During the examination, at the main trial, before the Trial Panel, the witness was presented a witness examination record made in the BiH Prosecutor's Office<sup>48</sup>, during the investigation in the case of *Nikola Marić*. The Prosecutor asked the witness if he had stated in this case the same as he stated at the main trial, namely if he had mentioned to the prosecutor in the investigation the incident when Željko Jukić had fired around his feet. The witness responded as follows: *"I mentioned Željko Jukić for four times to this gentleman, but each time he disregarded his name, and did not want to talk about Željko Jukić at all; he did not want to discuss anyone else (...). He just asked me about Nikola Marić, and he wanted me to describe his physical appearance, the type of rifle he had, the clothing he wore, etc."*

119. During the main trial testimony, the witness clearly and consistently described the prohibited acts the Accused had undertaken on the critical occasion. On the basis of such

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<sup>48</sup> KT-RZ-100/05 of 9 July 2009, the record was not tendered as evidence.

a testimony, the Panel is satisfied too that the witness obviously recounted what he had personally seen and experienced.

120. Since the testimony of witness Galib Sabitović was not brought into doubt by the other pieces of evidence adduced, the Panel has found, beyond a reasonable doubt, that the accused Željko Jukić indeed undertook the acts of inhumane treatment of Galib Sabitović, in the way described in Section 1 of the convicting part of the Verdict, as a result of which he suffered serious mental pain.

## **2. Section 2 of the Operative Part of the Verdict**

*The Prosecution's Indictment charged the accused Željko Jukić that, in mid July 1993, most likely on 15 July 1993, in the early morning hours, together with (accused) Vinko Papak and other HVO members, he participated in the escort of several hundred Bosniak men who were transported from prisons located in the area of Prozor town to the Dretelj camp near Čapljina, where he, together with (accused) Vinko Papak and another HVO member, beat Osman Hero, Almin Dautbegović, Alija Šero, Omer Subašić and Zejnil Grcić, he used a broomstick to hit Zejnil Grcić all over his body so hard that the broomstick eventually broke, he punched Almin Dautbegović twice in the head so that the aggrieved party fell down and lost his consciousness, he also punched and kicked other aggrieved parties all over their bodies, thereby causing severe physical and mental pain to all of them.*

### **Conclusions of the Appellate Panel**

121. The injured parties Zejnil Grcić and Almin Dautbegović confirmed the factual findings under Section 2 of the enacting clause of the convicting part of the Verdict, that the accused Željko Jukić participated in the transportation of several hundreds of Bosniak men to the Dretelj camp near Čapljina, where together with Vinko Papak and other member of the HVO, he beat within the camp compound the injured parties Osman Dautbegović, Almin Dautbegović, Alija Šero, Omer Subašić and Zejnil Grcić. A review of the case record also shows that witness Emir Korman<sup>49</sup> too testified about their transportation and arrival in the Dretelj camp near Čapljina.

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<sup>49</sup> Witness Emir Korman was heard at the hearing held on 28 March 2013.



122. Witness **Zejnir Grcić** testified that, after soldiers of the HVO attacked and entered the village of Duge, in early July 1993 as he recalled, he was taken, together with other Bosniak men, to the Secondary School Center in Prozor, while the women and children stayed in the village of Duge until 28 August 1993. The witness had stayed 10-15 days in the Secondary School Center until the night when the Kinder Platoon burst into the Center and called out from a list the names of men who were thereupon transported to Dretelj by 5 buses.

123. Witness **Almin Dautbegović** stated that the village of Duge was attacked on 6 July 1993, that he was taken to the Secondary School Center, and that in the evening of *12 July they found themselves in Čapljina*.

124. With regard to the abduction to the Dretelj camp, witness **Emir Korman** testified that, after he was arrested on 7 July 1993 in his apartment in Prozor, he was taken to the Fire House building and thereupon transferred to a prison for civilians and held there for 3-4 days. The witness saw the accused Željko Jukić for the first time on the bus when he was transported from the civilian prison to the Dretelj camp.

125. Describing the transportation to the Dretelj camp, witness **Zejnir Grcić** that the Accused, Vinko Papak and one Ivan Žuljević aka Dugi, all wearing camouflage uniforms and armed with rifles, were present in the bus by which he was transported to Dretelj. The beating started just after their arrival in Dretelj, upon their leaving the bus. The witness was not beaten at that moment but subsequently, when they were lined up along a runway, and when Vinko Papak and the accused Željko Jukić beat him. Witness Grcić stated that first they had to throw away all they had on them, in order *to be prevented from killing themselves if they had any opportunity*. The detainees were then ordered to lie down and stretch out their arms. Thereupon they (soldiers) started trampling on their hands with the boots on their legs, and when the detainees stood up again, they punched them. The witness stated he was punched by Željko Jukić until they noticed that Osman Dautbegović had a pocket knife which he had forgotten to throw away. Then they all swooped on him and his son Almin Dautbegović. Omer Subašić was also beaten after they had found tear gas on him.

126. Witness Grcić further explained that, once this “action” was completed, they were ordered to enter the hangar. The beating started the moment the witness started walking towards the hangar. Željko Jukić hit him with a broomstick, which broke against his back. Then they continued hitting him with whatever they had handy. He was beaten by Vinko

Papak, Željko Jukić and one Goran aka Goca. Witness Grcić explicitly stated that Omer Subašić, Alija Šero, Almin Dautbegović and his father Osman (whose last name is Dautbegović rather than Hero, as indicated in the Indictment) were beaten, and that the accused Željko Jukić took part in all the beatings.

127. The foregoing was confirmed by witness **Almin Dautbegović**, who had been transferred to Dretelj from the Secondary School Center by bus, together with Galib Sabitović, Zejnil Grcić, Aziz Dautbegović, Nisim Dautbegović, Nijaz Hasanbegović, and escorted by Željko Jukić. The witness stated that he had superficially known the Accused at the time, but that Zejnil Grcić, who had known him from before, told him who was in question. The witness described that the Accused's hair was *grey, or more brownish*.

128. Witness Almin Dautbegović remembered that, after their arrival in Dretelj, they were lined up in rows and ordered to empty their pockets. The beating had already started by then, against no one in particular. They were all beaten randomly. Someone suddenly hit the witness in his head, and then kicked him in his chest, as a result of which he had "*blurred vision*". Zejnil Grcić subsequently told the witness that he had been hit by Željko Jukić, and that the accused Jukić had also beaten his father (Osman Dautbegović). The witness stated he knew his father had been beaten, but he could not watch the beating since they were all ordered to look straight ahead. His father Osman was in the third or fourth line in front of him. In addition to Zejnil Grcić, other villagers who had been near him and his father, and better positioned to see the beating, told him they had seen his father being beaten. Also, the witness stated that when they entered the camp they all had to pass through a gauntlet formed by soldiers who beat them with sticks. The witness stated that, after this incident, he was not beaten any more during the whole period of time he stayed in the Dretelj camp.

129. Witness Almin Dautbegović was presented with the statement he gave in the investigation conducted by the BiH Prosecutor's Office<sup>50</sup>. The Prosecutor asked the witness to explain the discrepancies between what he stated at the main trial (namely that he had been beaten by Željko Jukić), and his statement from the investigation (that the identity of the person who had beaten him was unknown to him). The witness explained: "*I remembered, because I wanted to learn who had beaten me. So I found out that he had beaten me.*" Witness Dautbegović added that he had also inquired about this just before his arrival for the hearing. The Defense subsequently asked the witness why, during the

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<sup>50</sup> Witness Examination Record No. 663 10 of 10 February 2011 was not admitted into evidence.

interview in the Prosecutor's Office, he did not say that Jukić had beaten him and his father in Dretelj, if Zejnil Grcić had already at the time told him that. The witness explained: *"Both while I was in Dretelj and subsequently, I inquired about the person who had beaten me, and I always got the information that it was he (the Accused) who had beaten me (...)* Zejnil Grcić, who had known him well, told me that(..). He (Grcić) told me this both down there and, and in Duge, and even subsequently." The witness added: *"I was not sure until I saw the man. I have seen him now, and I know well that he had beaten me"*. Witness Almin Dautbegović also stated he had subsequently seen the Accused in Prozor, and he identified the Accused in the courtroom.

130. The Appellate Panel, just like the Trial Panel, analyzed witness Almin Dautbegović's testimony and his explanation of the discrepancies between his statements given in the investigation and at the main trial. The Panel has fully credited the testimony of this witness, since it was proved beyond a doubt that witness Dautbegović had no intention to incriminate the Accused with something he was not certain about, that is, until he personally sees the person in question. When the witness saw the Accused in the courtroom (whom he had known superficially from before the war), he was certain and confirmed that the Accused was exactly the person who had taken prohibited acts against him and the person whom he had seen in Prozor. In addition, the witness's decisive assertion, that after the above described incident, no one beat him any more in the Dretelj camp, not even the Accused, clearly suggests that the witness, whose evidence is confirmed by witness Zejnil Grcić, had no intention to incriminate the Accused with something he had not done, and that his testimony is credible, authentic and should be credited as such.

131. It has been proved, beyond a doubt, based on the examination of the testimony of witnesses Zejnil Grcić, Almin Dautbegović and Emir Korman, individually and in combination, that these witnesses gave consistence evidence about the decisive facts, that the other adduced evidence did not contest their evidence, which ultimately resulted in concluding beyond a doubt that, in mid-July 1993, in the early morning hours, together with Vinko Papak and other members of the HVO, the Accused Željko Jukić, escorted the transportation by buses of several hundreds of Bosniak men from the prisons in the Secondary School Center, Fire House, the Mol building located in the town of Prozor, to the Dretelj camp near Čapljina, and that inside the camp perimeter, the Accused, along with Vinko Papak and other member of the HVO, accorded inhuman treatment to Osman Dautbegović, Almin Dautbegović, Alija Šero, Omer Subašić and Zejnil Grcić in the way as

described in Section 2 of the convicting part of the Verdict, which resulted in causing serious physical and mental pain and suffering to the injured parties.

### **3. Section 3 of the Operative Part of the Verdict**

*In the evening hours of 3 August 1993, together with Vinko Papak and another unidentified HVO member, he came to the Secondary school in Prozor and took out inmate Ibro Pilav from one of the classrooms and brought him to the toilette on the second floor where he beat him up and used glass to cut him all over the body, which caused heavy bleeding, then he returned him to the room from which he was taken out. Then, that same night, he again took out Ibro Pilav, together with Vahid Berić and Mirsad Pilav, brought them to a motor vehicle, and told them to get in, Ibro Pilav and Vahid Berić sat in the back, while Mirsad Pilav was closed in the trunk of a Lada motor vehicle and then all of the them were taken to the Duška kosa garbage dump three kilometers from Prozor, where the vehicle stopped, Ibro Pilav was taken out of the vehicle and told to stand on the edge of ravine, after that, Mirsad Pilav was taken out and told to stand beside Ibro, but when Vinko Papak and another unidentified HVO member went back to fetch Vahid Berić, Mirsad Pilav seized a moment of Željko Jukić's distraction, whose rifle was pointed at him, and abruptly jumped down the slope, rolling down through the garbage, he managed to escape the shots fired at him, then he heard gunfire again and the sound of two bodies rolling down the slope. After that incident, Ibro Pilav and Vahid Berić disappeared without a trace. Also, that same night, the Accused Željko Jukić, Vinko Papak and an unidentified HVO member took Edis Omanović and Šefik Čiča out of a classroom of the Secondary School in Prozor and drove them away to an unknown location, those men disappeared without a trace and their bodies have never been found.*

### **Conclusions of the Appellate Panel**

132. The finding of facts in Section 3 of the convicting part of the Verdict, that in the evening hours of 3 August 1993, together with Vinko Papak and an unidentified member of the HVO, the Accused Željko Jukić came to the premises of the Secondary School Center (SSC) in Prozor, and undertook prohibited actions charged against him, was determined by the Appellate Panel based on the testimony of the witnesses examined at the trial before the Appellate Panel and the evidence the witnesses gave before the Trial Panel,

namely: Izet Pilav, Arif Pilav, protected witnesses S2, S7 and A1, Džafer Kaltak, Hamdo Kaltak, Avdo Husić, Alija Hujdur, Esad Brkić, Esad Vugdalić, Munib Bećirović, Muharem Konjarić, Ibrahim Grcić, Šemso Bećirović, Zlata Omanović, and the documentary evidence tendered in the case record.

133. Witness **Izet Pilav**<sup>51</sup> testified that, some time in July, he was brought to the SSC and detained at a classroom on the upper floor. Together with him were protected witness S7, Arif Pilav, Ibro Pilav, Vahid Berić, Sulejman Pilav, a butcher called Zec, and Ragib. The witness cannot recall the precise date, namely whether it was on 2 or 3 August 1993, but he remembered it was early August when the accused Željko Jukić, Ljuban Baketarić and other persons, one of whom was called Papak and the other Kamba, seven or eight of them in total, entered the room where he was detained with the other inmates. The prisoners were told to approach, one by one, a table placed near the entrance door, and put down on the table all their belongings, money, watches, golden jewelry, which were subsequently collected by Željko and *“his pal Ljupče*. The witness testified that the Accused, whom he identified in the courtroom, was his neighbor, that he had known him since he was a young boy, and that he had a brother, a sister, and a grandmother with whom he had lived. The witness often saw him in a black, camouflage uniform, always carrying a rifle and a pistol. The witness further testified that, just before dusk, while there was still some daylight, the Accused came again, took Ibro Pilav out of the room where they had been detained, to a hallway wherefrom they heard moans. After a while, when the Accused brought Ibro back to the classroom, and when Ibro took off his shirt, the witness saw cuts and carved crosses on his back and the chest, made by the accused Željko Jukić, as Ibro recounted to the witness.

134. Witness Izet Pilav testified that, on that very night, the Accused came again and again took Ibro Pilav, and then Vahid Berić out of the classroom. They were taken outside, and then he and another detainee (he did not remember who exactly), peered through the window and saw only the back side of a car, and someone being thrown into the car trunk, but he could not see, from this position, which car was in question and who was thrown in the trunk. After being presented with photo-documentation<sup>52</sup>, the witness explained in detail and showed the position of the classroom, and the window from which he had watched the action he spoke about.

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<sup>51</sup> Witness Izet Pilav was heard at the trial on 30 August 2012.

<sup>52</sup> Photo-documentation No. 16-13/1-7-149/11 of 27 December 2011, tendered as Prosecution Exhibit (T-7).

135. Witness Izet Pilav testified that, on the same night, Omanović was also taken out, and that, after 5-10 minutes, the accused Željko Jukić brought Arif Pilav back to the classroom out of which he had also been taken. Witness Pilav stated that the Accused searched the classrooms to find witness S7 whom he had known by his full name, who was together with them in the classroom but had rather hid in the rooms with no people, but when the situation calmed down, came back to them. This witness had information that, even after being told that witness S7 had been taken to Herzegovina, the Accused kept looking for him around other camps.

136. Witness Izet Pilav testified about his information related to the destiny of Ibro Pilav and Vahid Berić. The witness stated that, hiding in the woods, a group of villagers from the village of Lug had found Mirsad Pilav in a poor condition, that Mirsad told them that he had survived a summary execution at the Duška kosa garbage dump, and that Ibro Pilav and Vahid Berić had been killed.

137. The Appellate Panel has accepted the testimony of witness Izet Pilav as fully reliable and precise because it did not contradict, in the decisive facts, the testimonies of witness Arif Pilav, protected witness S7, and the other pieces of adduced evidence, subjective and objective.

138. Consistently with the evidence of the foregoing witness, witness **Arif Pilav**<sup>53</sup> testified that he had been detained at the SSC together with Izet Pilav, Ibro Pilav, Vahid Berić, witness S6 and many other detainees. He had known the Accused from before the war, specifically, from his age 10. The Accused lived in the village of Ometala, and had a grandmother, a brother and two sisters.

139. Witness Arif Pilav testified that, in early August 1993, while he was in the SSC, the Accused came into the classroom, and after spotting Ibro Pilav told him: “*Come on, young man, come out in the hallway*”. Ibro went out and stayed there between 20 minutes and a half an hour. When he came back, his chest, back and head were all in cuts. Ibro told them that Željko Jukić had done this to him, and that he had also asked him about witness S7. The witness told the Accused that he (S7) had gone to Dretelj, but the Accused responded he would come again to take him out. After a while, the Accused came again, took Ibro out of the classroom. No one has seen Ibro ever since.

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<sup>53</sup> Witness Arif Pilav was heard at the hearing held on 30 August 2012.

140. Witness Arif Pilav described the further development of the events. He stated that on this very day, already at night, two soldiers came into the classroom. One of them held a flashlight, and, walking around the classroom, lighted up, one by one, the faces of the detainees lying on the ground. The witness saw them lifting someone up behind his back, whereupon the other soldier, who had no flashlight, told him (the witness) and Vahid Barić, lying by his side, to stand up and go out to the hallway. No sooner than reaching the hallway, the witness saw that they were taken out of the classroom by Željko Jukić and Papak. The witness added he was certain 100% that it was Željko Jukić, and that, at the time, he wore a camouflage military uniform and held a rifle and a pistol in his hands. The Accused requested them to tell him about their whereabouts during the shooting in Lapsunj. The witness responded he had been up on the mountain, witness S6 responded he had been at Anto's place in Prozor, and Vahid Berić that he had been at his home. Thereupon, the Accused told him and witness S6 to go back to the classroom, and that he would later come to take them, while Vahid Berić was told to stay. The Accused took Vahid away and his destiny has been unknown ever since.

141. The Prosecutor asked the witness if, on the referenced night, anyone else had been taken away from the SSC. The witness responded that, in the morning, he heard, but did not see, that the Accused took Čiča, Enis and Mirso Pilav away, and that he was certain, because he saw it himself, that the accused Željko Jukić took away Ibro Pilav and Vahid Berić, whom the witness later on heard had been killed at the Duška kosa garbage dump.

142. Witness Arif Pilav was presented with the photo-documentation<sup>54</sup> including the photos of the SSC, whereupon he confirmed his claims, and showed the position of the classroom where he had been kept during his detention at the school.

143. **Protected witness S7**<sup>55</sup> confirmed the testimonies of the above referenced witnesses, namely that he was detained at the SSC, and that he was not placed among his villagers from Lapsunj, but rather among those from the village of Varvarani. Witness S7 recalled that, in the afternoon hours of 2 or 3 August 1993, Željko Jukić, whom he had known very well from childhood, came to the school. The witness was in the classroom on the ground floor and saw from its window when the Accused arrived by his car. The witness ran across the hallway to the upper floor and hid well among the tables and chairs piled in the hallway. No one knew he was hidden there. From this spot, the witness saw

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<sup>54</sup> Photo-documentation No. 16-13/1-7-149/11 of 27 December 2011, tendered as Prosecution Exhibit (T-7).

<sup>55</sup> Witness S-7 was heard at the hearing held on 23 August 2012.

the Accused entering the room where the villagers of Lapsunj were interned and taking Ibro Pilav, Vahid Berić, Mirso Pilav and a couple of other men out of it. The Accused was alone on this occasion. Witness S7 stated he could see only the lower part of the Accused's body, up to his waist, that is, he saw his military boots and black trousers.

