

**Bosna i Hercegovina**

**Босна и Херцеговина**



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

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**Case No. S1 1 K 012024 14 Kri**

**Announced on: 24 June 2015  
Written copy sent out on: 14 October 2015**

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**Before the Panel comprised of: Judge Šaban Maksumić, Presiding  
Judge Vesna Jesenković, member  
Judge Staniša Gluhajić, member**

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

**v.**

**BOSILJKO MARKOVIĆ  
AND OSTOJA MARKOVIĆ**

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**VERDICT**

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**Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:  
Ms. Olivera Đurić**

**Counsel for the Accused Bosiljko Marković: Attorney Nebojša Pantić  
Counsel for the Accused Ostoja Marković: Attorney Zoran Bubić**

Sud Bosne i Hercegovine, Sarajevo, ul. Kraljice Jelene br. 88

Telefon: 033 707 100, 707 596; Fax: 033 707 225

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**Number: S1 1 K 012024 14 Kri**  
**Sarajevo, 24 June 2015**

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

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel composed of Judge Šaban Maksumić, as the Panel President, and Judges Vesna Jesenković and Staniša Gluhajić as the Panel members, with the participation of the Legal Advisor Sabina Hota-Ćatović, as the Minutes-taker, in the criminal matter against the accused Bosiljko Marković and Ostoja Marković, charged with the criminal offense of War Crimes against Civilians in violation of Article 173(1)(e), as read with Article 180 of the Criminal Code of Bosnia and Herzegovina (CC BiH), pursuant to the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KTRZ- 0005827 12 of 30 April 2014, having held an oral and public main hearing, in the presence of the Prosecutor of the BiH Prosecutor's Office, the accused Bosiljko Marković and his Counsel, Mr. Nebojša Pantić, Attorney from Banja Luka, the accused Ostoja Marković and his Counsel, Mr. Zoran Bubić, Attorney from Banja Luka, partly held in camera, on 24 June 2015 rendered and publicly announced the following:

**V E R D I C T**

**THE ACCUSED:**

1. **BOSILJKO MARKOVIĆ**, father's name Nenad and mother Nevenka, neé Blagojević, born on 14 October 1965 in Banja Luka, ethnic ....., citizen of .... and ....., graduated from the secondary civil engineering school, married, no children, unemployed, indigent, residing in ....., ....., PIN ....., criminal proceeding number K00303805K pending against him before the Basic Court in Kotor Varoš for the criminal offense of rape,
2. **OSTOJA MARKOVIĆ** aka Čole, father's name Gojko and mother Miljka, neé Marković, born on 26 April 1965 in Donji Obodnik, Kotor Varoš municipality, ethnic ....., citizen of ..... and ....., completed primary school, unemployed, indigent, residing in ....., ..... No. ....., ....., previously convicted under the final Judgment of the Basic Court in Banja Luka No. .... of 14 November 2005 for the criminal offense of rape in violation of Article 193(1) of the RS Criminal Code and sentenced to two years and six months in prison, the criminal proceedings number K00303805K pending against him before the Basic Court in Kotor Varoš for the criminal offense of rape, PIN .....

**ARE HEREBY FOUND GUILTY**

## **In as much as:**

During the war in Bosnia and Herzegovina and the armed conflict between the Army of the Republika Srpska and the Kotor Varoš Territorial Defense, existing in the territory of the Kotor Varoš municipality from 11 June 1992, as members of the Army of Republika Srpska – Kotor Varoš Brigade, acted in violation of the rules of international humanitarian law, Article 3(1)(a) and (c) of the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949,

and thus, on 28 June 1992, at around 21:00 hrs, in a van owned by Huso Lihović from the place of Dabovci, driven by Mirko Božić, arrived in the village of Orahova, mostly inhabited by the Croat population, from which Predrag Cicmanović (killed in 1995) stepped out, and abducted from a house owned by A.A., in the presence of the family members, minor S-4, aged 14 at the time, under the excuse that she would be exchanged for the captured VRS members in the village of Večići, while at the same time the accused Ostoja Marković and Bosiljko Marković, together with driver Mirko Božić, waited in the van, and after Cicmanović brought the injured party S-4 into the vehicle, forced her into sexual intercourse during the ride, even though the injured party opposed it by crying and screaming, wherefore Cicmanović put a knife under her throat, and one of the Accused a pistol on her forehead, and during the ride towards the places of Vrbanjci and Kotor Varoš, Predrag Cicmanović told Božić to take a turn towards the village of Dabovci, which he did, and stopped the vehicle near a bus station, whereupon Predrag Cicmanović and the accused Ostoja Marković and Bosiljko Marković repeatedly raped, in turns, the injured party S-4, also forcing her into oral intercourse after the rape, while driver Mirko Božić left the van after halting it, and stood all the time in front of the vehicle, around ten meters away, listening to the beating and shouting coming from (inside) the van