144. From his hidden shelter, witness S7 saw the Accused taking back to the room all the men he had taken out of it, except Ibro Pilav who was left in the hallway. The Accused thereupon passed by the place where the witness was hidden and entered a toilette. The witness heard a sound of a glass-bottle breaking, and saw the Accused coming back to Ibro and cutting him with a piece of glass of the broken bottle, *both his chest and his back*. The witness stated that, at that moment, he leaned forward and fully saw the Accused's body and what he was doing to Ibro. The witness heard the Accused asking Ibro about him (witness S7). When Ibro responded that S7 was transferred to Dretelj, the Accused swore at him and said he would find him (S7) down there too, and that his experience would be even worse than that of Ibro's. Upon leaving, the Accused told Ibro that he would come back to fetch him again.

145. When he was quite certain that the Accused had gone, witness S7 left his shelter and followed Ibro to the toilet. Ibro, not knowing that witness S7 had seen the entire incident, showed him the injuries sustained, and told witness S7 that the Accused would come again in a half an hour, at dusk, to take him away. Witness S7 further testified that the accused Željko Jukić, just like he had said, came again at dusk, and again took out of the classroom Ibro Pilav, Vahid Berić, Mirso Pilav and two or three other men, whom he had never seen again. The Prosecutor asked the witness about his whereabouts at the moment when he saw all that. The witness responded he was in the classroom at the time, but when he saw the Accused coming back by his car, he again hid in his old shelter, under the tables, wherefrom he could watch those men being taken away. Witness S7 further added that Željko Jukić was alone when he came to fetch those men, but he was not certain if anyone else was outside.

146. Since the testimony of witness S7 does not contradict the testimonies of witnesses Izet Pilav, Arif Pilav, and a part of Džafer Kaltak's testimony, and its authenticity was not brought into doubt by the other pieces of the adduced evidence, subjective and objective, the Appellate Panel considers it as reliable and accurate.



147. Witness **Džafer Kaltak**<sup>56</sup> stated it was on 1, 2 or 3 August 1993 when he was brought, together with his father, to the SSC. He was around age 16 at the time. Witness Kaltak remembered that they were brought up the stairs in a line and placed in a classroom located to the left from the staircase, where Alija Hujdur, Alija Zečić and others had already been interned. Edis Omanović lied next to him and his father.

148. Witness Kaltak testified that, late in the night, they heard shouting and the sounds of someone being beaten in the hallway. Then the door opened, and the accused Željko Jukić entered the classroom, holding a flashlight in his hand, together with two men whom he had not known. The light in the classroom was off, however, like in all other classrooms, this one also had a window above the door (pointing to a photo No. 9 from a photo-album presented to him)<sup>57</sup>, through which the light from the hallway protruded, so the visibility was very good. The Accused walked from one detainee to another, lighted up the witness and his father, and then lighted up Edis, pulled his shoulder and told him: “*You, stand up*”, and pushed him towards the other two men. Since that moment, no one has ever heard anything about Edis or has seen him ever since. The witness watched all this from the distance of 20 centimeters.

149. Witness Kaltak stated he had known the accused Željko Jukić from before the war. The Accused lived in the village of Ometala, with his grandmother Mara or Anđa. As far as he could remember, the Accused had a brother and a sister. Before the war, when there were less land-line phones in Prozor, his grandmother would come to his (witness’s) parents’ house to receive calls from Germany. The Accused, whom the witness identified and showed in the courtroom, would usually come with her.

150. Witness Džafer Kaltak described the position of the room where Ibro Pilav was interned in relation to his classroom. He stated that Ibro was not with him in the classroom, but in a room next to the toilet. Considering that the door of his classroom was slightly opened, the witness could see from his place the toilet door and the door of the classroom next to the toilet. The witness saw Željko Jukić taking Ibro towards the toilet, and then he heard screams and shouts from that direction. After around 30-45 minutes, the witness saw Ibro Pilav again; his whole body was in cuts and carved crosses.

151. Witness Kaltak heard that, in addition to Edis Omanović, Šerif Čiča too was taken away from the other classroom, but he was not certain if that was his real name. Six or

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<sup>56</sup> Witness Džafer Kaltak was heard at the hearing held on 4 October 2012.

<sup>57</sup> Photo-documentation No. 16-13/1-7-149/11 of 27 December 2011, tendered as Prosecution Exhibit (T-7).

seven men were taken away on that night, but the witness could not remember their names. Those men never came back, and no one has seen or heard them ever since.

152. Responding to the Prosecutor's question, witness Kaltak stated that, in addition to the statement he had given at the BiH Prosecutor's Office, he also gave a statement to an international prosecutor in the case of *Nikola Marić*. The witness stated he made no mention of Željko Jukić in this statement because no one had asked him anything about Jukić. However, in a statement given to the BiH State Security in 1995, the witness responded to the questions related to the referenced events, and mentioned the accused Željko Jukić as a person who had taken Edis Omanović away<sup>58</sup>.

153. **Witness S2**<sup>59</sup> testified that he was transferred from the Fire House to the Secondary School Center in early July 1993, but he could not specify the date. He was placed in a classroom on the upper floor together with Halid Pilav, Ibro Pilav, Vahid Berić, witness S6 and other detainees.

154. Witness S2 recalled that, in early August, during the night, the Accused came to their classroom, together with three soldiers in uniforms. They requested the detainees to hand over their golden jewelry, money and everything they had on them and put it all on a certain place. The light in the classroom was off, but the light in the hallway was on, so it was visible in the classroom. One of the soldiers held a flashlight, walked from one detainee to another and lighted them up, asking for their names. The witness stated that he did not see Željko Jukić at the time, but that he recognized him by his voice when he asked about Vahid Berić. When Berić responded, the Accused told him to come out. Vahid Berić did so; he went out and no one has seen him ever since.

155. Witness S2 explained that he had known the Accused from his birth, and mentioned the names and details he knew in relation to the Accused's family life. Then the witness identified the Accused in the courtroom.

156. Witness S2 also stated that, on this very night, but before the incident with Vahid Berić, Ibro Pilav, who just like witness S7 (whom he had seen in the Secondary School Center), was hiding in the other classrooms because the Accused was looking for him to kill him. Ibro Pilav was brought back to the classroom, his body all in cuts. He was subsequently again taken out of the classroom and he never returned. On that very night, Mirsad Pilav, who subsequently got killed, had been taken out, as well as one Čiča, whose

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<sup>58</sup> These two records were not tendered as evidence.

<sup>59</sup> Witness S-2 was heard at the hearing held on 13 September 2012.

name the witness did not remember. The witness stated that five men were taken away on the referenced night.

157. Having analyzed Witness S2's evidence, the Appellate Panel too concluded that the facts presented by this witness regarding the decisive facts did not contradict the testimonies of the previous witnesses, who have consistently described the way in which the accused Željko Jukić, together with other soldiers, undertook the prohibited acts against Vahid Berić and Ibro Pilav, who had been taken from the SSC, never to return. Since the other adduced evidence did not bring into doubt the testimony of this witness, the Panel has accepted it as fully reliable and accurate.

158. Witness **Hamdo Kaltak**<sup>60</sup> testified that he had lived in his own house in Prozor, together with his wife and minor son Džafer, until the night of 31 July/1 August 1993, when soldiers of the HVO took him away together with his son and the other men from the villages of Gorice, Lapsunj, Varvare and other surrounding villages, and detained them at the Secondary School Center. Upon their arrival in the SSC, the witness and his son Džafer were placed in a classroom on the upper floor, together with Alija Hujdur, Enes Grcić, Hamdo from Gorica, Edis Omanović and many other villagers from different villages.

159. Witness Hamdo Kaltak described the incident when Edis Omanović was taken away. While they were lying, they suddenly heard shouting and 5-6 HVO soldiers entered the classroom, including the accused Željko Jukić, who held a flashlight in his hand. There was no light in the classroom itself, but the light was on in the hallway and protruded into the classroom. Thus, he could see Željko Jukić whom he had known. The witness stated that everyone called the Accused '*grandma's Željko*', and he knew that the Accused had lived in Ometala with both his grandmother and uncle.

160. When the Accused entered the classroom with the flashlight, everyone was in fear. After he had lighted Edis Omanović up, he grabbed his sleeve and told him: "*You, get out!*" The young man stood up, went out, and he never saw him again. Witness Hamdo Kaltak also confirmed the statements of the other witnesses that five detainees had been taken away on that night. The witness mentioned the name of a person whose last name he believed was Bajrić (but whose first name none of the witnesses mentioned), obviously implying Vahid Berić, who had been taken out of the classroom exactly in the way the other witnesses consistently described. Among those five men taken away, the witness

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<sup>60</sup> Witness Hamdo Kaltak was heard at the hearing held on 4 October 2012.

mentioned Mirsad Pilav who had successfully escaped from Duška kosa, but subsequently got killed in the place of Here.

161. Witness **Alija Hujdur**<sup>61</sup> testified that, during 15 July, he was taken out from the house by two HVO military police officers, with white belts and HVO insignia, and brought to the Secondary School Center in Prozor, which was crammed with Bosniak men. Witness Hujdur was placed in a classroom where Ekrem Bećirović, Damir Hadžić, Samir Hadžić, Kulagić, Kulagović, Hamdija Kaltak, his son Džafer Kaltak, Edis Osmanović with whom he attended karate trainings, and other men he had known only by sight as he went to Sarajevo after completing his primary school education, had been already detained. The witness confirmed the statement of Džafer Kaltak that Edis Omanović sat on the other side of the classroom, opposite to the witness, and near Džafer Kaltak and Hamdija Kaltak.

162. Describing the further development of the events, witness Alija Hujdur stated that, perhaps fifteen days after his arrival in the school, during the night, when the lights in the classroom were off, but the light came through the windows mounted between the classrooms and the hallway, they heard shouts in the hallway and the names of Ibro Pilav, Mirsad Pilav, Ševko Čiča, and Vahid Berić called out. Some men, two-three of them, entered the classroom, and walked with a flashlight from one *head to another*, lightening up the detainees. The witness saw one of those men kicking someone, telling him: “You, get up!” After they left the classroom, the witness saw that Edis was missing. Immediately thereafter, he learned from the other detainees positioned closer to the place where Edis was positioned, that they recognized the voice of one Željko Jukić, whom the witness had not personally known.

163. Witness **Esad Brkić**<sup>62</sup> testified that, in early August 1993, he was brought to the Secondary School Center and placed in a classroom located at the lower side of the school, further away from the entrance. The witness sat near his neighbor Alija Hujdur. There were also Hamdija Kaltak, his son Džafer and Edis Omanović. Similarly to witnesses Hamdija Kaltak, Džafer Kaltak and Alija Hujdur, witness Esad Brkić described the way in which Edis Omanović was taken away. The witness stated that, it was during the night when an HVO soldier came with a flashlight in his hand into the classroom, where the light was off, and, walking from one to another detainee laying on the floor, illuminated their faces. When the soldier approached Edis Omanović, who was in the opposite part of the classroom, he kicked Edis and the witness heard him saying: “*You,*

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<sup>61</sup> Witness Alija Hujdur was heard at the hearing held on 4 October 2012.

<sup>62</sup> Witness Esad Brkić was examined at the hearing held on 11 October 2012.

*stand up and get out*". Witness Esad Brkić stated that he did not see the person who had taken Edis out, because the light coming through the window above the classroom door was not sufficient for him to identify the person in question. Edis went out, and the soldier told the other detainees to put their gold, jewelry and watches down in the center of the classroom where a tent-half was placed. Then a member of the HVO came in and collected it all. Confirming the statements of witness Alija Hujdur, the witness stated that a couple of days later, the detainees spoke among themselves that Edis Omanović had been taken away by Željko Jukić. No one has ever seen Edis after he had been taken away. Witness Esad Brkić stated that he had not known the Accused, and that he saw him for the first time in the courtroom.

164. Witness **Esad Vugdalić**<sup>63</sup> was detained at the Secondary School Center in July or August 1993, but he could not specify the date. He was placed in a classroom located on the upper floor, on the right side (of the hallway). The witness could not recall the date when he was brought to the SSC. He responded to the Prosecutor that Mirsad Pilav, Edis Omanović, Berić Vahid, Bajro Pilav were not with him in the classroom. The Panel has therefore found that the witness was, most likely, brought to the SSC after 3 August 1993, when he learned from the detained civilians that the referenced persons had been taken away by *Željko Jukić and others*, and that the persons taken away had never appeared among the detainees again.

165. **Witness A-1**<sup>64</sup> testified that, following his arrest, he was taken to the Secondary School Center in Prozor, where he saw a large number of detained Muslims. The witness stayed there until 8 January 1994. He was interned in a classroom on the upper floor, together with Omer Bektaš, Mirza Bektaš, Mirso Pilav, Ševko Čiča and many others whose names he did not remember.

166. Responding to the question as to what happened with Mirsad Pilav and Šefik Čiča, the witness stated that the accused Željko Jukić had come to the classroom with two soldiers, called out Mirso Pilav and Šefik Čiča and took them out of the classroom.

167. Speaking about the concrete situation, the witness stated that, when he called out Mirsad Pilav, the Accused made comments such as *"You are a good singer, and you walk/dance on the tables"*, etc., and took him out of the room. After around an hour, the accused Željko Jukić came back to the classroom, asked for Šefik Čiča and took him out

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<sup>63</sup> Witness Esad Vugdalić was examined at the hearing held on 11 October 2012.

<sup>64</sup> Witness A-1 was heard at the hearing held on 18 October 2012.

of the room. None of these two men ever returned. It was only after the war that the witness learned they had been killed.

168. Witness A-1 did not know the names of these two soldiers, he only knew Željko Jukić. There was no light in the classroom when they came in, but the light in the hallway was on, and the light passed through the upper glass so it was visible in the classroom. The witness remembered that the Accused wore a uniform, but since it was dangerous to look at those men, he could not identify its color. The witness however stated that they sometimes wore black uniforms and sometimes camouflage ones.

169. Witness A-1 stated he had known Željko Jukić well, since his childhood and school days. Like the other witnesses who knew him, this witness too disclosed the information he knew, *inter alia*, that the Accused had lived with his grandmother, and that his parents had worked in Germany. The witness used to see him in a uniform during the war, but not quite often. The witness identified the Accused in the courtroom.

170. Witness A-1 was presented with the discrepancies in his statement given to the Prosecution in the investigation<sup>65</sup> where, contrary to what he said at the main trial, he did not mention that two soldiers had come together with the Accused into the classroom from which Mirsad Pilav and Šefik Čiča were taken out. The witness explained he did not know those soldiers, and that, since he knew only the accused Željko Jukić, he believed it was sufficient to mention just the one he had known. The witness explained the discrepancies in the statements given in the investigation<sup>66</sup> and at the main trial in the part relating to the sequence of Mirsad Pilav's and Šefik Čiča's abduction. He stated that, when he gave his statement at the time, like today too, the sequence in which they were taken away was irrelevant to him, in relation to the mere fact that they were taken away. In the witness's opinion, it was not important who was taken out first.

171. Witness A-1 was also presented with the examination record made in the Public Security Station in Prozor in 1995.<sup>67</sup> The witness explained that, in the referenced statement, he did not speak about the above described events since no one had asked him about them, so he did not mention them. In addition, the witness was afraid of how one or the other ethnic group would react to his testimony, considering that he was a member of the HVO, so he gave the statement only in relation to the circumstances he was questioned about.

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<sup>65</sup> Witness Examination Record, T20 0 KTRZ 0000663 10 of 4 March 2011, tendered as Prosecution Exhibit (T-9a)

<sup>66</sup> *Ibidem*.

<sup>67</sup> Witness Examination Record, No. 64/95 of 18 May 1995, Public Security Station Prozor, tendered as Prosecution Exhibit (T-9).

172. Taking into account the explanations the witness gave in relation to the discrepancies between his statement given during the investigation and the one given at the main trial, the Appellate Panel too, just like the Trial Panel, is satisfied that as the then member of the HVO, the witness is obviously still in fear of possible reactions of his fellow-citizens, Croats and Bosniaks, and that he therefore sought the Court to grant him protective measures so that he could testify safely and without any fear. The witness's consistent position that it was important to mention only the names of the people he knew, and that the sequence in which the detainees had been taken out was never important to him because the result was the same – they were taken out of the room, is reasonable, logical and, in relation to the decisive facts, consistent with the testimonies of the previous witnesses, and therefore acceptable for the Panel. In view of the foregoing and the fact that the witness's evidence was not brought into doubt with the other adduced evidence, subjective and objective alike<sup>68</sup>, this Panel has accepted it as authentic and true as well.

173. Witness **Dževad Kovačević**<sup>69</sup>, examined by the Appellate Panel too, testified that, when the war broke out, he was in the village of Donji Lug, that Muslim men from the village were taken to the Secondary School Center, and that he hid in the woods until 7 September 1993 to avoid being taken away. Munib Bećirović, Nazif Marić, Halil Bajrić, Sulejman Barić, Sule and Meho Bajrić hid in the woods together with him.

174. Remembering Mirsad Pilav, witness Kovačević stated that, in early August, most likely on 3 August 1993, he met him (Pilav) in the woods in a very bad condition, with a swollen face and injuries all over his body. Mirsad Pilav told the witness that he had escaped the summary execution at Duška kosa, that Papak, Željko Jukić and a third man unknown to him had taken him out of the SSC for execution, and that Ibro Pilav and Vahid Berić had been taken out together with him. First those two were taken out, and the third person, whom Pilav did not know, came subsequently, lighted him up with a flashlight and told him: "*Singer, you are coming with me*". They were driven by a vehicle make "Lada" to

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<sup>68</sup> Excerpt from the Register of Deaths for Mirsad Pilav of 11 April 2011, No. 02/1-15-7/2011 (Prosecution Exhibit **T-15**).  
Excerpt from the Register of Deaths for Edis Omanović of 5 April 2011, No. 02/1-15-89/2011 (Prosecution Exhibit **T-17**).  
Decision Confirming the Death of Ibro Pilav of 14 October 1996, No. R2-70/96, Basic Court in Bugojno (Prosecution Exhibit **T-17a**).  
Excerpt from the Register of Deaths for Ibro Pilav of 5 April 2011, No. 02/1-15-6-2011 (Prosecution Exhibit **T-18**).  
Excerpt from the Register of Deaths for Vahid Berić of 5 April 2011, No. 02/1-15-91/2011 (Prosecution Exhibit **T-19**).  
Excerpt from the Register of Deaths for Šefik Čiča of 5 April 2011, No. 02/1-15-92/2011 (Prosecution Exhibit **T-20**).  
Forensic evaluation by forensic expert, Dr Vedo Tuco, M.D. of 27 October 2011, Tuzla (Prosecution Exhibit **T-21**).  
List of identified persons, List of the persons missing from the area of Prozor Municipality, Institute for Missing Persons of Bosnia and Herzegovina, No. 02/1-40-1-6098-2/11 of 15 March 2011 (Prosecution Exhibit **T-22**).  
List of the killed and missing civilians from the territory of Prozor Municipality from 23 October 1992 until the war end, The Hague number: RR 276882 (Prosecution Exhibit **T-138**).  
List of the missing persons in the BiH territory with special reference to Prozor Municipality, issued by the International Red Cross (Prosecution Exhibit **T-139**).  
The events that occurred in the Prozor municipality, collected by the State Commission for the Collection of Facts about War Crimes of 26 April 1995 (Prosecution Exhibit **T-141**).

<sup>69</sup> Witness Dževad Kovačević was heard at the hearing held on 1 November 2012.

the Duška kosa garbage dump. Since they could not all sit in the car, the third man packed Pilav in the car trunk. Further recounting Mirsad Pilav's words, witness Kovačević stated that, once Mirsad got out of the car trunk, he saw Ibro Pilav standing on a concrete wall, with his hands lifted up on his head, and Željko Jukić standing in front of him, with a rifle pointed at him (Ibro). Mirsad was ordered to take out all the items he had on him, and then to stand next to Ibro. Having seen Jukić's attention drifting from Ibro to a man being taken out of the car, Mirsad used the moment, threw himself down the slope, rolled down and fell to the bottom of the garbage dump.

175. Having analyzed the discrepancies in this witness's statements, the Appellate Panel, just like the Trial Panel, also did not accept the testimony of this witness as authentic and reliable.

176. Reviewing the statement the witness gave on 14 April 2003 before the investigative judge of the Cantonal Court in Mostar<sup>70</sup>, the Appellate Panel concluded that Dževad Kovačević did testify in the *Nikola Marić* case, but also that he was examined in relation to the circumstances surrounding the event he had discussed with Mirsad Pilav, but that at the time he stated he did not recall the names or full names mentioned by Mirsad Pilav. As opposed to the foregoing, in the statement he gave to the BiH Prosecution, on 17 January 2011<sup>71</sup>, the witness remembered many details, stating that, whenever he was not certain, he would check his information by speaking with the persons who at the time were detained at the Secondary School Center. The witness explained and justified the inconsistencies in his statements, and stated that he had feared for his own safety and the safety of his family, which he repeated at the trial before the Appellate Panel too. The Panel, however, did not accept them as a convincing argument, considering that the witness offered no convincing and corroborating arguments along this line, and also that the course of the evidentiary proceedings did not result in any other conclusion contrary to the presented one.

177. Witness **Munib Bećirović**, examined by the Appellate Panel on 13 January 2015, testified that when the war broke out, he had been in the village of Lug, and that during the abduction and persecution of the population from the village, he hid in the woods together with his uncle's son, Nazif Marić, Mujo Čiča, and Dževad Kovačević. The witness also testified that, on 5 or 6 August 1993, they found Mirsad Pilav exhausted and sick, and that he already knew Mirsad had escaped an execution and was hiding in the woods.

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<sup>70</sup> *Idem.*

<sup>71</sup> Prosecution Exhibit T-11.



178. Witness Bećirović learned from Mirsad Pilav that Mirsad had been taken to the Secondary School Center and that, on 3 August 1993, between 9. p.m. and 11 p.m., Željko Jukić, Papak Vinko and other soldier entered their room, walked around, looked closely at them, lighted them up with a flashlight and went out. Mirsad told him that, after several minutes, a soldier whose name he had not known entered the room, lightened Mirsad Pilav with flashlight and told him: “*Singer, get out*”, and that, once he was in the hallway, Ibro Pilav and Vahid Berić had already been there.

179. All three of them were taken out of the school, and put in a car, where Vinko Papak sat in the driver’s seat, the accused Željko Jukić next to the driver, and Berić and Pilav in the back seat. Mirsad recounted that since there was no more space in the car, he was squeezed into the trunk of the vehicle make “Lada” and they started off. Once the vehicle stopped and he got out of the vehicle, an unidentified soldier told Mirsad to stand on a small wall, where Ibro Pilav and Vahid Berić had already been standing. At the moment when he took out of his pocket all he had in it, and when he was told to put his hands at the back of his head, above his head, one of the soldiers, whose name Mirsad had mentioned but the witness forgot, cocked his rifle and pointed it at Mirsad or someone else, he was also uncertain. Mirsad seized the moment, threw himself down the slope and rolled down to a creek, whereupon, according to Mirsad Pilav, he heard bursts of fire and hand-grenade sounds coming from behind him.

180. Witness **Muharem Konjarić**<sup>72</sup> knew Mirsad Pilav well. Testifying about his experiences, the witness stated that, before he went to the village of Here, he had seen Mirsad Pilav at Lug on 8 September 1993 (the witness came into the village of Here on 9 or 10 August 1993). When they met, Mirsad Pilav told the witness that, in the evening hours of 3 August 1993, while he was detained at the SSC, Željko Jukić, Vinko Papak and a third person whose name he did not know but knew him as a former conductor in the *Putnik* Company, came to him. Željko Jukić told him: “*Come on, you singer, stand up*”. Mirsad stood up, whereupon Vahid Berić and Ibro Pilav also stood up, and the Accused took them out into the hallway.

181. The accused Željko Jukić took them out of the school and brought them to a car. As far as witness Konjarić remembered, Mirsad told him it was a black vehicle make “BMW”. The Accused put Mirsad into the trunk, and the other two men in the back seat. The vehicle stopped at the *Duška kosa* garbage dump. The Accused first took Mirso Pilav

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<sup>72</sup> Witness Muharem Konjarić was heard at the hearing held on 20 January 2015.

out of the car and escorted him to a wall, then the other two detainees, but he could not remember the sequence. According to Mirsad, all three of them had their backs turned towards a creek, down to the garbage dump. Mirso told the witness that, at the moment when Željko Jukić turned towards Vinko Papak, he (Mirso) threw himself down the slope, whereupon fire was opened and hand grenades thrown, but that only iron particles scratched him while he tumbled down the slope. Mirso ended up in the water. In order to avoid being ambushed on the road towards the village of Duge, he sat on a rock all covered in blood. The witness recalled Mirso telling him that, around an hour later, the second group arrived there. He heard bursts of fire and the sound of a car driving back towards Prozor.

182. Witness **Šemsa Bećirović**<sup>73</sup> testified she had lived in the village of Lug when the war broke out. She lost her husband, Ibro Bećirević, her father and a brother in the war. Her husband was taken away together with the other men from her village, on 17 July 1993, and detained at the SSC. The witness testified that, on the following day, or two days thereafter, she went to look for her husband. Guards allowed her to enter the school and this was the last time she saw him. The witness stated that, in early August 1993, she went to the school again. She learned there that her husband had been taken to Uzdol to perform forced labor, and that, according to Selim Bećirović who had also been in Uzdol, he was killed there by members of the HVO. On that occasion, the witness met Arif Pilav in the hallway, and he told her that the accused Željko Jukić had taken away her brother Ibro Pilav, who had been also detained at the school, but she had not known that until then. When the survived camp detainees were released from the camp, witness S7 and some others confirmed that Željko Jukić had taken her brother out of the Secondary School Center. The witness found her husband, buried him and received a certificate confirming he had died a violent death.

183. Witness Š. Bećirović testified that she searched for further information and that the camp warden also told her that the Accused had taken her brother Ibro Pilav away. Once she arrived in the village of Duge, the witness learned that the accused Željko Jukić and Vinko Papak had taken to the *Duška kosa* site her brother Ibro Pilav, Vahid Berić and Mirsad Pilav, who had escaped by jumping down the garbage dump slope. The witness also learned that a few Muslims had been hiding in the woods, including Munib Bećirović, Dževad Kovačević, Halil Bajrić and others. Thus she learned that Mirsad Pilav was alive. The witness spoke with Munib Bećirović, and he told her what Mirsad had told him: that

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<sup>73</sup> Witness Šemsa Bećirović was heard at the hearing held on 13 January 2015.

Željko Jukić, Vinko Papak and a third person whose name even Mirso did not know, took Ibro Pilav and Vahid Berić to the *Duška kosa* garbage dump. The witness asked Munib to take her to Mirsad Pilav, however, since Mirsad's health condition was bad, she did not reach him.

184. It follows from the substance of the investigative statement given by witness **Zlata Omanović**<sup>74</sup>, which was read out before the Appellate Panel, that when the war broke out she lived in Prozor with her husband Mehmed Omanović and her sons Edis Omanović and Armin Goran Omanović. She stayed there until early April 1993, when she went to visit her sick mother in Mostar together with her younger son. Since the conflict in Jablanica broke out at the time, she could not go back any more. Her husband and her older son Edis stayed in Prozor. The witness saw her husband for the first time in mid-October 1993, after he was released from the Dretelj camp. Her husband told her that, on 15 July 1993, members of the HVO took him to the Secondary School Center, which was a camp for Bosniaks, and that in the evening hours of the same day they brought there their son Edis, who stayed detained in the school even after her husband had been taken away, first to Ljubuški, and thereupon to Dretelj. The witness's husband first learned from Smail Zaimović in Jablanica that their son Edis had been killed. Inquiring about their son's destiny, the witness's husband went to the village of Šćipe, where the persons he knew had been detained at the school told him that Edis had been taken out of the camp on 3 August by the accused Željko Jukić and Vinko Papak. Having learned that Mirsad Pilav, who had been taken out the same night like Edis, was in the village of Šćipe, the witness's husband went there to look for him. Mirsad told him that he had not been taken out in the group with Edis, but with Vahid Berić and Ibro Pilav, that he threw himself down the garbage dump slope, that after around a half an hour, he heard a car arriving again at the *Duška kosa*, that he heard shooting and sounds of bodies rumbling down the garbage dump. Mirsad Pilav told him that they had been taken out by Željko Jukić, Vinko Papak and a conductor from Rumbok, whose name Mirsad did not know. Witness Zlata Omanović also stated for the record that she spoke with Mehmed Grcić, Hašim's son, the pre-war professor who had held practice lessons in the secondary school, and that he told her he had seen Željko Jukić taking Edis away, and that Željko could not hide as he knew his voice from the school, since he was his teacher.

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<sup>74</sup> Prosecution Exhibit AT-3a, No. T20 0 KTRZ 0000663 10 of 21 November 2011.

185. Witness **Enisa Pilav**<sup>75</sup> testified that, before the war outbreak, she lived in the village of Lug with her three children, mother-in-law and husband Mirsad Pilav, that is, until 17 July 1993, when members of the HVO entered the village. Most men from the village surrendered that day, and where thereupon transferred by trucks to Prozor and detained at the Secondary School Center, while a number of villagers hid in the woods. The witness went every day, together with other women, to the SSC to take food to her husband. On 3 August, however, they were not there anymore. A guard told the women they had been taken away by the police at 10:30 p.m. but not brought back. The women were presented with a notebook containing a list of names of Ševko Čiča, Edis Omanović, Osman Bajrić, Mirsad Pilav, Ibrahim Pilav and Vahid Berić, with a written note “*taken by the police at 10:30 p.m., not brought back*”. Witness Enisa Pilav learned after four days that her husband was alive, that he had been taken at the Duška kosa site for execution, but that he successfully escaped. The witness could not reach him because members of the HVO held the villages of Duge and Lug under their control. Ultimately, after ten days, the witness managed to meet her husband, who was in a very bad condition, his body all cut up.

186. Enisa Pilav’s husband told her that, in the evening of 3 August, when the lights were off, some men came in with a flashlight, walked from one detainee to another, reached him and told him to get up and go out. Once he was out in the hallway, he saw Vinko Papak, who was their neighbor, the accused Željko Jukić, and a third police officer unknown to him, who Mirsad believed was from Rubok. Mirsad asked Vinko Papak where he was taking him, and Vinko responded he was taking him for execution. A red vehicle make “Lada” was parked in front of the school. Vinko Papak drove the vehicle, Željko Jukić sat next to him, while Ibrahim Pilav and Vahid Berić sat in the back seat. The witness’s husband told the witness that he was placed in the car trunk since there was no space for all of them (in the car). The car stopped after a short drive, and Mirsad was told to get out. He saw they were at the Duška kosa garbage dump. When Mirsad got out of the trunk, he saw Ibro Pilav already standing on the edge of the garbage dump, with his hands behind his neck, and Željko Jukić standing in front of him, with a rifle pointed at him. Mirsad was told to stand next to Ibro, and Vinko Papak took a position in front of him (Mirsad), also with his rifle pointed at Mirsad. While they were taking out the third men, Vahid Berić, Mirsad used the moment of their inattention and jumped down the slope, fell down into a

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<sup>75</sup> Witness Enisa Pilav was heard at the hearing held on 24 February 2015.

creek, crossed to the other bank and survived. They opened fire and threw hand grenades at him.

187. Witness Enisa Pilav described her husband's further destiny. Mirsad told her that they drove the vehicle towards Prozor, and came back in a half an hour. Mirsad heard the shooting, and assumed that another group of men had been brought to the site. Thereafter, her husband headed off towards the village of Duge and the men hiding in the woods found him there. The witness stated her husband had been killed in the village of Here on 24 January 1994.

188. These facts presented by witness Enisa Pilav contradicted neither the testimonies of the witnesses who had eye-witnessed Mirsad Pilav being taken away from the Secondary School Center nor the testimonies of the indirect witnesses to whom Mirsad Pilav recounted his experience after they had found him in the woods.

189. Witness **Ibrahim Grcić**<sup>76</sup> testified he had lived in Prozor, or more precisely, in the village of Pograđe during the conflict between the ARBiH and HVO, when HVO soldiers detained him at the SSC, and released him after a day spent there. A day following his release, however, a small group of soldiers came to the village again, including the accused Željko Jukić, and took him again to the school where he stayed for two days this time. The witness stated that, while he was in the school, on 3 August 1993, in the evening hours between, 9:30 p.m. and 10:00 p.m., a vehicle stopped in front of the school, and the detainees shouted the police had arrived. The detainees moved from the hallway to the classrooms and turned the lights off. Witness Grcić was in one of the classrooms on the upper floor, with the windows overlooking a parking lot, and the main entrance to the school, so he could see the vehicle. The witness was uncertain about the make of the vehicle, but most likely it was a vehicle make "Lada". Witness Grcić further testified that the Accused climbed up to the upper floor along with Vinko Papak, whom he had known because he originated from the same place as the witness's mother. He was older than the witness, and the witness used to play football with him. The witness saw when they passed along the hallway as he stood by the door. The witness heard the Accused calling out the names of Ibro Pilav and Mirsad Pilav – *Singer from Lug*, and asking where they were, whereupon he withdrew deeper into the room. The witness learned from other inmates that the accused Željko Jukić had cut Ibro Pilav with a piece of glass and drawn

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<sup>76</sup> Witness Ibrahim Grcić was heard at the hearing held on 24 February 2015.

crosses on his body, but he did not see that, as he did not see the Accused taking Ibro and Vahid out of the classroom.

190. Witness Grcić saw through the window the Accused, Ibro, Vahid, Vinko and a soldier unknown to him standing by the car. A guard noticed the detainees were watching them, and ordered them to withdraw from the windows. The witness, however, looked through the window again out of curiosity, and saw that Ibro Pilav and Vahid Berić had already been inside the car, while Mirsad Pilav was out in the car trunk. The witness also saw when Vinko Papak sat in the driver's seat, while the accused Jukić and the third man unknown to him were still standing by the car. When the guard again shouted "*Get inside! What are you looking at?*", the witness moved away from the window and heard that the "*engine was started and the car drove away.*" He has not seen Mirsad Pilav, Ibro Pilav and Vahid Berić ever since.

191. The Prosecutor asked witness Grcić if other persons were also taken out on the referenced night. The witness responded that he learned from the other detainees that, an hour later on that very night, the vehicle came back and that Edis Omanović and Šefik Čiča were taken away that time. The witness, however, did not see this, but learned about the incident from the other detainees.

192. Witness Grcić stated he had stayed in the Secondary School Center in the period between 15 and 20 August 1993, after which he was, as a minor, released, together with sick persons, after a doctor and a commission had visited them in detention.

193. Regarding the decisive facts, this witness's testimony does not contradict the testimonies of the other witnesses who gave evidence about the same circumstances, nor was his testimony brought into question by the adduced evidence of documentary nature. In this Panel's view, the witness is consistent and decisive in what he speaks about, which is why his testimony is accepted as testimonial evidence.

194. The Appellate Panel has evaluated the testimonies of all the witnesses, individually and in combination, and in the context of the adduced documentary evidence. Thus, the Appellate Panel concluded beyond a doubt, as explained in detail in Section 3 of the convicting part of the Verdict that, in the evening hours of 3 August 1993, along with Vinko Papak and an unidentified member of the HVO, the accused Željko Jukić, came several times to the Secondary School Center in Prozor, took detainee Ibro Pilav out of one of the classrooms, brought him to the toilet, beat him up, and cut him up all over his

body, and brought him back to the same classroom, and that on the same night he again took him out together with Vahid Berić and Mirsad Pilav, placed them all in a motor vehicle make "Lada", drove them to the *Duška kosa* garbage dump, and when they reached the site, took Ibro Pilav and Mirsad Pilav out of the vehicle, forced them to stand on the edge of the garbage dump slope, whereupon Mirsad Pilav was ordered to stand by Ibro's side, and when Vinko Papak and an unidentified member of the HVO went back to fetch Vahid Berić, Mirsad Pilav used the inattention of the accused Željko Jukić, suddenly jumped down the slope of the garbage dump, avoiding the fire opened at him, whereupon he again heard the shooting and sounds of two bodies rumbling down the slope, since when Ibro Pilav and Vahid Berić have been unaccounted for, as well as Edis Osmanović and Šefik Čiča, whom the accused Željko Jukić, along with Vinko Papak and an unidentified member of the HVO, on the same evening, took out of the classroom in the Secondary School Center in Prozor and drove to an unknown location, since when Ibro Pilav, Vahid Berić, Edis Omanović and Šefik Čiča have been unaccounted for, and their bodies have never been found.

195. The examined witnesses testified in the same way about the decisive facts, and their testimonies, in their entirety, provide a clear picture of the events that occurred on 3 August 1993 in the SSC and of the role the Accused played with the other persons in undertaking the prohibited acts against the detained Muslims, which resulted in the forcible disappearance of four men whose traces have been lost ever since.

#### **4. Section 4 of the Operative Part of the Verdict**

*The Prosecution's Indictment charged Željko Jukić that, on an unspecified date in late August 1993, together with other HVO members, he arrived in the village of Gornji Višnjani, went to Mustafa Lulić's house, where he physically ill-treated Ibrahim Lulić and by firing from his pistol into the ceiling, he attempted to take money from the aggrieved party, but, failing in his attempt to get the money, he went out of the house, where he found Ibrahim Lulić's parents, Mustafa Lulić and Kada Lulić, and told them he would kill Ibrahim unless they gave him the money, so that Kada Lulić offered him an unspecified amount of Croatian Dinars. That same day, he approached the aggrieved party Mustafa Lulić on the road between Gornji and Donji Višnjani and asked him for money, but when Mustafa told him he did not have any money, the Accused kicked him in his chest so that he fell on the ground and, after that, Mustafa gave the Accused an unspecified amount of German Marks. All this caused physical and psychological trauma to the aggrieved parties.*

## Conclusions of the Appellate Panel

196. This Panel is satisfied, based on the testimonies of the injured party Ibrahim Lulić and witness Amir Konjarić, as described in more detail in Section 4 of the Operative Part of the Verdict, that the Accused Željko Jukić committed persecution by the acts of inhumane treatment of the injured parties Ibrahim Lulić, Mustafa Lulić and Kada Lulić in late August 1993.