## **whereby they committed**

the criminal offense of War Crimes against Civilians in violation of Article 142(1) of the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY), that was adopted based on the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of SFRY<sup>1</sup>, as read with Article 22 of the same Code,

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<sup>1</sup> The SFRY Assembly adopted the Criminal Code of SFRY at the session of the Federal Council held on 28 September 1976 and published it in the SFRY Official Gazette, No. 44 of 8 October 1976. Once the independence of BiH was declared, the CC SFRY was, based on the Decree with the force of law of 11 April 1992, adopted as the law of the Republic of Bosnia and Herzegovina (with minor amendments), and came into force on the day when it was established.

so the Court, applying the foregoing provisions and Articles 33, 38 and 41 of the CC SFRY, for the referenced criminal offense,

## SENTENCED

1. The accused Bosiljko Marković to IMPRISONMENT FOR A TERM OF TEN (10) YEARS

2. The accused Ostoja Marković to IMPRISONMENT FOR A TERM OF TEN (10) YEARS

### II

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

### III

Pursuant to Article 198(2) of the CPC BiH, the claim under property law filed by the injured party S-4 is hereby awarded, and the accused Bosiljko Marković and Ostoja Marković shall compensate the injured party-protected witness „S-4“, jointly and severally, by way of non-pecuniary damage compensation, with the amount of **KM 26,500.00** as follows:

- For mental pain caused by violations of liberty or personal rights in the amount of KM 20,000.00;
- For mental pain due to diminished quality of life, the amount of KM 6.500,00,

all within a 30-day deadline under the threat of enforcement.

The claim under property law filed by the injured party, exceeding the awarded amount of non-pecuniary damage compensation of KM 13,500.00, is dismissed as ill-founded, and the injured party instructed to pursue the claim in a civil action.

## Reasoning

### I. CRIMINAL PROCEEDINGS

#### A. THE INDICTMENT AND THE MAIN TRIAL

1. The Indictment of the Prosecutor's Office of Bosnia and Herzegovina (the Prosecution), number KTRZ- 0005827 12 of 30 April 2014 charged Bosiljko Marković and

Ostoja Marković with the commission of the criminal offense of War Crimes against Civilians under Article 173(1)(e) of the Criminal Code of Bosnia and Herzegovina. The Accused were charged with the unlawful treatment of a civilian-protected witness S-4, in breach of the provisions of international humanitarian law during the armed conflict in the territory of Kotor Varoš municipality in Bosnia and Herzegovina, in June 1992.

2. The main trial commenced on 26 August 2014 by reading the Indictment and the Prosecution's opening statement.

3. The evidentiary proceedings were completed at the main trial hearing held on 28 April 2015, whereupon the Prosecution, the Defense and the injured party's attorney (in relation to the claim under property law) presented their respective closing arguments.

## B. PROCEDURAL DECISIONS

### (a) **Decision to exclude the public from part of the main trial**

4. Pursuant to Article 235 of the CPC BiH, the public was excluded from the main trial during the testimony of the injured party S-4. The Panel found the exclusion of the public justified with the aim to protect the private life of the witness who gave evidence with regard to the circumstances of the incident covered by the Indictment.<sup>2</sup>

5. The public was, on the same grounds, also excluded when the Examination Record for witness A.A.<sup>3</sup> was read out at the hearing held on 3 February 2015, with a view to protecting the witness S-4's personal details. Considering that it was proposed that the statement given by the injured party's father be read out, pursuant to Article 273 of the CPC BiH, it was not possible to tender this evidence without disclosing the information due to which the public was excluded when the protected witness S-4 gave her evidence. Considering the foregoing, the Panel accepted the Prosecution's motion, to which both the Defense and the Accused also consented, that the hearing be closed for the public while the referenced statement is being read out.

6. Pursuant to the Defense's proposal, and in order to protect witness Cvijeta Narić's private life, the Panel also excluded the public from the main hearing held on 10 February 2015. Notwithstanding the Prosecution's objections to the Defense's proposal, the Panel accepted the Defense's reasons as justified (the reasons provided for the record from the main hearing), bearing in mind the circumstances and the facts about which the witness would testify at the main trial concerning her personal/intimate life.