197. The injured party-witness **Ibrahim Lulić**<sup>77</sup> testified that he lived in his village of Gornji Višnjani until 28 August 1993 when he was expelled. Two members of the HVO came to his house on the referenced day, wearing white belts and caps. The witness recalled that, upon entering his house, one of the two soldiers asked for the money the witness did not have. After the witness had told them he had no money, the soldier took out his pistol and fired a round into the ceiling. The witness stated that all this occurred one meter away from him. Witness Lulić described the soldier who had done this as a tall man - around 1.80 m height, blond, with a wide forehead and a slightly flattened nose. Having fired a round, the soldier told witness Lulić to stay in the room, and went out. He came back several minutes later and told the witness to get ready to go. Leaving the house, the witness saw his father, sisters and mother, Kada Lulić in front of the house, who told him that the soldier had asked money from her too, threatening he would slit her son's throat. The witness stated that the soldier did not take the money his mother had offered to him as it was of no value for him.

198. Witness Lulić further testified that they all gathered, and together with some other families from his village headed off towards the village of Donji Višnjani. On the road towards Donji Višnjani, they were caught up with a vehicle, and the same soldier who had abused them in the house and fired up to the ceiling came out of the vehicle. Immediately upon leaving the car, the soldier grabbed the witness's father, Mustafa Lulić, asking for money. When the father told him he had no money, the soldier kicked him in his chest, and his father fell on the ground. The soldier then ordered him to take off his socks, and Mustafa Lulić did so. There was some money in the socks, some marks, but the witness did not know exactly how much. The soldier seized the money, went back to his car and drove towards Donji Višnjani.

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<sup>77</sup> Witness Ibrahim Lulić was heard at the hearing held on 27 January 2015.



199. Witness Ibrahim Lulić learned about the identity of the soldier who had entered his house, fired up into the ceiling, requested money from his mother Kada Lulić by using threats, and seized money from his father, Mustafa Lulić, by physically abusing him, only after he had reached the place of Urove after running for 2.5 km, where they found the Muslim population gathered on the road, some of them still coming in escorted by HVO soldiers. Among the soldiers in the escort, the witness recognized the soldier who had undertaken the described acts against him and his parents. Amir Konjarić was also among the people still arriving in. The witness asked him if he knew the name of the referenced soldier. Konjarić responded: “*Well, that’s Željko Jukić*”.

200. Witness **Amir Konjarić** confirmed he had met and spoke with Ibrahim Lulić. Witness Konjarić was heard at the main trial on 10 January 2013. Witness Amir Konjarić testified that, after being expelled from his village on 28 August 1993 (and after the events the Panel will deal with and explain in more detail in Section 5 of the convicting part of the verdict), he came with the remaining population from his village to the village of Urove, where he found women, children and others who had taken the other road. The witness spoke there with Ibrahim Lulić, who had addressed the witness by asking: “*Who is that one? He took money from my father?*” The witness told Ibrahim that the person he asked about was Željko Jukić. The witness stated he had known the accused Željko Jukić from before, that they used to meet each other in Prozor, and that he personally met him on 17 April 1993, when HVO soldiers had for the first time entered his village. The witness identified the Accused in the courtroom.

201. The testimony of witnesses Ibrahim Lulić and Amir Konjarić, individually and in combination, provides a clear picture of the development of the critical incident, as well as a sufficient extent of likelihood to conclude beyond a reasonable doubt that, in the way described in Section 4 of the Operative Part of the Verdict, by the acts of inhumane treatment, the accused Željko Jukić caused considerable mental and physical pain to the injured parties Ibrahim Lulić, Mustafa Lulić and Kada Lulić.

## 5. Section 5 of the Operative Part of the Verdict

*The Prosecution’s Indictment charged Željko Jukić that, on an unspecified date in late August 1993, in the village of Donji Višnjani, Prozor Municipality, the Accused took Juso Konjarić out of the house, knocked him down on the ground with the intention to slit his*

*throat with a big knife, but an unidentified HVO soldier stopped him. After that, while participating in the escort of men from the village of Višnjani to the place called Potok, he singled out Amir Konjarić from the column and hit him with a rifle butt and punched him four times in the body and face, which caused his heavy bleeding, then he singled out Nazif Konjarić from the column and fired above his head from a big black pistol, after which he turned towards Suljo Konjarić and fired from the same pistol below Suljo Konjarić's right arm, at the level of his upper arm, the bullet passed below his arm and hit a big suitcase he carried on his back. All this caused physical and psychological trauma to the aggrieved parties.*

## **Conclusions of the Appellate Panel**

202. The finding of fact that, in the way described in more detail in Section 5 of the Operative Part of the Verdict, the accused Željko Jukić committed persecution by the acts of inhumane treatment of the aggrieved parties Juso Konjarić, Amir Konjarić, Nazif Konjarić and Suljo Konjarić, is based on the evaluation of the testimony of the witness-aggrieved party Amir Konjarić, and witness Muharem Konjarić.

203. Witness **Amir Konjarić**<sup>78</sup> testified that the critical incident occurred after the arrival of HVO soldiers in his village of Donji Višnjani in late August 1993, when the population was ordered to gather at one place and wait for the arrival of people from the village of Gornji Višnjani. The elderly gathered in front of Juso Konjarić's house. The witness recalls that, following an order of an HVO soldier, he went to wash Nikola Marić's vehicle, and that thereupon he went to Juso's house in front of which the remaining population gathered. In front of the house, from the distance of around 10-15 meters, he saw Juso and Željko Jukić holding in his hand a big knife, standing above Juso. The witness explained the position in which the accused Jukić stood in relation to Juso Konjarić, namely that Juso was on his knees, stretched backwards, while the accused Juso grabbed his shoulder holding a big knife in his hand. The witness stated he had averted his eyes and looked at them no more.

204. Witness Amir Konjarić further explained the sequence of events stating that the incident in front of Juso's house ended when an HVO soldier went to the place where the accused Jukić and the injured party Juso Konjarić were standing and prevented the Accused in his intent to kill Juso.

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<sup>78</sup> Witness Amir Konjarić was examined at the hearing held on 20 January 2015.

205. The witness stated that, following the incident in front of Juso Konjarić's house, the people gathered from his village were divided in two groups, one with the women, children and the elderly, and the other with able-bodied men. The witness was in a group of able bodied men which went along the road towards the place of Lug, together with his brother Enes, Džemal Konjarić, Suljo Konjarić and Hašim Osmić. The witness saw Željko Jukić and a person with the last name Zelenika following them in a vehicle. When they arrived in the place known as Potok, they were ordered to stop. Thereupon the witness felt three blows into his back with a rifle butt, as a result of which he stumbled. When the witness said he could not hold any further the dog previously handed over to him by a soldier, the accused Željko Jukić rotated him and punched him in his face as a result of which he started bleeding. The witness was certain that Željko Jukić had punched him in his face, but could not state with certainty who had hit him from behind since he did not see it.

206. Witness Amir Konjarić testified that, following the events in the place known as Potok, they were again halted at a drain, where they were abused and requested to hand over their money and gold. The witness noticed that, at one moment, the accused Željko Jukić turned around and singled out Nazif Konjarić aside, pointing at him a big, black pistol. *He saw with his own eyes the pistol firing towards Nazif and raising a trail of dust in the escarpment 10 centimeters away from Nazif's head.* The witness stated he had watched the incident from the distance of around five to six meters. At that moment, Amir's grandfather, Suljo Konjarić, shouted and Željko Jukić turned to him, and fired a round directly pointing at Suljo who had carried a big suitcase on his back. The witness stated that, at the level of Suljo's upper arm, a big hole was visible on the suitcase. The witness watched all this, and saw the whole from the same distance. They left this place running for 2.5 km towards the place of Usol.

207. According to this Panel, the evidence of witness Amir Konjarić is, with regard to the decisive facts, consistent with the evidence of witness Muharem Konjarić, who was also examined at the hearing held on 20 January 2015. Witness **Muharem Konjarić**, also originally from the village of Donji Višnjani, testified that in the second half of August 1993 the village population was expelled from the village by HVO soldiers. The witness fled to the woods beyond the village and watched a group of soldiers entering the houses, and heard the "*women screaming and children crying*". The witness also saw his villagers gathering in front of Juso Konjarić's house, and the men being separated and taken towards Potok. Among them, he saw Amir Konjarić, Hašim Letica, Suljo Konjarić, Ivo Letica, Hašim Osmić, and Safet Konjarić... The witness followed them through the woods.

The witness further testified that, standing some 50 m away, he heard two shots, about which witness Amir Konjarić also testified. Witness Muharem Konjarić testified that one round was *fired at Suljo Konjarić, into his suitcase*. The witness did not see which soldier fired the round, because he was in front of them, with his back turned against the soldiers, and he did not know who fired the second round and in which direction. The witness stated that the men from his village left the place running for 2.5 km towards the place of Usol.

208. With such a state of facts, contrary to the arguments of the Accused's Defense pointing to certain inconsistencies in the witnesses' investigative statements, the Appellate Panel completely accepted the testimony of the witnesses Amir Konjarić and Muharem Konjarić, which in their entirety provided a clear and comprehensive picture of the referenced event and the acts undertaken by the Accused, and who testified about only what they had seen, and showed no intention of incriminating the Accused with something they were uncertain about. Since there was no evidence to challenge the credibility and accuracy of their testimonies, it was concluded beyond a doubt that by the acts of inhuman treatment described in Section 5 of the convicting verdict, the accused Željko Jukić caused physical and mental pain to the injured parties Juso Konjarić, Amir Konjarić, Nazif Konjarić and Suljo Konjarić.

## **6. Section 6 of the Operative Part of the Verdict**

*The Indictment of the Prosecutor's Office charges the Accused Željko Jukić that on an unidentified date in the summer of 1993, in late afternoon hours, together with other members of the HVO, he came to the place of Lapsunj, Prozor Municipality, where he participated in the physical and psychological maltreatment of the remaining Bosniak population, predominantly the elderly, including Zuhra Berić and Mujo Pilav (deceased), whom he forced to sing HVO songs, and when the old lady Zuhra Berić could not pronounce [the acronym] HVO, he beat her against her body and she fell to the ground due to the force of the blows, while he kicked and beat the injured party Mujo Pilav with fists and other objects all over his body, the consequence of which was a physical and mental pain inflicted on the injured parties.*

## **Conclusions of the Appellate Panel**

209. The allegations from Section 6 of the convicting part of the enacting clause of the Verdict that, together with other members of the HVO, the Accused Željko Jukić

participated in the physical and psychological maltreatment of the remaining Bosniak population, including Zuhra Berić and Mujo Pilav, by beating them all over their bodies, were confirmed in a convincing manner acceptable to the Panel by eyewitnesses to the event, Mujo Perviz and Đula Berić-Sultanić.

210. Describing this event, witness **Mujo Perviz**<sup>79</sup>, stated that after the arrival of the HVO troops in his village of Lapsunj in the summer of 1993 and the departure of able-bodied men to the frontline, the population started hiding in the woods. He remembers that it was early evening when the HVO soldiers, including Željko Jukić, forced a young man to go from door to door and tell the remaining inhabitants to gather by a shop in the village. He knew the Accused from before, as he used to come across the Accused when passing through Ometala on his way to work. He remembered him as a problematic person even in that period. Describing the Accused's physical appearance from that period the witness said that he was quite short, with narrow pointed face and boxer's nose. He recognized him in the courtroom. Describing further events in the relevant time the witness recalled that he was watching from a forest, from a distance of 25 meters, the arrival of Zuhra Berić and Mujo Pilav, and heard when Željko Jukić told them to sing HVO songs. The witness stated that that was the moment when a conflict occurred between Zuhra and Jukić because Zuhra could not pronounce [the acronym] *HVO*, but uttered *Hv, Hv*. According to the witness, Jukić then started beating Zuhra, "*he first hit her with his fist, rifle butt, rifle, with all sorts of things, so the woman fell down unconscious*". The witness estimates that Zuhra was almost 70 at the time. The witness states that a similar fate befell on Mujo Pilav, who was also not able to pronounce *HVO* and whom Željko Jukić beat with his fist, rifle butt, "*he beat him with all sorts of things, the man lost his consciousness.*" All that lasted around 30 minutes, according to the witness. After Jukić left, the witness returned and took Mujo Pilav and Zuhra Berić to their homes.

211. The statement of witness Mujo Perviz is confirmed by witness Đula Berić-Sultanić with respect to the decisive facts, and the Defense did not challenge this witness' statement and credibility in the course of the proceedings, either.

212. Witness **Đula Berić-Sultanić**<sup>80</sup> stated that she had lived in her apartment in Prozor until June 1993 when she was expelled and when she returned to her native village of Lapsunj together with her mother. She said that she had known the Accused Željko Jukić since childhood for she had worked with his aunt. She identified him in the

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<sup>79</sup> Witness Mujo Perviz was examined at the hearing held on 27 January 2015.

<sup>80</sup> Witness Đula Berić-Sultanić was examined at the hearing held on 20 January 2015.

courtroom. In the period concerned, she used to see him on the occasions when the HVO troops entered the village, stating that *he always carried a rifle and wore a camouflage uniform and short-sleeved shirt or T-shirt.*

213. Witness Đula Berić-Sultanić stated that she was in a forest when a song was heard and when Željko Jukić hit an elderly woman who could not properly pronounce the word *HVO*, but shouted *AU, AU, AU*. She clarified that she had only heard a song but had not seen the Accused hitting Zuhra Berić, and that it was only on the following day that she heard from her neighbor that Željko Jukić had hit Zuhra Berić.

214. Following a comprehensive analysis of the respective statements of witnesses Mujo Perviz and Đula Berić-Sultanić, both individually and in terms of their correspondence with each other, the Panel fully accepted their statements as reliable and accurate, given that they testified about the decisive facts almost identically and that their statements were not contested by the other adduced evidence. The Panel, therefore, concluded that the Accused Željko Jukić carried out persecution, in the manner closely described in Section 6 of the operative part of the Verdict, by the acts of inhumane treatment of the injured parties Zuhra Berić and Mujo Perviz, due to which they suffered physical and mental pain.

## **7. Section 7 of the Operative Part of the Verdict**

*The Indictment of the Prosecutor's Office of B-H charges the Accused Željko Jukić that on 28 August 1993, together with other members of the HVO, he participated in an organized forcible transfer of the Bosniak population from the territory of Prozor Municipality, on which occasion, armed with an automatic rifle, he forced Bosniak civilians in the village of Lapsunj to leave their homes and board the trucks that had arrived before and by which they were transported to the territory under the control of the Army of B-H, and when the injured party Đula Berić pleaded with him to pass to her on the truck she was forced to board a plastic bag with essential items for her mother, he cursed God to her and hit her with a rifle butt against her shin, the consequence of which was heavy physical and mental pain inflicted on her.*

## Conclusions of the Appellate Panel

215. The Panel's belief that on 28 August 1993 the Accused Željko Jukić participated in an organized forcible transfer of the Bosniak population from the territory of Prozor Municipality during which he carried out acts of inhumane treatment of the civilian population in the village of Lapsunj in the manner closely described in Section 7 of the Operative Part of the Verdict is founded on the statements of the injured party Đula Berić-Sultanić and witnesses Mujo Perviz and Hamid Kmetaš.

216. Witness **Đula Berić-Sultanić** recalls that it was 28 August 1993 when HVO soldiers came to the village of Lapsunj, went from door to door and threatened the villagers that they all had to leave their homes or be killed. According to the witness, nine trucks with tarpaulins arrived in the village and some 500-600 refugees were boarded on them. She stated that she recognized the Accused Željko Jukić among the HVO soldiers who entered the village of Lapsunj that day. She remembered that he wore a camouflage uniform on that occasion and was armed with a rifle; he swore, opened fire and provoked. The witness said that before getting on board the trucks, they had to throw away all personal belongings that they had taken with them. Describing the moment when the Accused hit her with a rifle butt, the witness said that it happened when they were already *loaded* onto the truck and a tarpaulin started rolling down, and at that moment the Accused came by. When the witness asked him as *an acquaintance and a neighbor*, as she said, to pass her a plastic bag, the Accused Jukić swore God to her and hit her with the rifle butt against her leg.

217. The Appellate Panel gives full credence to the statement of this witness as her account is clear, consistent and, with respect to decisive facts, in conformity with the statements of other witnesses examined about the same circumstances.

218. Witness **Mujo Perviz** confirmed that on 28 August 1993 he was in the village of Lapsunj when the HVO soldiers came. Consistently with witness Đula Berić-Sultanić, he also stated that the villagers were threatened that they had to leave their homes, or otherwise they would be killed. He remembered the arrival of the trucks with tarpaulins on board of which the inhabitants of Lapsunj and other Bosniak villages were *loaded*, such as Varvara, Kovačevo Polje, Lug, Gorica and Paroš, who had meanwhile arrived. The witness was certain that Željko Jukić was there on that day as he ordered the witness to get aboard a truck. The trucks had military escort, two jeeps at the front and two at the rear.

He stated that Željko Jukić was in the last jeep, at the rear, and he escorted them until they reached Ustirama.

219. The statement of witness **Hamid Kmetaš**<sup>81</sup> almost fully matches the respective statements of witnesses Đula Berić-Sultanić and Mujo Perviz in terms of decisive facts. He confirmed that it was 28 August 1993 when the population of the village of Lapsunj was expelled and transported by trucks with tarpaulins. He recognized the Accused among the soldiers who arrived in Lapsunj that day; the Accused wore a camouflage HVO uniform and carried a rifle and a pistol. Describing the Accused's appearance at the time, the witness said that he was quite skinny, of medium build and brown-haired. He personally saw the moment when the Accused hit Đula Berić. He clarified that it happened when people were being *loaded* onto the trucks and Đula asked the Accused to pass her a plastic bag with her mother's medicines. The witness stated that Jukić then cursed her and hit her with both a rifle and the rifle-butt.

220. Based on the witnesses' testimonies, the Panel concluded beyond any reasonable doubt that the Accused Željko Jukić participated in the organized forcible transfer of the Bosniak population, in the manner closely described in Section 7 of the operative part of the Verdict, and carried out the acts of inhumane treatment of the injured party Đula Berić, the consequence of which was a physical and mental pain inflicted on her.

## 8. Section 8 of the Operative Part of the Verdict

*The Indictment of the Prosecutor's Office charges the Accused Željko Jukić that on 28 August 1993, together with another member of the HVO, he drove in a motor vehicle to the place of Ustirama, Prozor Municipality, where a large group of Bosniak men, expelled from their homes, were waiting for transportation to a camp in Prozor, whereupon he called one group of those men to approach the vehicle, opened the trunk in which Kerim Terzić, son of Sadik, was lying tied, and said "Look the swine we've caught", and then closed the trunk and drove away towards Jezero from where a burst of fire was heard after a while, as of when every trace of the injured party Kerim Terzić has been lost and his body has never been found.*

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<sup>81</sup> Witness Hamid Kmetaš was examined at the hearing held on 21 February 2013.



## Conclusions of the Appellate Panel

221. The belief of the Court that the Accused Željko Jukić participated in the persecution by the acts of enforced disappearance of persons, described in Section 8 of the enacting clause of the convicting part of the Verdict, is based on the statements of eyewitnesses Mujo Perviz and Hamid Kmetaš.

222. **Witnesses Mujo Perviz and Hamid Kmetaš** confirmed that Željko Jukić escorted the female group toward Kućani after the separation, while the men stayed in Ustirama. The witnesses claimed resolutely that the Accused Jukić returned to Ustirama shortly afterward in a private automobile with one Cele, whom witness Mujo Perviz said he knew only by sight and nickname.

223. Witness **Mujo Perviz** stated that immediately upon the return to Ustirama the Accused Jukić opened the trunk and called the gathered men, the group including the witness and Hamid Kmetaš, one Mustafa, one Ibro, and Enes Duvljak, shouting: *Balijas [derogatory term for Bosnian Muslims; translator's note], look at the swine that we've caught*. The witness remembers that he was the fourth one in the row and that he saw clearly when Jukić opened the automobile trunk in which a young man was lying with his hands and legs tied. The young man was alive, he did not know him, but he heard people behind his back saying that it was khoja's [Islamic cleric; translator's note] son Kerim.

224. Describing further developments, witness Mujo Perviz stated that the Accused Jukić and Cele left by the automobile taking the road in the direction of Jezero and that shortly afterward a burst of fire was heard from that direction, whereupon Jukić and Cele returned among the gathered men in the place of Ustirama.

225. Consistently with the statement of witness Mujo Perviz, witness **Hamid Kmetaš** confirmed that he approached the automobile and that a young man was lying tied in the trunk. Mujo Perviz was among the men who approached the vehicle. The witness stated that he recognized the young man lying in the trunk; it was Kerim, khoja's son from Kovačevo Polje. Witness Hamid Kmetaš also said, as did witness Mujo Perviz, that a burst of fire was heard 10 minutes after Cele and Jukić had gone away in the automobile in the direction of Jezero. The young man never returned and is still unaccounted for, according to the witness.

226. At the main trial held on 28 February 2013, **Taiba Terzić**, mother of the injured party Kerim Terzić, was examined. The witness confirmed that she heard that her son had been taken away and placed into a trunk, but she did not know who had done it, as she “*was not there*”, in her own words. She has never found her son.

227. The Appellate Panel evaluated the statements of witnesses Mujo Perviz and Hamid Kmetaš in the context of the overall events in the referenced villages of Prozor Municipality, about which many other witnesses, referred to in previous Sections, testified. The Panel did not infer that the statements of witnesses Mujo Perviz and Hamid Kmetaš were contrary to the adduced objective and subjective evidence. Both the individual pieces and the whole body of evidence give a clear picture of how the referenced event happened and of the role of the Accused who undertook prohibited acts together with another person, the consequence of which was the disappearance of Kerim Terzić, whose every trace has been lost and whose body has not been found to the present day.

### **9. Section 9 of the Operative Part of the Verdict**

*The Indictment of the Prosecutor's Office of B-H charges the Accused Željko Jukić that on 28 February 1993, in the same place of Ustirama, Prozor Municipality, upon returning from the direction of Jezero, together with another member of the HVO, he ordered Bosniak men to sing different songs about the HVO and hit each other, and when he was not satisfied with the intensity of their blows he would beat them strongly, so he beat up Hamid Kmetaš by kicking and hitting him with fists all over his body, whereupon he took part in the beating of other Bosniak men, including Mujo Perviz, Muho Pilav, Muho Berić and Enes Duvnjak, and tied a rope around the neck of the injured party Bajro Pilav, nicknamed Hasić, forcing him to bark, and then tied his legs forcing him to neigh, and after he beat them up, he fired from his pistol above their heads, the consequence of which was fear and physical and mental pain of all injured parties.*

### **Conclusions of the Appellate Panel**

228. The Court's belief that the Accused Željko Jukić participated in the commission of inhumane acts whose consequence was fear and physical and mental pain suffered by the injured parties in the manner closely described in Section 9 of the operative part of the Verdict, is based on the statements of the injured parties Mujo Perviz and Hamid Kmetaš and witnesses Dervo Kmetaš and Petar Knežević.

229. It was not disputable for the parties to the proceedings, and it was confirmed by the statements of the examined witnesses Mujo Perviz and Hamid Kmetaš, that the event described in this Section of the convicting part of the Verdict happened on 28 August 1993 in the place of Ustirama, that is, that it followed immediately upon the return of the Accused Jukić and one Cele from the direction of Jezero.

230. The injured parties Mujo Perviz and Hamid Kmetaš confirm in unison that the Bosniak men were ordered to hit each other and that the Accused Željko Jukić beat them if he was not satisfied with the intensity of the blows they exchanged, so he beat up Hamid Kmetaš and then participated in the beating up of the other Bosniak men.

231. Witness **Mujo Perviz** stated that the Accused Željko Jukić, having returned from Jezero, called the captives to stand around the campfire kindled with belongings that the expelled people had left behind. When they stood in circle, the Accused told them: “*C’mon now, slap each other, all of you; if you don’t, I will do it myself*”. The witness stated that they obeyed him and that he got to hit Mustafa Berić, who was of poor health, so the witness did not want to hit him hard. The witness said that at that moment Cele approached him and hit him with his fist and the Accused Željko Jukić also hit him twice afterward.

232. Witness **Hamid Kmetaš** recalls that the Accused Željko Jukić ordered him to slap his cousin and neighbor Enes Duvnjak. As the witness did not want to hit him hard since he was a child, the Accused Jukić started beating the witness instead. Describing this event in more detail, witness **Mujo Perviz** explained that Cele started beating Enes after Hamid had refused to do so, and then Željko Jukić started beating Hamid “*with his fists, rifle butts, with whatever he could, and kicking him with his feet in military boots*”.

233. Describing further developments at Ustirama, witness **Mujo Perviz** stated that among the gathered Bosniak men there were a father and a son who did not want to beat each other, so they suffered the same fate as Hamid Kmetaš and Enes Duvnjak. Witness **Hamid Kmetaš** stated that Muho Berić, Muho Pilav and one Numo whose last name he could not remember, were next to him on that occasion and that he saw that Jukić was beating them.

234. Witnesses Hamid Kmetaš and Mujo Perviz state consistently that Bajro Pilav, a young man from the village of Hasići who had worked abroad, suffered the worst mistreatment and that Jukić and Cele requested money from him. Describing in more

detail the mistreatment of Bajro Pilav, the witnesses stated that Bajro was tied around his neck and forced to bark like a dog, then unleashed, and then his legs were tied and he was forced to jump and neigh like a horse. Hamid Kmetaš said the most traumatic experience was the shooting from a pistol above their heads, and added that the Accused Jukić did it to him specifically, but that, generally, both Cele and the Accused did it. Both witnesses stated consistently that buses came after this event and that they were transported by these buses to the High School Center in Prozor.

235. Witness **Dervo Kmetaš**<sup>82</sup>, stated that his father, Hamid Kmetaš, told him about the events at Ustirama and he confirmed Hamid Kmetaš's account how he was beaten up and how he and his colleagues were mistreated by Željko Jukić. The witness knew Jukić from the *beginning of elementary school*, they were neighbors, and the witness remembers that the Accused would sometimes wear a camouflage uniform and sometimes a black one. The witness adds that he never had any bad encounter with the Accused.

236. Defense witness **Petar Knežević**<sup>83</sup> states that he is currently in business relation with Hamid Kmetaš and that he talked about the war with Hamid in the presence of his own father. He said that when asked by his father how they had fared in the war, Hamid answered that he had fared well, but that his son Dervo had not, but witness Petar Knežević did not understand clearly what he meant by that. He also stated that Hamid Kmetaš did not mention the name of Željko Jukić at a single moment and did not ever tell him that Jukić had hit him or beaten up the other Bosniak men.

237. This Panel too has fully upheld the evaluation of evidence presented in the Trial Verdict. Specifically, witness Knežević's statement was not corroborated by evidence, either subjective or objective one, and it aimed at alleviating the position of the Accused in the criminal proceedings, that is, diminishing or annulling the criminal responsibility for the actions the Accused was charged with, and for that reason the witness' statement has not been admitted for the purposes of this Verdict.

238. Having comprehensively analyzed the statements of the witnesses that it trusted, individually and in terms of their mutual correspondence, the Panel accepted their statements in entirety as credible and accurate, since they testified about the decisive facts in an identical manner, and concluded that, in the manner closely described in Section 9 of the operative part of the Verdict, the Accused Željko Jukić carried out

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<sup>82</sup> Witness Dervo Kmetaš was examined at the hearing on 21 February 2013.

<sup>83</sup> Witness Petar Knežević was examined at the hearing held on 11 July 2013.

persecution by acts of inhumane treatment of the injured parties Hamid Kmetaš, Mujo Perviz, Muho Pilav, Muho Berić, Enes Duvnjak and Bajro Pilav aka Hasić, the consequence of which was physical and mental pain of the injured parties.

#### 10. Section 10 of the Operative Part of the Verdict

*The Indictment of the Prosecutor's Office of B-H charges the Accused Željko Jukić that on an undetermined date, most probably in September 1993, in the camp in the Prozor High School Center, he beat up Mujo Perviz and one Čorbadžić by hitting them with fists and kicking them all over their bodies, the consequence of which was physical and mental pain of the injured parties.*

#### Conclusions of the Appellate Panel

239. The Panel established the facts referred to in Section 10 of the convicting part of the Verdict that on an undetermined date, most probably in September 1993, the Accused Željko Jukić beat up the injured party Mujo Perviz and one Čorbadžić by hitting them with fists and kicking them all over their bodies, the consequence of which was physical and mental pain of the injured parties. The Panel established this on the basis of the statement of the injured party Mujo Perviz, who was examined at the hearing held on 17 January 2013, and at the hearing before the Appellate Panel on 17 January 2013.

240. Witness **Mujo Perviz** said that after his arrival at the High School Center he saw that other people were detained there as well, the ones from frontlines and those who did not belong to any military formation alike. He saw the Accused Željko Jukić in the High School Center for the first time in early September when the Accused called out “Čorbadžić” first and then called him (the witness) to get down to the ground floor in two minutes.

241. Describing the event as charged, the witness said that when he came down to the ground floor, he first saw Željko Jukić and a guard and that there was nobody else there. The Accused immediately started beating “Čorbadžić” *“with his fists, rifle, rifle butt and kicking him ...”* against his back, head, everywhere, according to the witness. The same happened to the witness. As the witness was an invalid, of *failing* health, he lost consciousness three times while being beaten, and, as he said, *he would not be able to endure such beating today.*

242. Although the injured party Mujo Perviz was the only witness examined about the referenced event, the Appellate Panel too, just like the Trial Panel, fully accepts his statement as it finds it to be convincing and sufficient for establishing the factual circumstances referred to in this Section of the operative part of the Verdict. That the witness did not have any reason to incriminate the Accused without grounds for something the Accused did not do is shown by the fact that the witness said that after the referenced event the Accused Jukić did not beat him any more and that the witness did not see him ever again, either. Finally, this witness' statement, in the part concerning the facts relative to the event as charged, was not contested by the Defense, while the parts of the statement concerning the factual circumstances described in other Sections of this Verdict are consistent with the statements of the other witnesses examined about these circumstances, which, in the opinion of the Panel, does not give rise to doubt the witness' credibility and reliability of his statement about the facts referred to in Section 10 of the operative part of the Verdict.

243. Therefore, after a comprehensive analysis and evaluation of witness Mujo Perviz's statement, which was admitted as reliable and accurate since its truthfulness was not challenged by any other adduced evidence, the Panel concluded beyond any reasonable doubt that the Accused Željko Jukić carried out persecution by acts of inhumane treatment of the injured parties Mujo Perviz and one "Čorbadžić" in the manner closely described in Section 10 of the Verdict, the consequence of which was physical and mental pain of the injured parties.

## **11. Section 11 of the Operative Part of the Verdict**

*The consolidated Indictment of the Prosecutor's Office, Count 12, charges the Accused Željko Jukić that on or about 7 July 1993, in the evening hours, in the Fire Station (Vatrogasni Dom) in Prozor, which housed the headquarters of the Military Police of the HVO of Prozor and a prison in which Bosniaks were detained, he inflicted grave physical and mental pain to Emir Korman by pressing a burning Ronhill cigarette against his face and drawing with the cigarette a cross on his right cheek, whereupon he ordered Korman to move to another room where he ordered him to take his jacket off and bend over a chair, and when the injured party did so, he took a baton and started beating him strongly against his back and when he no longer had the strength to beat him, he knelt in front of him telling him "Why don't you cry, Balija" and cursed his Balija mother and then pressed a pistol-shaped lighter below his neck and started setting his beard on fire, and only when*

*the whole beard of the injured party burst into fire did he allow him to put the fire out, the consequence of which was a grave physical and mental pain of the injured party.*

## **Conclusions of the Appellate Panel**

244. The Court's belief that the Accused Željko Jukić undertook the acts of inhumane treatment in the manner closely described in Section 11 of the convicting part of the Verdict, is based primarily on the statement of witness–injured party Emir Korman, the statement of eyewitness Ekrem Hubijar, and the statements of witnesses Fadil Zec and Zahid Zec.

245. It is beyond dispute for the parties to the proceedings that in the headquarters of the HVO Military Police, in the Fire Station, there existed a camp in which Bosniaks were detained, which was confirmed during the proceedings by the evidence of both the subjective<sup>84</sup> and objective nature<sup>85</sup>.

246. Witness–injured party **Emir Korman** stated that the events in the Fire Station had been preceded by his arrest in the evening of 7 July 1993, on which occasion two HVO members came to his apartment in Prozor telling him to get ready and go with them to give a statement about the weapons he allegedly possessed at his home. Together with Ekrem Hubijar and “*one Senad from Prijedor*” he set off toward the civilian prison. In front of the very entrance to the building Željko Jukić came by in a car and shouted to the HVO soldiers who were escorting them to take them “down there”, which the soldiers did and took them to the Fire Station building.

247. The witness states that the Accused Željko Jukić wore a Military Police camouflage uniform with a waist-belt. The witness had known the Accused well before the war as they had attended elementary school together. Describing the Accused's appearance from that period, the witness stated that the Accused was of his height, rather skinny, with light blonde hair, and at that time the Accused lived with his grandmother at Ometala. The witness identified the Accused in the courtroom.

248. Witness Emir Korman recalled that upon arriving to the Fire Station building, together with Ekrem Hubijar and “*little Senad from Prijedor*”, he entered one office and sat in an armchair. The Accused sat to his right side, took a Ronhill cigarette from a desk, took

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<sup>84</sup> Some of the witnesses who testified about the detention in the Fire Station were S-2, Esad Brkić, Esad Vugdalić, Fadil Zec, Zahid Zec and Emir Korman...

<sup>85</sup> HVO Camps in Herzegovina, ICTY No. 02064768 – 790 (T-134)

2-3 drags whereupon he started pressing the cigarette against the witness' face burning it and drawing a cross on the witness' right cheek so that he still has a visible scar. The witness said that all this lasted for some 10-15 minutes, and eventually the Accused put the cigarette out against his nose. Although it was difficult for him at those dramatic moments, the witness did not shed a tear, due to which the Accused cursed his "*Balija mother*" asking him: "*What is it, why don't you cry?*" The witness said that Ekrem Hubijar, who was with him in the same room, saw it all.

249. Describing further developments, witness Emir Korman said that the Accused Željko Jukić took him to another room in that same building and ordered him there to take off his blue-jeans jacket and lie on his stomach across a chair. After the witness had done so, the Accused took a baton -- the witness could not see what it was like or made of -- and started to beat him against his back wherever he could. The beating lasted for around an hour and when he became feeble from the beating, the Accused Jukić ordered him to sit on the chair again, which the witness did, whereupon the Accused again cursed his "*Balija mother*" and asked him why he was not crying.

250. Describing further developments, the witness stated that the Accused ordered a soldier who was standing all that time at the door of the room where the witness was being beaten to hand him over a pistol the soldier had at his waist-belt. After the Accused took the pistol and pressed it under the witness' chin, the witness thought that these would be his "*last twitches*". Only when the Accused Jukić pulled the trigger and fire burst out did the witness realize that it was a fire pistol. As he was unshaven his beard caught fire, but he dared not do anything until the Accused Željko Jukić allowed him to put out the flames some 5-6 minutes later. The witness said that when this incident was over, the Accused allowed him to take his jacket telling him that he would decide in the morning whether the witness would stay alive or be killed.

251. The Appellate Panel too fully credits witness Emir Korman's statement as it is based on the facts and events that the witness personally experienced, and that witness Ekrem Hubijar also confirmed. The witness did not have any reason or intention to incriminate the Accused without grounds for something the Accused did not do, which is also indicated by the fact that when asked by Defense Counsel about the killings that had happened at the time when the HVO troops entered his village the witness did not blame the Accused Željko Jukić for the killing of Ziba Korman and Mejra Korman, for example, and was resolute that the Accused did not beat him again after he had beaten him up



upon his arrival in Dretelj (which is described in more detail in the reasoning of Section 12 of the convicting part of the Verdict).

252. As indicated earlier, the statement of witness Emir Korman was confirmed with respect to the decisive facts by witness **Ekrem Hubijar**<sup>86</sup>, an eyewitness to the referenced event. Witness Ekrem Hubijar stated that in the evening of 7 July 1993, he set out of his apartment in Prozor together with Emir Korman toward the civilian prison, and that the Accused intercepted them in an automobile and took them to the Fire Station. When they arrived in the Fire Station, he and Emir Korman were taken to one room where he personally saw the Accused extinguishing cigarettes and drawing a cross on Emir's face, and immediately after that he saw scars. The witness said that Emir was then taken to another room and he never saw him again after that event.

253. Although the statement of this witness differs in some details from the statement of the injured party Emir Korman (the witness said that Emir was shaven when the face-igniting incident took place and that the cross on his face was drawn by a lighter), the Panel fully accepts this witness' statement as it is consistent with the statement of the injured party with respect to the decisive facts and was not challenged by any other adduced evidence. The witness was an eyewitness to the event as charged, and his account is based on the facts that he personally had seen and there was no indication that he had any reason to charge the Accused without grounds. In addition, during the arrest and taking to the Fire Station the witness was mistreated and beaten himself, and asked by the Prosecutor whether Željko Jukić did it to him, he was resolute that he did not, which, as stated earlier, shows that he did not have any reason to blame the Accused without grounds.

254. Witnesses Fadil Zec and Zahid Zec also saw Emir Korman in the Fire Station after the described event had taken place. Thus witness **Fadil Zec**<sup>87</sup> stated that he also saw Korman in the Fire Station among his cousins and neighbors. He stated that everyone whom he found there was in poor shape, but that Emir's condition was among the worst ones, as he was inflicted cross-shaped burns by a cigarette to his face which was burnt and blue. He stated that he did not see who had done that to Emir and that he did not know the Accused at the time, either, but that it was said that Željko Jukić had done it to him. Witness **Zahid Zec**<sup>88</sup> confirmed in a similar way that he saw Emir Korman covered

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<sup>86</sup> Witness Ekrem Hubijar was examined at the hearing held on 28 March 2013.

<sup>87</sup> Witness Fadil Zec was examined at the hearing held on 28 March 2013.