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<sup>2</sup> Main trial hearing of 23 December 2014.

<sup>3</sup> Considering that the disclosure of this witness's full name would indicate the identity of the injured party, who is a protected witness, the witness is marked as A.A. in the Verdict.

(b) **Witnesses with granted protective measures**

7. Witness S-4's personal details were protected under the Decision of the Court of BiH No. S1 1 K 012024 14 Krn6 of 18 April 2014. Specifically, this witness was seriously psychologically traumatized due to the circumstances in which the crime covered by the Indictment was committed. Therefore, pursuant to Article 3(2), Article 12 and Article 13 of the Law on the Protection of Vulnerable Witnesses and Witnesses under Threat, the witness S-4 was granted the status of a vulnerable witness.<sup>4</sup>

(c) **Recess of the main trial**

8. At the main trial hearing held on 28 October 2014, the Panel President resumed the main trial pursuant to Article 251(2) of the CPC BiH<sup>5</sup>, considering that the main trial was not held during a period longer than thirty days. With the consent of the parties to the proceedings and the Defense Attorneys, the Indictment was not read out again, and the evidence was not re-adduced, namely the parties and Counsel agreed to use the previous evidence the witnesses and expert witnesses gave at the main trial, and the evidentiary proceedings were resumed.

(d) **Changed order of the presentation of evidence**

9. At the resumed main hearing held on 3 March 2015, the Panel decided, considering the principle of judicial economy and the consent of the parties to the proceedings, to change the order of the evidence presentation and examine witness Petko Župljanin, as additional evidence, before the Prosecution's rebuttal evidence. The Panel deems the foregoing justified given the fact that the witness for the referenced day appeared before the Court to give evidence, while the rebuttal evidence scheduled for presentation before adducing additional evidence could not be tendered at the referenced hearing.

10. The order of evidence presentation was also changed by reading witness Sekula Jurić's statement, whose examination was proposed under the Indictment. Given the fact that, during the stage of the Prosecution's evidence presentation, it was not possible to adduce evidence by examining this witness, and in an effort to exhaust all the available options relating to the witness's appearance before the Court prior to a possible reading of his statement, the Panel decided to alter the order of evidence presentation, initiate the

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<sup>4</sup> Article 3(2) of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses: „A vulnerable witness is a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive...”

<sup>5</sup> Article 251(2) of the CPC BiH provides as follows: “The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defense attorney, the Panel may decide that in such a case the witness and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene investigation and the testimony of the witnesses and experts given at the prior main trial be used instead.”

stage of the proceedings for the presentation of the Defense's evidence, and reschedule a possible reading of the referenced witness's statement.

**(e) Decisions accepting the proposals to adduce evidence by examining and reading witness examination records pursuant to Article 273(2) of the CPC BiH**

11. At the hearing held on 3 February 2015, pursuant to Article 273(2) of the CPC BiH, the Panel granted the Prosecution's motion to read out the Examination Record for Witness A.A. – Crime Police Sector, Department for War Crimes Investigation Banja Luka, dated 4 October 2010, considering that the witness had died in the meantime.<sup>6</sup>

12. Following the same principle, at the hearing held on 18 November 2014, the Panel accepted the proposed reading of the Witness Examination Record for Šefika Lihović, the First Police Administration BiH, Police Department, No. 05-1/06-1-452/10, of 26 May 2010. This witness was unable to appear before the Court to give evidence due to her bad health condition. Neither the Defense nor the Accused had any objections to the foregoing whatsoever.<sup>7</sup>

13. At the hearing held on 21 April 2015, the Panel accepted the Prosecution's motion, filed pursuant to Article 273(2) of the CPC BiH, to read out the Witness Examination Record for Sekula Jurić, No. 08-02/1-266/10, of 9 August 2010, considering that the witness's appearance before the Court was made difficult by important reasons.<sup>8</sup> Specifically, the referenced witness's examination was proposed under the Indictment. The witness was summoned several times to appear before the Court, but the Prosecution reported the witness was working abroad on a temporary basis. Also, it was established through telephone contacts, as well as through the relevant police bodies, that it was not certain when the witness could possibly appear before the Court to give evidence. Official notes were also made with regard to this fact.<sup>9</sup> In addition, the Court made efforts to contact the witness through the Witness Support Section of the Court of BiH. It was noted twice (Official Note made by the Witness Support Section of 13 April 2015) that there was no information about the referenced witness's availability and the organization of either his arrival in BiH, or his giving evidence via video link. On 16 April 2015, admitted in the case record was a new Official Note reporting that, on 14 April 2015, the Witness Support Section of the Court of BiH made a telephone contact with the witness, that the witness confirmed certain circumstances existed that made his arrival in BiH and availability to the Court difficult, which he had already presented to the Prosecutor in the case during their conversation. The witness stated he was engaged in field work, covering the Italy-Germany international route, and that he had no options to reschedule his days off, other