<sup>88</sup> Witness Zahid Zec was examined at the hearing held on 11 April 2013.

with blood, with a cross tattooed on his face, and that Emir told him who had done it to him but that he did not remember it.

255. Having analyzed and evaluated the statements of the referenced witnesses, both individually and in terms of their mutual correspondence, the statements whose truthfulness was not challenged with any other adduced evidence either, the Appellate Panel too established beyond any reasonable doubt that the Accused Željko Jukić, with the acts of inhumane treatment undertaken at the time and in the manner described in Section 11 of the operative part of the Verdict, inflicted physical and mental pain on the injured party Emir Korman.

## 12. Section 12 of the Operative Part of the Verdict

*The consolidated Indictment of the Prosecutor's Office charges the Accused Željko Jukić that, most probably on 15 July 1993, in the Dretelj camp near Čapljina he took Emir Korman into a hangar, pressed him against a wall, and then took a 1-meter-long baton and started beating him against his legs and the injured party fell on the ground due to the intensity of the beating, whereupon the Accused hit him twice in his ribs, the consequence of which was grave physical and mental pain inflicted on the injured party.*

### Conclusions of the Appellate Panel

256. The averment in Section 12 of the convicting part of this Verdict that in mid-July 1993, in the Dretelj camp near Čapljina, the Accused Željko Jukić took Emir Korman into a hangar, took a baton and started beating him against his legs, and the injured party fell on the ground due to the intensity of the beating, whereupon the Accused hit him twice in his ribs, the consequence of which was grave physical and mental pain inflicted on the injured party, was confirmed in a convincing manner acceptable for the Panel by the injured party Emir Korman, who was examined as a witness at the main trial held on 28 March 2013.

257. Describing the very event of inhumane treatment, witness **Emir Korman** said that the first time he saw the Accused Željko Jukić after the incident at the Fire Station and the transfer to the civilian prison located in the MUP building, was during the transportation by buses from the civilian prison toward the Dretelj camp. According to him, the Bosniak inmates got on board four-five buses that were parked in front of the MUP. When they

reached Mt. Vran, a place where passage was difficult, the prisoners were forced out of the buses and they continued their journey on foot. On that occasion the witness saw the Accused, dressed in a camouflage uniform and armed with a rifle and a pistol, also getting off the bus and following them.

258. Witness Emir Korman recalls that when the captives arrived in Dretelj and got off the bus they were all lined up in front of a hangar that had training ranges. Then the roll-call started and everyone whose name was called out entered the hangar. When the turn came for his name to be called out, the witness set off toward the hangar, but the Accused Željko Jukić grabbed him by his hands, took him into the hangar and started beating him against his legs, “... *against the left and the right one in turns with wooden baton.*” The beating continued until the witness fell off his feet from the blows that he could no longer endure. The witness remembers that the Accused kicked him two more times below his ribs and left. He was beaten for 15-20 minutes and the beating was horrible, the witness said.

259. Having carefully analyzed the statement of witness Emir Korman, evaluated in the context of events described in certain Sections of the convicting part of the Verdict and in correspondence with the other adduced evidence of the subjective and the objective nature alike, the Appellate Panel too accepted as credible and accurate the statement of this witness, after reviewing it. In other words, the witness gave an absolutely clear and consistent account of the facts and events that he had personally experienced and did not show an intention to blame the Accused groundlessly.

260. Since this witness' statement was not contested by the other adduced evidence, the Appellate Panel concluded beyond a reasonable doubt that with the acts of inhumane treatment the Accused Željko Jukić inflicted physical and mental pain on the injured party Emir Korman at the time and in the manner described in Section 12 of the operative part of the Verdict.

261. In view of the foregoing, with respect to each charge, the Panel provided its evaluation of the statements of the examined witnesses and its reasoning as to which statements it accepted, that is, gave credence to when it concluded that certain criminal acts of which it found the Accused guilty were considered proven. In the process, the Appellate Panel was mindful of the fact that there were certain discrepancies between the respective statements of certain witnesses it trusted and referred to, and to which the Accused's Defense pointed during cross-examination of certain witnesses. However, given

the lapse of time, the dramatic circumstances surrounding the events, the huge number of the events involving multiple injured parties, members of their families, neighbors and friends, as well as the multiple acts that the Accused undertook on his own or with other individuals, each of which is dramatic in its own right, the Panel did not consider a single one of those discrepancies to be of such significance with respect to the decisive facts so as to affect the credibility of their statements.

### III – CRIMINAL RESPONSIBILITY

262. The Appellate Panel established beyond a doubt, based on the adduced evidence in both the trial and the appellate proceedings, that the acts undertaken by the Accused Željko Jukić satisfied all the objective-subjective underlying elements of the criminal offense of Crimes against Humanity under Article 172(1)(h), as read with sub-paragraphs d), i) and k) of the same Article. Having evaluated this evidence in the context of the described events in the territory of Prozor Municipality, in which the Accused played an active part as a member of the *Rama* HVO Brigade, the Panel found it proven that the Accused Željko Jukić committed the criminal offense of persecution by the acts of forcible transfer of the Bosniak civilian population, enforced disappearance and other inhumane acts with the intention of inflicting great suffering and serious physical and mental injuries on the injured parties. While undertaking the prohibited acts, irrespective of whether he undertook them alone or together with other members of the HVO, as described in the facts of the operative part of the Verdict, the Accused acted with direct intent, as he was aware that by transporting the Bosniak men to camps and the remaining civilian population to the territory under the control of the ARB-H, he carried out a forcible taking and transfer of the population from the territory it legitimately inhabited and where its homes were.

263. The Appellate Panel concludes that, in committing all those acts, considering their gravity, the way of commission, the mental and physical state, particularly of a certain number of persons, the Accused acted *with intent and wanted them to occur, fully aware* that by taking the acts, such as beating, kicking, punching, hitting with rifle-butts, buttons, drawing crosses with broken glass or burning cigarettes on persons' bodies, burning their beards with lighter's flames, will result in multiple detrimental consequences for the Bosniak civilian population. As the direct consequence of the acts committed in the described way, the civilian Bosniak population left the territory of Prozor municipality, where they had always lived, had their homes and land, and thereupon suffered severe

physical and mental suffering and pain, felt subdued, jeopardized, hopeless, and humiliated, feared for their own lives and the lives of their families' members. It should be noted that, in this case, particularly important are the Accused's acts that resulted in the enforced disappearance of a certain number of civilians whose traces have been lost and who have been still unaccounted for.

264. The Panel concludes that all the foregoing acts, committed as the underlying acts of persecution, were committed by the Accused Željko Jukić with *discriminatory intent*, as he was aware that he was undertaking the prohibited acts on ethnic and religious grounds against the Bosniak civilian population only. The Accused demonstrated his awareness and intent through a number of prohibited acts and the conduct toward that population, and with the awareness and knowledge that those were civilians of another ethnicity and religion, being aware of the impact of such acts on the community, namely that they were unlawful, inhumane and unacceptable.

265. In addition to the foregoing, bearing in mind that the Accused had the knowledge of the widespread and systematic attack of the military forces of the HVO and the HV [Army of Croatia], that the attack was directed against the Bosniak civilian population of both the Prozor town and the villages of Prozor Municipality, and that the Accused knew and was aware that his acts constituted a part thereof, it can be reasonably concluded that the acts of the Accused, described and defined in the operative part of the Verdict, satisfy all essential elements of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with Sub-Paragraphs (d), (i) and (k), all as read with Article 29 of the CC BiH hence the Panel has found him guilty of this offense and convicted him pursuant to the law.

#### **IV - APPLICATION OF SUBSTANTIVE LAW**

266. In the context of substantive law application, the Defense objected to the application of the Criminal Code of BiH, arguing that the Criminal Code of SFRY should have applied, as the law that was in force when the acts, as qualified under the Indictment, were committed, and which is certainly more lenient to the Accused Jukić, considering the subsequent abolition of the death penalty and its replacement with a maximum 20-year prison sentence.

267. As to the issue of which substantive law is to apply to the concrete criminal offense, in the context of the time of its commission, and bearing in mind all the appellate complaints the Defense advanced along this line, the Panel decided, as stated in the operative part of the Verdict, applying the following provisions.

268. Article 3 of the CC BiH governs the principle of legality, namely that criminal offenses and criminal sanctions shall be prescribed only by law, and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which a punishment has not been prescribed by law. Also, Article 4 of the CC BiH provides that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense, and if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

269. Article 7(1) of the ECHR also provides for the principle of legality. Pursuant to Article 2.2 of the Constitution of BiH, the ECHR has primacy over all BiH laws. In addition, this provision of the ECHR provides for the general principle prohibiting the imposition of a heavier penalty than the one that was applicable at the time the criminal offense was committed, but not for the application of the most lenient law. Article 4a of the CC BiH provides that Articles 3 and 4 of the CC BiH shall not prejudice the trial and punishment of any person for any act or omission which at the time when it was committed “was criminal according to the general principles of international law.” Article 7(2) of the ECHR provides for the same exemption, stating that paragraph 1 of the Article “...shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.” (See, also, Article 15(1) and (2) of the International Covenant on Civil and Political Rights which contains similar provisions. The State of Bosnia and Herzegovina, as a successor of (the former) Yugoslavia, has ratified this Covenant).

270. The application of the CC BiH to the concrete criminal offense is based on the above quoted Article 4a of the CC BiH. An exemption from the general principles set forth in Articles 3 and 4 of the CC BiH has been made with this provision, in terms that these Articles do not bring into question the trial and punishment of any person for any act or omission which was the offense of crimes against humanity, and which, as such, was not

provided for in the law that was in effect at the time when the criminal offense was committed.

271. At the time when the incriminating acts were committed, crimes against humanity were not criminalized under the CC SFRY, but they did form the imperative principle of international law, and in 1992, undisputedly formed part of international customary law<sup>89</sup>. Crimes against humanity are crimes pursuant to international law in the universal terms of the jurisdiction for prosecution, thus a conviction for such offenses, pursuant to the law that has subsequently provided for and criminalized this offense, and defined a special criminal sanction for it, is not in violation of Article 7(1) of the ECHR.

272. The Court has taken such a position too in *Naletilić v. Croatia*, No. 51 891/99, where the applicant advanced the same complaints as the Defense in this case, but in relation to the ICTY Statute.

273. In addition, the Appellate Panel considers ill-founded the Defense's complaints advanced in its closing argument, namely that the adopted CC SFRY was more lenient to the perpetrator in terms of the prescribed sentence. In fact, the Appellate Panel considers this complaint irrelevant since the CC SFRY did not even prescribe the criminal offense at issue.

274. In view of the foregoing, the Appellate Panel has concluded that the application of the principle of legality and the principle of non-retroactivity was in no way violated by the application of the 2003 CC BiH.

## V - DECISION ON THE CRIMINAL SANCTION

275. In deciding on the sentence, the Appellate Panel has relied on the general principles of meting out punishments set forth in Article 48 of the CC BiH, and the purpose of punishment set forth in Article 39 of the CC BiH. Therefore, the Appellate Panel is satisfied that by the prison sentence of fifteen (15) years in prison, imposed on the Accused Željko Jukić, the anticipated purpose of punishment will be completely achieved. The Panel has taken into account the statutory framework for imposing a sentence for the criminal offense at issue. Thus, the sentence prescribed for the criminal offense of which the Accused was found guilty is minimum 10 years in prison or a long-term imprisonment.

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<sup>89</sup> Decision of the European Court of Human Rights, *Šimšić v. Bosnia and Herzegovina*, No. 51552/10 of 26 August 2010.

Also, the Panel has taken into account the general rules relative to the selection of the type and length of sentence, namely the purpose of punishment, and in particular, the degree of the Accused's criminal liability, the circumstances in which the offense was perpetrated, the degree of danger or injury to the protected object, the past life of the perpetrator, his personal situation and conduct after the perpetration of the offense and the motives for perpetrating the offense.

276. As to the extenuating circumstances, the Panel took into account the life the Accused had lived hitherto, that is, the fact that until the moment of the perpetration of the specific offense he had not had any prior conviction, that at the time of the perpetration of the acts he had been a young person of 23, that he was a father of three underage children, his proper and expected demeanor during the trial and the demonstrated respect for the Court.

277. As to the aggravating circumstances, the Panel particularly took into account the gravity of the violation to a protected value and the related manner of perpetration of the act whose consequence was the disappearance of five Bosniak men and the physical and mental pain and suffering of the Bosniak civilians, the consequences of which they still feel due to the loss of their nearest kin and their homes that they had to abandon and to which many have not returned yet.

278. The Appellate Panel has particularly taken into account the gravity and character of the Accused's acts, or the degree of criminal activity, also apparent from the persistence the Accused showed in the commission of prohibited acts that he undertook within the period of three months, which is a relatively short time period. The Appellate Panel also regarded as an aggravating circumstance the manner of perpetration of certain acts without any demonstrated compassion for anyone, especially for the particularly vulnerable and helpless category of civilian population – women, children, the elderly, the sick, and the feeble, or for his acquaintances and schoolmates.

279. Having considered all the circumstances surrounding the Accused, the Appellate Panel concluded that during the first-instance proceedings these circumstances were not considered to a sufficient extent. Bearing in mind that the Prosecution's appeal contested the decision on the imposed sentence, the Appellate Panel has meted out a lengthier prison sentence for a term of 15 years. The Appellate Panel has held that this sentence is proportionate to the gravity of the offense, considering the established aggravating and



extenuating circumstances, and the Accused's participation and role in the commission of the crime.

280. As already apparent from all the foregoing, the Accused Željko Jukić is found guilty of persecution, by the criminal acts underlying Crimes against Humanity – forcible removal of the population, enforced disappearance of persons and other inhumane acts of similar character committed with intent to cause great suffering, or serious injury to body or to physical or mental health, which, given the degree of demonstrated criminal energy apparent from the prohibited acts, implies a more stringent sentence in relation to the statutory minimum, and imposing a lengthier sentence in relation to the one imposed in the revoked Trial Verdict.

281. Considering all the foregoing, as well as the degree of the Accused's participation and contribution to the commission of the criminal offense of which he is found guilty, the Appellate Panel is satisfied that the imposed sentence was meted out in compliance with Article 48(1) of the CC BiH, and that the purpose of criminal sanctions and punishment pursuant to Article 39 of the CC BiH will be achieved with this punishment. The Panel has noted that the kind and scope of the imposed criminal sanction will influence the Accused not to commit criminal offenses in the future, that it will encourage his rehabilitation, that is, that the requirements of special deterrence will be fulfilled with the pronounced sentence. Likewise, the Panel is convinced that the imposed sentence appropriately reflects the community's condemnation of the criminal offense, and that it sends a clear message to all potential perpetrators of criminal offenses in the future that even in war circumstances such offenses will not stay beyond the reach of justice and will not go unpunished given that honoring the laws and universally accepted rules of behavior is an obligation of each individual, not only in peace time, but also at time of hostilities.

282. Pursuant to the rule of Article 56 of the CC BiH, the time the Accused spent in custody, in the period between 2 November 2011 and his committal to serve the prison sentence, shall be credited towards the imposed prison sentence.

## **VI - DECISION ON THE COSTS AND CLAIMS UNDER PROPERTY LAW**

283. Taking into account the fact that the Accused Željko Jukić is indigent and that obligating him to cover the costs of the criminal proceedings would additionally jeopardize

his financial standing and the life of the persons he is obliged to support financially, and also taking into account the fact that the Accused is acquitted of some of the charges in the Indictment, pursuant to Article 188(4) and Article 189(1) of the CPC BiH, the Panel relieved the Accused of the duty to cover the costs of the criminal proceedings.

284. Pursuant to Article 198(2) and (3) of the CPC BiH, the injured parties are instructed to pursue potential claims under property law in civil action, since the data of the criminal proceedings do not provide a reliable basis for either a complete or partial award.

**MINUTES-TAKER  
LEGAL ADVISOR**

**Lejla Garaplija**

**PANEL PRESIDENT  
JUDGE**

**Dr. Miloš Babić**

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

## ANNEX 1 – PROSECUTION AND DEFENSE TENDERED DOCUMENTARY EVIDENCE

### D. PROSECUTION OF BiH DOCUMENTARY EVIDENCE

285. The following documentary evidence of the Prosecutor's Office of BiH was adduced at the main trial:

286. 1	T-	Witness Examination Record for Zejnil Grcić, High Court in Mostar, No. Ki. 14/95, 16 October 1995
<b>T-2</b>		Witness Examination Record for Zejnil Grcić, Public Security Station (SJB) Prozor, No. 38/94, 17 March 1994
<b>T-3</b>		Witness Examination Record for Galib Sabitović, Prosecutor's Office of B-H, No. KZ-RZ-100/05, 9 July 2009
<b>T-4</b>		Photo-documentation, presentation of crime scene (murder of Uzeir Sabitović), village of Duge, Prozor Municipality, No. 16-13/1-7-47-11, 10 May 2011
<b>T-5</b>		Institute of Forensic Medicine, School of Medicine in Sarajevo, Autopsy Report Duge – Prozor, Body No. 1 -- Sabitović Uzeir, 11 May 2011, Dr. Hamza Žujo
<b>T-6</b>		Photo-documentation, presentation of crime scene – protected witness S-7, High School Center Prozor, No. 16-13/1-7-151/11, 16 January 2012
<b>T-7</b>		Photo-documentation, presentation of crime scene – witness Izet Pilav, High School Center Prozor, No. 16-13/1-7-149/11, 16 January 2012
<b>T-8</b>		Photo-documentation, presentation of crime scene – witness Džafer Kaltak, High School Center Prozor, No. 16-13/1-7-150/11, 16 January 2012
<b>T-9</b>		Witness Examination Record for A-1, Prozor SJB, No. 64/95, 18 May 1995
<b>T-9a</b>		Witness Examination Record for A-1, Prosecutor's Office of B-H, No. T20 0 KTRZ 0000663 10, 4 March 2011
<b>T-10</b>		Witness Examination Record for Avdo Husić, Čelebići, No. 1105015413, 20 July 1994
<b>T-10a</b>		Witness Examination Record for Avdo Husić, Prosecutor's Office of B-H, No. KT-RZ-100/05, 6 July 2009
<b>T-10b</b>		Witness Examination Record for Avdo Husić, Prosecutor's Office of B-H, No. T 20 0 KTRZ 0000663 10, 7 January 2011
<b>T-11</b>		Witness Examination Record for Dževad Kovačević, Prosecutor's Office of B-