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<sup>6</sup> T-49-A- Extract from the Register of Deaths number 2510721/3 15 158, Zagreb, 20 January 2015; T- 49- Record on Witness Statement Taking, No. 08-02/1-358/120 of 4 October 2010 - CJB Banja Luka.

<sup>7</sup> T19a- Medical documents related to the bad health condition of witness Šefika Lihović; T-19- Witness Examination Record for Šefika Lihović.

<sup>8</sup> T-53- Record on Witness Statement Taking, No. 08-02/1-266/10 of 9 August 2010, CJB Banja Luka.

<sup>9</sup> See the transcript of the hearing dated 13 January 2015.



than a short vacation in August, when he planned to come to BiH. Considering the fact that waiting through August would be in violation of the principle of judicial economy, the Panel accepted the proposal that the referenced witness's statement be read out, also considering the fact that neither the Defense had any objections to presenting this evidence in the referenced way.

(f) **Dismissed objections relating to the lawfulness of evidence**

14. The Defense for Bosiljko Marković objected to the lawfulness of the Prosecution's evidence obtained by way of conducting special investigative measures – intercepted telephone conversations between Bosiljko Marković and Goran Bubić, his Counsel at the time, as well as the conversation between witness Božić and his Counsel.

15. The Panel dismissed the Defense's objection considering that witness Božić is not a defendant (accused person) in the present proceedings, which renders the Defense's objection to the use of his communication with the Attorney irrelevant. In terms of Article 116(4) of the CPC BiH, the Panel finds no procedural obstacles to use the audio-recordings of the conversations between the accused Bosiljko Marković and Counsel Goran Bubić. This is so considering the fact that the Court did not use the contents of the intercepted conversations. This evidence was rather proposed in relation to the chronology of the Accused's activities related to the interference with the witness at the investigative phase. The Panel thereby accepted the use of the intercepted conversations as evidence, but did not evaluate the contents thereof. It was accepted solely in order to establish that, after Božić's insisting to agree on the way in which he would testify in return for money, the accused Bosiljko Marković contacted his Counsel, who was supposed to check the statement Mirko Božić gave to the Prosecutor in the case (according to the contents of the intercepted conversations between the Accused persons).

16. In rendering its decision, the Panel did not evaluate the contents of the intercepted conversations between the Accused and their Counsel. The evidence was rather used merely as information that they were in contact at the time when the Accused were mutually making arrangements to interfere with the evidentiary proceedings. Considering the foregoing, the Court finds that the referenced evidence is not unlawful, and that the Accused's right to a defense was not violated by this evidence.

17. The Defense for Bosiljko Marković also objected to the Prosecution's motion to adduce as evidence the Official Notes made by the police inspectors in relation to what they had heard or seen. The Defense argued that such official notes could not be used as evidence. The Court dismissed the referenced Defense's complaint as ill-founded considering that the official notes were not informative ones, but rather the notes made by the official persons on the basis of the conducted special investigative measures of covert following of individuals (Article 118(6) of the CPC BiH), undertaken based on the Court's order. In addition, the leader of the team of inspectors gave evidence before the Trial Panel about the referenced investigative measures, which ultimately formed the basis for

tendering the Official Note in the case record and using it as evidence in the present proceedings.

18. The Defense teams objected to tendering evidence by examining witness Petko Župljanin, for the fact that the witness was examined on 19 November 2014, or prior to the completion of the stage of the proceedings when the Prosecutor presented his evidence, which is why he should have been proposed as a witness in the referenced stage of the proceedings. The Panel dismissed the Defense's objection finding that the witness could not at all be examined in that phase of the proceedings, considering that his examination was not proposed under the Indictment, and that he was examined once the investigation in this case was completed.

(g) **Dismissed evidentiary proposals**

19. The Defense teams for the Accused presented a joint proposal to jointly visit the crime scene. The Panel dismissed the referenced proposal, finding that by visiting the alleged crime scene the Panel could obtain no information about the decisive facts in the case at hand. In addition, the Panel has held that adducing this evidence would not be reliable considering that the critical incident occurred more than twenty years ago, and that the factual situation on the ground certainly changed during the referenced period.