	H, No. T20 0 KTRZ 0000663 10, 17 January 2011
<b>T-11a</b>	Witness Examination Record for Dževad Kovačević, Cantonal Court in Mostar, No. Ki-9/02, 14 April 2003
<b>T-13</b>	Witness Examination Record for Mirsad Pilav, 6th Corps of the Army of B-H (AB-H) Konjic, No. 01-1-173/29/93, 22 November 1993, RR197565
<b>T-14</b>	Witness Examination Record for Dervo Subašić, Prozor SJB, No. 52/94, 16 July 1994, RR358109
<b>T-15</b>	Extract from Register of Deaths for Mirsad Pilav, 11 April 2011, No. 02/1-15-7/2011
<b>T-16</b>	Extract from Register of Deaths for Dervo Subašić, 27 January 2011, No. 02/1-15-215/2011
<b>T-17</b>	Extract from Register of Deaths for Edis Omanović, 5 April 2011, No. 02/1-15-89/2011
<b>T-17a</b>	Decision declaring Ibro Pilav dead, issued on 14 October 1996, No. R2-70/96, Basic Court in Bugojno
<b>T-18</b>	Extract from Register of Deaths for Ibro Pilav, 5 April 2011, No. 02/1-15-6/2011
<b>T-19</b>	Extract from Register of Deaths for Vahid Berić, 5 April 2011, No. 02/1-15-91/2011
<b>T-20</b>	Extract from Register of Deaths for Šefik Čiča, 5 April 2011, No. 02/1-15-92/2011
<b>T-21</b>	Forensic Medical Analysis, Forensic Medicine Expert, Dr. Vedo Tuco, MSc., Specialist in Forensic Medicine, 27 October 2011, Tuzla
<b>T-22</b>	List of identified persons; List of missing persons from the territory of Prozor Municipality, Institute for Missing Persons of Bosnia and Herzegovina, No. 02/1-40-1-6098-2/11, 15 March 2011
<b>T-23</b>	Forensic analysis of medical documentation of witness Muho Pilav by Dr. Alma Bravo, 26 March 2013
<b>T-24</b>	Decision on the declaration of an imminent threat of war, published in the <i>Official Gazette of the RB-H</i> No. 1, 9 April 1992
<b>T-25</b>	Decree Law on the Armed Force of Bosnia and Herzegovina, published in the <i>Official Gazette of the RB-H</i> No. 4/92, 20 May 1992
<b>T-26</b>	Decision on the declaration of state of war, published in the <i>Official Gazette of the RB-H</i> No. 7/92, 20 June 1992
<b>T-27</b>	Decision on the establishment of the Croat Community of Herzeg-Bosnia,

	published in the <i>Official Gazette of the Croat Community of Herzeg-Bosnia</i> , 18 November 1991
<b>T-28</b>	Decision on the forming of the Croat Defense Council, published in the <i>Official Gazette of the Croat Community of Herzeg-Bosnia</i> , No. 2/92, 8 April 1992, Mostar
<b>T-29</b>	Decision on the termination of the state of war, published in the <i>Official Gazette of the R B-H</i> , No. 50, 28 December 1995, Sarajevo
<b>T-30</b>	Request of the SIS (Security and Information Service) of Prozor Municipal Staff, No. 02-43/92, 20 October 1992, taken-over from State Archives of the Republic of Croatia
<b>T-31</b>	Extract from Register of Deaths for persons from the village of Klek, namely, Halil Marić, Ibro Karađuz, Šaban Karađuz, Adem Karađuz, recorded under number 203-415/09, 10 June 2009
<b>T-32</b>	Extract from Register of Deaths in which Prozor is indicated as the place of death for: Osman Bajrić, Bajro Pilav, Omer Purgić, Numo Imamović, Haso Hrimiće, Abdulah Alibegović; Extract from Register of Deaths in which Skrobučani is indicated as the place of death for: Selim Selimović, Fata Demirović, Omer Selimović, Mujo Selimović, Šaban Munikoza; Extract from Register of Deaths from Paroš for: Zulfo Bećirović, Ajka Ramić, Bećir Bećirović, while Suljo Husić is registered for the place of Tolovac.
<b>T-33</b>	Records of examination of forensic medicine expert Dr. Ilijas Dobrača, with causes of death, following the exhumations at the localities of Lapsunj, Mahala, Bunarići, Skrobučani, Paroš, Gorica, Klek, Heldovi, Parcani, Orašac, Čelce, Varvara, Donji Krančiči, Tolovac, Prajin and Zahlihača.
<b>T-34</b>	List of military persons, Rama Brigade – 42nd Home-Guard Battalion, 1 April 1995
<b>T-35</b>	Data from the Military Records of the Federation [of B-H] Ministry for Veterans and Disabled Veterans of the Homeland War No. 07-03-12/11, 1 March 2011, Željko Jukić – Vob (Personal Military Record) 1, Vob 2 and Vob 3
<b>T-36</b>	Letter by the MUP (Ministry of the Interior) of the Herzegovina-Neretva Canton No. 02-02/3-1-04-34-142/11 ZP of 31 March 2011, with a list and a CD with recording of damaged Bosniak-owned buildings
<b>T-37</b>	Photo-documentation, garbage dump at the locality of Duška Kosa in the place of Lug, Prozor Municipality, State Investigation and Protection Agency (SIPA),

	10 May 2011
<b>T-38</b>	Extract from Register of Deaths for Uzeir Sabitović, No. 1/10-202-189/96, 6 November 1996; Decision on subsequent registration of death No. 18/07-202-3269/96, 30 October 1996
<b>T-39</b>	Photo-documentation, autopsy of an unidentified body and sample-taking for DNA analysis, Mostar, City Morgue in Sutina, No. 02-02/3-5-106/11, 11 May 2011
<b>T-40</b>	Photo-documentation, Exhumation of Uzeir Sabitović, Prozor, village of Duge, No. 02-02/3-5-68/11, 26 April 2011
<b>T-41</b>	Record of exhumation, Prosecutor's Office of B-H, No. T 20 0 KTRZ 0000663 10, 24 March 2011
<b>T-42</b>	Sketch of the scene, exhumation of Uzeir Sabitović, Prozor, village of Duge, No. 02-02/3-5-68/11, 21 April 2011
<b>T-43</b>	Crime Scene Investigation Record, Herzegovina-Neretva Canton MUP, Crime Police Sector, No. 02-02/3-1-120/11, 21 April 2011
<b>T-44</b>	Crime Scene Investigation Record, High Court in Mostar, No. Kri:59-II-/98, 4 November 1998
<b>T-45</b>	Record of Exhumation, High Court in Mostar, No. Kri: 59/98, 29 September 1998
<b>T-46</b>	Crime Scene Investigation Record, Security Services Center Mostar, No. Ku – 16/95, 4 December 1995
<b>T-47</b>	Photo-documentation, torching of houses by HVO soldiers, village of Tošćanica, Prozor Municipality, Mostar Crime Police Sector, ICTY No. RR 372999-373022, 5 November 1995
<b>T-48</b>	Photo-documentation by Mostar Crime Police Sector, village of Tošćanica, Tošćanica cemetery, 5 November 1995, ICTY No. RR 372956-372960
<b>T-49</b>	Photo-documentation by Mostar Crime Police Sector, village of Grevići, 5 November 1995, ICTY No. RR 373023
<b>T-50</b>	Photo-documentation by Mostar Crime Police Sector, village of Lizoperci, 4 November 1995, ICTY No. PR 372961
<b>T-51</b>	Record of identification of bodies of the persons killed in the villages of Uzdol and Here, High Court in Mostar, No. KRI:9/94, 28 July 1994
<b>T-52</b>	Decision by High Court in Mostar No. Kri 2/94 of 27 April 1994
<b>T-53</b>	Request to provide evidence, High Court in Mostar, No. 1-09-10-10/94, 11 April

	1994
<b>T-54</b>	List of registered victims of Prozor Municipality No. 926, compiled by State Commission for Gathering Facts on War Crimes, Sarajevo, 25 April 1995
<b>T-55</b>	Report by SIS of the Prozor Municipal Staff, No. 02-44/92, 20 October 1992, ICTY No. 01525590, certified and taken-over by State Archives of the Republic of Croatia
<b>T-56</b>	Croat Community of Herzeg-Bosnia (HZ HB), HVO Prozor Municipality, No. 01-23/92, 23 October 1992, sent to the military and civilian representatives of the Muslims of Prozor Municipality, with the subject line: Proposals for Overcoming the Newly Emerged Political and Security Situation, ICTY No. 01527602, certified
<b>T-57</b>	List of buildings in Prozor town, property of Muslim citizens, burnt-down as a result of the attack by HVO and HV [Army of Croatia] of 23 October 1992, No. RR 282575 – 76
<b>T-58</b>	List of vehicles seized in the territory of Prozor Municipality since the HVO and HV aggression, that is, since 23 October 1992, RR 282596 – 97
<b>T-59</b>	Report of HZ HB, Municipality of Rama–Prozor, Rama Brigade, 24 October 1992, about the situation on the ground, ICTY No. 01515592
<b>T-60</b>	Intelligence report No. 89/92 of 26 October 1992, made by HVO, ICTY No. 01513855 – 01513856
<b>T-61</b>	SIS request No. 02-52/92, 1 November 1992, taken-over from State Archives of the Republic of Croatia
<b>T-62</b>	Command of the Zenica Staff No. 540/92, 26 November 1992, ICTY No. 00402371
<b>T-63</b>	Command of the Municipal Staff of Mostar, 3rd HVO Brigade, No. 02-01-11/92, 9 December 1992, ICTY No. 00405563 and 00405564
<b>T-64</b>	HVO Decision No. 01-I-32/93, 15 January 1993, ICTY No. 01094172 – certified, with a map of Bosnia and Herzegovina – ICTY No. 0604-6942
<b>T-65</b>	Order by HVO–Rama Brigade Command, No. 01-22 3-13/93, 27 January 1993, ICTY No. 01525455
<b>T-66</b>	Order by Armed Force North-West Herzegovina, No. 05/6-276, 12 April 1993, ICTY No. 00398827
<b>T-67</b>	Report by Rama–Prozor Military Police dated 17 April 1993 for 16 April 1993, ICTY No. 015489/89

<b>T-68</b>	Request by Rama-Prozor Brigade SIS, No. 03-03-182/93, 9 May 1993, ICTY No. 01525273, taken-over from State Archives of the Republic of Croatia
<b>T-69</b>	HVO order for attack No. 01-459, 11 May 1993, ICTY No. 03641778, 79, 80
<b>T-70</b>	Report by Rama-Prozor Brigade SIS, No. 03-02-39/93, 25 May 1993, ICTY No. 01514141-01514142, taken-over from State Archives of the Republic of Croatia
<b>T-71</b>	Order of the North-West Herzegovina Command, Class 9-13/93, Ur.No. 278/93, 28 May 1993, document taken-over from State Archives of the Republic of Croatia
<b>T-72</b>	Report about events in the villages of Klek and Donji Krančiči by Rama-Prozor Brigade, No. 03-02-40/93, 1 June 1993, document taken-over from State Archives of the Republic of Croatia
<b>T-73</b>	Report by Rama Brigade SIS, No. 03-02-42/93, 3 June 1993, taken-over from State Archives of the Republic of Croatia
<b>T-74</b>	Order by Rama Brigade SIS, No. 03-03-248/93, 9 June 1993, taken-over from State Archives of the Republic of Croatia
<b>T-75</b>	Command of the North-West Operations Zone, Information about situation in Prozor, No. 352/93, 14 June 1993
<b>T-76</b>	Order by Rama-Prozor Brigade for apprehension and search of apartments, No. 03-03-263/93, 22 June 1993, document taken-over from State Archives of the Republic of Croatia
<b>T-77</b>	Report by Rama-Prozor Brigade No. 03-02-66/93, 27 June 1993, ICTY No. 01514134
<b>T-78</b>	Report by Rama-Prozor Brigade No. 03-02-65/93, 27 June 1993, document taken-over from State Archives of the Republic of Croatia
<b>T-79</b>	Report by Rama-Prozor Brigade No. 03-02-68/93, 30 June 1993, document taken-over from State Archives of the Republic of Croatia
<b>T-80</b>	Rama Brigade SIS, Report, No. 03-02-72/93, 4 July 1993, document taken-over from State Archives of the Republic of Croatia
<b>T-81</b>	HVO Order No. 01-1489/93, 6 July 1993, ICTY No. 01553825
<b>T-82</b>	HVO Rama-Prozor Brigade Order No. 03-1263, 7 July 1993, ICTY No. 01514112
<b>T-83</b>	Rama Brigade SIS Report No. 03-02-74/93, 8 July 1993, ICTY No. 01514132, document taken-over from State Archives of the Republic of Croatia
<b>T-84</b>	Escort Sheet of Rama-Prozor Brigade No. 02/115/93, 11 July 1993



<b>T-85</b>	Report by Rama Brigade SIS No. 03-02-79/93, 14 July 1993, ICTY No. 0420-0097
<b>T-86</b>	SIS of North-West Herzegovina, Report, Class 1-76/93, Ur. No. 443/93, 15 July 1993, ICTY No. 01515379, document taken-over from State Archives of the Republic of Croatia
<b>T-87</b>	Rama-Prozor Military Police, 17 July 1993, Report for 16 July 1993, ICTY No. 01548971
<b>T-88</b>	Receipt by Rama-Prozor Military Police, No. 81-91/93, 19 July 1993, ICTY No. 01561211
<b>T-89</b>	Notification by Rama-Prozor Military Police, No. 22-18/93, 21 July 1993, document taken-over from State Archives of the Republic of Croatia
<b>T-90</b>	Rama Brigade Order No. 01-1381/93, 21 July 1993, ICTY No. 01525447
<b>T-91</b>	Rama-Prozor Military Police Report dated 22 July 1993 for 21 July 1993, ICTY No. 01548967
<b>T-92</b>	Request to HVO units for assistance No. 02-2/1-01-1537/93, 24 July 1993, 0420-0777
<b>T-93</b>	Rama-Prozor Brigade Order No. 01-1410/93, 26 July 1993
<b>T-94</b>	Rama-Prozor Military Police Order No. 01-35, 28 July 1993, ICTY No. 01505695
<b>T-95</b>	Rama Brigade SIS Report No. 03-02-83/93, 31 July 1993, ICTY No. 01525297-01525298, document taken-over from State Archives of the Republic of Croatia
<b>T-96</b>	Rama Brigade SIS, No. 03-02-84/93, 31 July 1993, ICTY No. 01525293-01525296
<b>T-97</b>	Report by Rama-Prozor Brigade prison warden, No. 03-02-89/93, 2 August 1993, ICTY No. 01505717 and 01505718, document taken-over from State Archives of the Republic of Croatia
<b>T-98</b>	Free movement permit, Rama-Prozor Military Police, No. 01-38/93, 2 August 1993, ICTY No. 01561208
<b>T-99</b>	Report by Rama-Prozor Brigade prison warden, No. 03-02-90/93, 4 August 1993, ICTY No. 01505698
<b>T-100</b>	Report by Rama-Prozor Brigade SIS No. 03-02-87/93, 5 August 1993, ICTY No. 01514111
<b>T-101</b>	Report by Rama-Prozor Brigade prison warden, No. 03-02-91/93, 6 August 1993, 01505699

<b>T-102</b>	Request by Rama-Prozor Brigade SIS, No. 03-03-414/93, 6 August 1993, ICTY No. 01514110
<b>T-103</b>	Request by Rama-Prozor Brigade SIS, No. 02-88/93, 10 August 1993, taken-over from State Archives of the Republic of Croatia
<b>T-104</b>	HVO Official Note, No. 02-4-1-1109/93, 13 August 1993, ICTY No. 01505907 and 01505908
<b>T-105</b>	Rama-Prozor Brigade Order, No. 01-1533/93, 14 August 1993
<b>T-106</b>	Report by Rama Brigade SIS No. 03-02-99/93, 14 August 1993, taken-over from State Archives of the Republic of Croatia
<b>T-107</b>	Rama Brigade Report No. 03-02-99/93, 14 August 1993
<b>T-108</b>	Appeal for rescue of the Muslim population of Prozor, No. 1-01-99-4/93, 17 August 1993; List of civilians killed in the territory of Prozor Municipality from 23 October 1992 to 17 August 1993; List of torched houses, ICTY No. 01034320, 21, 22, 23 – certified
<b>T-109</b>	Certificate of housing insurance, Rama-Prozor HVO Military Police, No. 21-220/93, 19 August 1993, ICTY No. 01561197
<b>T-110</b>	Report by HVO Rama Brigade on activities of EC monitors in the territory of Rama Municipality, No. 03-02-94/93, 21 August 1993, ICTY No. 01514130-31
<b>T-111</b>	List of detained Muslims from Prozor, 22 August 1993, ICTY No. 00919889, 90, 91, 92
<b>T-112</b>	Makljen Prozor DTP of 26 August 1993, ICTY No. 06043294
<b>T-113</b>	Permission issued by Rama-Prozor Brigade, 29 August 1993, ICTY No. 06043204
<b>T-114</b>	Free movement permit, Rama-Prozor Military Police, No. 21-140/93, 30 August 1993, ICTY No. 01561190
<b>T-115</b>	Rama-Prozor HVO Brigade No. 02-6-1861/93, 30 August 1993, ICTY No. 06043257
<b>T-116</b>	Rama-Prozor Brigade Order No. 01-1720/93, 31 August 1993, ICTY No. 06043258
<b>T-117</b>	Document, Persons who were not returned from labor, 1 September 1993, ICTY No. 06043249
<b>T-118</b>	HVO Military Police Administration Mostar No. 02-4/I-01-2530/93, 15 October 1993
<b>T-119</b>	Prison Warden Request, 28 October 1993, ICTY No. 06043253

<b>T-120</b>	Rama-Prozor HVO SIS No. 02-4/2-7-61/93, 10 November 1993, ICTY No. 01514074 to 75
<b>T-121</b>	Report by HVO Rama Brigade SIS No. 03-02-116/93, 14 November 1993, ICTY No. 01514122, taken-over from State Archives of the Republic of Croatia
<b>T-122</b>	Official Note by SIS, Rama Operations Group, No. 02-4/2-7 128/93, 26 November 1993, ICTY No. 01511300-01
<b>T-123</b>	Information A by Rama-Prozor HVO, SIS Center, No. 02-4/2-7-149/93, 2 December 1993, ICTY No. 01511239-01511241; List of detainees on 4 December 1993, ICTY No. 06043237 and 06043238; Information A by Rama Prozor HVO, SIS Center, No. 02-4/2-7/177/93, 12 December 1993, ICTY No. 01511207-01511227
<b>T-124</b>	Rama SIS Official Note No. 02-4/2-7-49/94, 10 January 1994, ICTY No. 01570221
<b>T-125</b>	Information A by Rama-Prozor SIS Sub-Center, No. 02-4/2-7-60794, 12 January 1994, taken-over from State Archives of the Republic of Croatia, ICTY No. 01545878
<b>T-126</b>	Prison Warden Log-Book, ICTY No. 03252174-03252201, 06043212-06043215, 03252338-03252428, 03252430-03252577, 06043182-06043211, 06043216-06043242, 06043245-06043260, 06043269-06043279
<b>T-127</b>	Official Note of Rama-Prozor SIS Sub-Center, No. 02-4/2-7-102/94, 22 January 1994, taken-over from State Archives of the Republic of Croatia, ICTY No. 01570224
<b>T-128</b>	Rama-Prozor SIS Sub-Center, No. 02-4/2-7-103/94, 22 January 1994, document taken-over from State Archives of the Republic of Croatia, ICTY No. 01570117
<b>T-129</b>	Information A by Rama-Prozor SIS Sub-Center No. 02-4/2-7-131/94, 27 January 1994, ICTY No. 01570228
<b>T-130</b>	Rama SIS Sub-Center No. 02-4/2-7-152/94, 31 January 1994 -- unburied dead bodies of people of Muslim ethnicity, taken-over from State Archives of the Republic of Croatia, ICTY No. 01567797
<b>T-131</b>	Excerpt from the minutes of the meeting of Defense Minister's Advisory Board held on 4 March 1994, class: 03-01/94-02/13, No. 02-03-94-1, 14 March 1994, ICTY No. 01570142, 43, 44, 45, 46, 47, 48 – taken-over from State Archives of the Republic of Croatia

<b>T-132</b>	Municipal Center for Research of Crimes against Humanity and International Law, Prozor War Presidency -- Brief overview of events and situation in Prozor Municipality, No. 1-09-09/94, 10 April 1994
<b>T-133</b>	Army of B-H – Information on the situation in Prozor Municipality before and after the HVO and HV aggression of 23-24 October 1992 and the status of the Muslim people related to the events, No. 1-09-13/94, 20 April 1994
<b>T-134</b>	HVO camps in Herzegovina, ICTY No. 02064768–790
<b>T-135</b>	Provisional instruction for the operation of units, HVO Military Police, ICTY No. 01550537–546
<b>T-136</b>	File of the place of Prozor, pre-war geographic and demographic data, ICTY No. 02915257–265
<b>T-137</b>	Sketch – plan of the building of the High School Center in Prozor, RR 282806–808
<b>T-138</b>	List of killed and missing civilians from the territory of Prozor Municipality from 23 October 1992 to the end of the war, ICTY No. RR 276882
<b>T-139</b>	List of missing persons in the territory of B-H, with particular emphasis on Prozor Municipality, issued by the International Committee of the Red Cross
<b>T-140</b>	List of structures that came under attack in Prozor Municipality compiled by the State Commission for Gathering Facts on War Crimes, 27 April 1995
<b>T-141</b>	Events in the territory of Prozor Municipality compiled by the State Commission for Gathering Facts on War Crimes, 26 April 1995
<b>T-142</b>	Record of identification of the scene -- the building of High School Center in Prozor, No. P-16-04/2-5-04-2-308/11, 29 December 2011

287. The following evidence was adduced at the trial before the Appellate Panel:

<b>AT-1</b>	Witness Examination Record for Muharem Konjarić from investigation, Cantonal Prosecutor's Office Mostar, No. KT-22/03, KT.13/01, of 10 March 2004
<b>AT-2</b>	Witness Examination Record for Muharem Konjarić, B-H Prosecutor's Office, No. KT-RZ-100/05, of 13 July 2009
<b>AT-3a</b>	Witness Examination Record for Zlata Omanović, B-H Prosecutor's Office, No.T20 0 KTRZ 000066310, of 21 November 2011

<b>AT-3b</b>	Extract from Register of Deaths for Zlata Omanović No. 04/18-13-3-1019/2014, of 2 December 2014
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### E. DEFENSE DOCUMENTARY EVIDENCE

288. The following documentary evidence of the Defense was adduced at the main trial:

289.	O-1	Witness Examination Record for Mirza Bektaš, Cantonal Prosecutor's Office Mostar, No. KT 13/01 and KT 22/03, 26 March 2004
	<b>O-2</b>	Witness Examination Record for Ibrahim Grcić, Prosecutor's Office of B-H, No. T20 0 KTRZ 0000663 10, 28 February 2011; Photo-album, Prosecutor's Office of B-H, 23 November 2010; Witness Examination Record for Ibrahim Grcić, Zenica SDB Sector (State Security Service Sector) – Labor Organization Bugojno SDB, No. 100/94, 24 June 1994
	<b>O-3</b>	Witness Examination Record for Ibrahim Lulić, State Investigation and Protection Agency (SIPA), Mostar Regional Office, No. 17-13/3-1-04-2-29-58/10, 8 April 2010
	<b>O-4</b>	Witness Examination Record for Hamid Kmetaš, Prosecutor's Office of B-H, No. T20 0 KTRZ 000663 10, 17 November 2011
	<b>O-5</b>	Witness Examination Record for Dervo Kmetaš, Prosecutor's Office of B-H, No. T 20 0 KTRZ 000663 10, 23 March 2011
	<b>O-6</b>	Witness Examination Record for Dervo Kmetaš, State Investigation and Protection Agency, Mostar Regional Office, No. 17-13/3-1-174/06, 12 September 2006
	<b>O-7</b>	Witness Examination Record for Dervo Kmetaš, Prozor Public Security Station, No. 62/95, 10 March 1995
	<b>O-8</b>	Photo-album, Prosecutor's Office of B-H, No. T20 0 KTRZ 000663/10, 18 March 2011
	<b>O-9</b>	Witness Examination Record for Armin Pračić, Prosecutor's Office of B-H, No. T20 0 KTRZ 0000663 10, 31 January 2011
	<b>O-10</b>	Two photographs showing the Accused Željko Jukić
	<b>O-11</b>	Photocopy of the emblem of the <i>Marinko Beljo</i> –Rama Special Purpose Unit

<b>O-12</b>	Private photographs of the Accused Željko Jukić
<b>O-13</b>	Decree Law on the Armed Force of the Republic of Bosnia and Herzegovina (RB-H), <i>Official Gazette of the RB-H</i> No. 4/92, 20 May 1992
<b>O-14</b>	Decision on the declaration of the state of war and the Order on the proclamation of general public mobilization in the territory of the RB-H, <i>Official Gazette of the RB-H</i> No. 7, 20 June 1992
<b>O-15</b>	Decision on the establishment of the Croat Community of Herzeg-Bosnia, <i>Official Gazette of the Croat Community of Herzeg-Bosnia</i> No. 1, September 1992, ICTY No. 00561308
<b>O-16</b>	Decision on the forming of the Croat Defense Council, <i>Official Gazette of the Croat Community of Herzeg-Bosnia</i> , No. 1, September 1992, ICTY No. 01328793
<b>O-17</b>	Decision on the declaration of an imminent threat of war, <i>Official Gazette of the RB-H</i> No. 1, 9 April 1992, ICTY No. 00507522
<b>O-18</b>	Minutes of the 64th session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 3 April 1992, No. 02-011-340/92, ICTY No. 04615209
<b>O-19</b>	Minutes of the 66th session of the Presidency of the Republic of Bosnia and Herzegovina held on 9 April 1992, No. 02-011-304/92, ICTY No. 04615218
<b>O-20</b>	Minutes of the 68th session of the Presidency of the Republic of B-H held on 12 April 1992, No. 02-011-355/92, ICTY No. 04615228
<b>O-21</b>	Minutes of the 69th session of the Presidency of the Republic of B-H held on 13 and 14 April 1992, No. 02-011-312/92, ICTY No. 04615231
<b>O-22</b>	Minutes of the 70th session of the Presidency of the Republic of B-H held on 14 April 1992, No. 02-011-621/92, ICTY No. 04615238
<b>O-23</b>	Minutes of the 71st session of the Presidency of the Republic of B-H held on 15 April 1992, No. 02-011-318/92, ICTY No. 04615241
<b>O-24</b>	Minutes of the 74th session of the Presidency of the Republic of B-H held on 20 April 1992, No. 02-011-325/92, ICTY No. 04615252
<b>O-25</b>	Minutes of the 75th session of the Presidency of the Republic of B-H held on 21 April 1992, No. 02-011-638/92, ICTY No. 04615256
<b>O-26</b>	Minutes of the 76th session of the Presidency of the Republic of B-H held on 22 April 1992, No. 02-011-639/92, ICTY No. 04615259
<b>O-27</b>	Minutes of the 77th session of the Presidency of the Republic of B-H held on

	24 April 1992, No. 02-011-326/92, ICTY No. 04615262
<b>O-28</b>	Minutes of the 78th session of the Presidency of the Republic of B-H held on 25 April 1992, No. 02-011-622/92, ICTY No. 04615265
<b>O-29</b>	Minutes of the 79th session of the Presidency of the Republic of B-H held on 27 April 1992, No. 02-011-327/92, ICTY No. 04615268
<b>O-30</b>	Minutes of the 80th session of the Presidency of the Republic of B-H held on 28 April 1992, No. 02-011-329/92, ICTY No. 04615271
<b>O-31</b>	Minutes of the 81st session of the Presidency of the Republic of B-H held on 4 May 1992, No. 02-011-343/92, ICTY No. 04615276
<b>O-32</b>	Minutes of the 82nd session of the Presidency of the Republic of B-H held on 7 May 1992, No. 02-011-623/92, ICTY No. 04615280
<b>O-33</b>	Decision on the termination of the state of war, <i>Official Gazette of the RB-H</i> No. 50, 28 December 1995
<b>O-34</b>	Defense plan for Prozor Municipality by the Territorial Defense Staff No. 1-01-3/92 of 1 June 1992 with attachments, Document <i>Beta</i> and Document <i>Alfa</i> , total of 5 pages
<b>O-35</b>	Zajko Delalić's Report to Commander of the Armed Force of the Republic of B-H from 13 to 15 August 1992
<b>O-36</b>	Zejnir Delalić's Order to the Prozor Municipal Staff of the Armed Force of B-H No. 02/349-59, 28 August 1992
<b>O-37</b>	Report about the number of expelled Croats by Sub-Office for Labor, Social Welfare and Family, Municipality of Rama, No. 75/93, 31 August 1993
<b>O-37a</b>	Conclusions and tasks of the Prozor Municipal Defense Staff No. 1-01-117/92, 1 September 1992
<b>O-38</b>	Request for assistance in arming the Muslim combatants of the Prozor Municipal Defense Staff, No. 1-01-120/92 of 2 September 1992, forwarded to the Kuwaiti <i>Igasa</i> in Split
<b>O-39</b>	Letter of Hidajet Effendi Elkaz, chief imam of the Prozor board of the Islamic Community, of 4 September 1992, to the Kuwaiti <i>Igasa</i> presidency in Split
<b>O-40</b>	Letter of Croat Community of Herzeg-Bosnia-HVO–Prozor Municipality, No. 01/023-6/92 of 3 September 1992, to the Party of Democratic Action (SDA) of Prozor
<b>O-40a</b>	Report by HVO, Prozor Municipal Staff, SIS, No. 02-16/92, 8 September 1992
<b>O-41</b>	Report by Prozor Territorial Defense Staff to the Commander of Prozor

	Municipal Defense Staff about the deployment of two platoons in the war theater in the region of Ravašnica–Kicelj–Zahum, 9 September 1992, 2 pages
<b>O-41a</b>	Report by HZHB-HVO No. 02-19/92, 15 September 1992
<b>O-41b</b>	Report on the Croat-Muslim inter-ethnic relations by the Defense Department, Security and Information Service, No. 02-21/92, 20 September 1992
<b>O-42</b>	Report by HVO, Prozor Municipal Staff, SIS, No. 2-44/92, 20 October 1992, Attn. Colonel Željko Šiljeg, ICTY No. 01525590
<b>O-43</b>	Report about the Croat-Muslim inter-ethnic relations by the HZHB, HVO, Defense Department, Security and Information Service, No. 02-20/92, 15 September 1992
<b>O-44</b>	Report about the current events in the territory of the Municipality, Defense Department, Security and Information Service, No. 02-27/92, 1 October 1992, 2 pages
<b>O-45</b>	Report about the current events in the territory of the Municipality, Defense Department, Security and Information Service, No. 02-31/92, 16 October 1992, 2 pages
<b>O-46</b>	Report by HZHB, HVO, Rama–Prozor Municipality, Rama Brigade, 20 October 1992
<b>O-47</b>	Report by Defense Department, Security and Information Service, No. 02-45/92, 21 October 1992, 3 pages
<b>O-48</b>	Report by HVO Prozor Municipal Staff, SIS, No. 02-48/92, 22 October 1992
<b>O-49</b>	Report by HVO Prozor Municipal Staff, SIS, No. 02-50/92, 22 October 1992
<b>O-50</b>	Letter by HVO, Prozor Municipality, No. 01-23/92 of 23 October 1992, to the military and civilian representatives of the Muslims of Prozor, ICTY No. 01527602
<b>O-51</b>	Intelligence report by HVO No. 89/92, 26 October 1992, ICTY No. 01513855
<b>O-52</b>	Order Operational Number 3 to Commanders of Municipal Defense Staffs of Konjic, Jablanica, Gornji Vakuf and Prozor, RB-H, Supreme Command Staff of the Armed Force of the Republic of B-H, Tactical Group (TG) 1, No. 02/349-131, 27 October 1992, 3 pages
<b>O-53</b>	Report by HVO, Prozor Municipal Staff, SIS, No. 02-51/92, 28 October 1992
<b>O-54</b>	Official Note by HVO, Prozor Municipal Staff, SIS, No. 01-71/92, 28 October 1992
<b>O-55</b>	Decision by the HVO, No. 01-I-32/93, 15 January 1993, ICTY No. 01094172



<b>O-56</b>	Report by HZHB, HVO Rama–Prozor Brigade, Security and Information Service, No. 03-02-29/93, 4 April 1993, 2 pages
<b>O-57</b>	Rama-Prozor Brigade Report No. 03-02-65/93, 27 June 1993
<b>O-58</b>	Report No. 03-02-74/93, 8 July 1993, ICTY No. 01514132
<b>O-59</b>	Report No. 03-02-84/93, 31 July 1993, ICTY No. 01525293
<b>O-60</b>	Report No. 03-02-96/93, 4 August 1993, ICTY No. 01505698
<b>O-61</b>	Report No. 03-02-91/93, 6 August 1993
<b>O-62</b>	Request No. 03-03-414/93, 6 August 1993, ICTY No. 01514110
<b>O-63</b>	Report by Rama Brigade, Security and Information Service, No. 02-88/93, 10 August 1993
<b>O-64</b>	Invitation to a meeting No. 01-2065/93, 12 October 1993
<b>O-65</b>	Provisional instruction for the operation of units of the HZHB HVO Military Police, ICTY No. 01550537
<b>O-66</b>	File of the place of Prozor, ICTY No. 02915257
<b>O-67</b>	Conclusions and tasks of the Army of RB-H, Prozor Municipal Defense Staff, No. 1-01-117/92, 1 September 1992; Decision of the Main Staff of the Armed Force, Sarajevo, No. 02/7002, 26 July 1992; Order by the Army of RB-H, TG 1, Konjic, No. 02/349-23, 4 August 1992; Defense plan for Prozor Municipality No. 1-01-1/92, 1 June 1992; Order of the Supreme Command Staff of the Armed Force, Sarajevo, TG 1, No. 02/349-59, 28 August 1992 – source: <i>Ramski zbornik 2000</i>
<b>O-68</b>	Extract from the book by Ivica Mlivočič, <i>Zločin s pečatom i Genocid i ratni zločini muslimanskih snaga nad Hrvatima u BiH 1992.-1994. godine</i> [Crime with a Seal and Genocide and War Crimes of the Muslim Forces against the Croats in B-H 1992-1994]
<b>O-69</b>	Extract from the Rama–Prozor Municipality Register of Deaths for Franjo Zadro No. 02/1-15-104/2013, 20 March 2013
<b>O-70</b>	Extract from the Rama–Prozor Municipality Register of Births for Josip Jukić No. 02/1-15-622/2013, 19 March 2013
<b>O-71</b>	Extract from the Rama–Prozor Municipality Register of Births for Nela Tomić No. 02/1-15-621/2013, 19 March 2013
<b>O-72</b>	Extract from the Rama–Prozor Municipality Register of Births for Željka Paun No. 02/1-15-620/2013, 19 March 2013
<b>O-73</b>	Extract from the Rama–Prozor Municipality Register of Births for Elvedin

	Duvnjak, No. 02/1-15-400/2013, 25 February 2013
<b>O-74</b>	Extract from the Rama–Prozor Municipality Register of Births for Tomislav Beljo, No. 02/1-15-389/2013, 3 April 2013
<b>O-75</b>	Extract from the Rama–Prozor Municipality Register of Births for Ante Beljo, No. 02/1-15-390/2013, 3 April 2013
<b>O-76</b>	Extract from the Rama–Prozor Municipality Register of Births for Mara Jukić, No. 02/1-15-787/2013, 10 April 2013
<b>O-77</b>	Certificate by <i>TIP Dekorativa d.d.</i> [shareholding company] Prozor No. 01-2/13, 8 April 2013
<b>O-78</b>	Certificate by <i>Marka Marulića</i> Elementary School in Prozor No. 408/12, 18 July 2012
<b>O-79</b>	Certificate by Prozor High School No. 479/12, 16 July 2012
<b>O-80</b>	Response by Prozor High School No. 240/13, 12 April 2013
<b>O-81</b>	Response by Prozor High School No. 311/13, 17 May 2013
<b>O-82</b>	SFRY passport to the name of Željko Jukić No. 314007
<b>O-83</b>	Translation by certified court interpreter of the text on pages 13 and 14 of the SFRY passport to the name of Željko Jukić No. 314007
<b>O-84</b>	Health insurance card of conscript and Military Academy student to the name of Željko Jukić, No. of record XII-3-10, dated 18 April 1988
<b>O-85</b>	Extract from Register of Births for Prozor for Paula Jukić, No. 02/1-15-2804/2013, 4 October 2013
<b>O-86</b>	Extract from Register of Births for Mostar for Leonardo Jukić, No. 04/1-IV-15-1-67263/2013, 10 October 2013
<b>O-87</b>	Extract from Register of Births for Mostar for Kristina Jukić, No. 04/1-IV-15-1-67259/2013, 10 October 2013
<b>O-88</b>	Deposition about a joint household, Prozor Municipality, No. 6713/13, 4 October 2013
<b>O-89</b>	Certificate by Cantonal Tax Authority, Prozor-Rama Tax Office, No. 13-7/5-15-1608-1/13, 4 October 2013
<b>O-90</b>	Certificate by Municipal Court in Konjic, Land Register Department, No. 056-0-RZ-13-000 750, 4 October 2013
<b>O-91</b>	Certificate by <i>JKP Vodograd d.o.o. Prozor/Rama</i> [Public Utility Enterprise] for Dragica Jukić No. 03/1-581-1/13, 4 October 2013

290. The following documentary evidence was adduced at the trial before the Appellate Panel:

<b>AO-1</b>	Witness Examination Record for Šemsa Bećirović, B-H Prosecutor's Office, No. T20 0 KTRZ 0000663 10, of 13 December 2010
<b>AO-2</b>	Witness Examination Record for Đula Berić-Sultagić, B-H Prosecutor's Office, No. T20 0 KTRZ 0000663 10, of 9 December 2011
<b>AO-3</b>	Witness Examination Record for Muharem Konjarić, B-H Prosecutor's Office, No. T20 0 KTRZ 0000663 10, of 9 December 2010
<b>AO-4</b>	Witness Examination Record for Amir Konjarić, B-H Prosecutor's Office, No. T20 0 KTRZ 0000663 10, of 8 December 2010
<b>AO-5</b>	Witness Examination Record for Dževad Kovačević, B-H Prosecutor's Office, No. T20 0 KTRZ 0000663 10, of 17 January 2011
<b>AO-6</b>	Witness Examination Record for Ibrahim Lulić, B-H Prosecutor's Office, No. T20 0 KTRZ 0000663 10, od 20 January 2011
<b>AO-7</b>	Document of the PU Konjic, PS Prozor-Rama, No. 02-02/4-4-04-16/15, of 5 February 2015