20. The accused Bosiljko Marković's Defense also proposed that a map of the area about which witness S-4 gives evidence be examined as the Defense's corroborative evidence, and that a surveyor expert witness visit the crime scene, make notes in relation to the distance between the witness S-4's house and the Dabovci station, and check if there is any right turn and a path to the woods along this section of the road. This is because witness S-4 stated she had been raped on a side road in a small woods, after some five to ten minutes ride. Counsel for the Principal Accused also joined the proposal, arguing this would be significant for establishing these facts.

21. The Court dismissed this Defense's proposal for the same reasons. The Court has held it unnecessary to summon and examine a surveyor expert witness too in order to clarify the matter. The Panel noted that, considering the witness S-4's situation in the van during the ride, her perception of whether it was a side or main road is irrelevant. The Panel found that those facts had no decisive value for the explanation of the Indictment allegations.

## C. EVIDENTIARY PROCEEDINGS

### (i) The Prosecution

22. A total of eight witnesses were examined on the Prosecution's proposal, namely: witness I.A. on 2 September 2014,<sup>10</sup> witness S.A. on 2 September 2014,<sup>11</sup> Milorad Kalamanda on 9 September 2014, Mirko Sivonjić on 28 October 2014 and 4 November 2014, Goran Rakić on 4 November 2014, Mirko Božić on 2 December 2014, witness S-4 on 23 December 2014 and Petko Župljanin on 3 March 2015 (corroborative evidence).

23. At the main trial, the Prosecution presented and tendered in the case record the documentary evidence specified in the Annex to the Verdict, which also forms part of the reasons for the Verdict.

24. The Prosecution abandoned presenting the evidence indicated in the Indictment under numbers 17, 18, 19, 27 and 35, as well as numbers 69 through 79 of the Indictment.

### (ii) The Defense

25. Examined in the capacity of the Defense's witnesses for the accused Bosiljko Marković were: Cvijeta Narić at the hearing held on 10 February 2015, and Luka Narić at the hearing held on 31 March 2015.

26. Witnesses Ilija Rajlić and Niko Novaković were examined on 17 February 2015 in the capacity of Defense witnesses for the accused Ostoja Marković.

27. Defense teams for the (two) Accused tendered in the case record the documentary exhibits specified in the Annex to the Verdict, which also forms part of the reasons for the Verdict.

### (iii) The injured party

28. During the proceedings, Attorney Nedžla Šehić, the injured party's authorized representative, filed with the Court a petition to pursue a claim under property law. The reasoning of the petition stated that, pursuant to Articles 193 and 194 of the CPC BiH, the injured party files a claim under property law for compensation of non-pecuniary damage caused by the referenced criminal offense. To this end, the injured party's claim also specified the cumulative amount of the requested total non-pecuniary damage, including the suffered psychological and physical pain, fear and diminished general quality of life. In addition, the injured party proposed that the expert opinion made by a forensic expert be

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<sup>10</sup> The Verdict does not disclose the witness's full name as the witness is the injured party's mother.

<sup>11</sup> The Verdict does not disclose the witness's full name as the witness is the injured party's brother.

adduced as evidence, pursuant to the Prosecution's order in relation to the injured party's health condition, disability, severe and persistent pains and the experienced fear. The Panel accepted that this evidence be tendered by direct presentation of the expert opinion by the forensic expert witness at the main trial. At the hearing held on 28 April 2015, Prof. Alma Bravo Mehmedbašić, expert witness in neuropsychiatry, and Mr. Senadin Fadilpašić, forensic expert in psychology, presented and explained their respective expert opinions, tendered in the case record with the supporting documents also listed in the Annex to the Verdict.

## **D. CLOSING ARGUMENTS**

### **a. The Prosecution**

29. The Prosecutor argued, in his closing argument, that the allegations of the Indictment were completely proved during the evidentiary proceedings. The Prosecutor primarily argues that the evidence showed that an armed conflict indeed existed in the territory of the Kotor Varoš municipality, which broke out on 11 June 1992, and which was preceded by mobilization and arming of the population. In addition, there is no doubt that there is a nexus between the armed conflict and the Accused, the then members of the Republika Srpska Army. The Prosecutor further argues it was concluded, based on the whole body of evidence adduced during the main trial, that the Accused indeed committed the criminal offense charged against them under the referenced Indictment. The Prosecution made such a conclusion relying on the testimony of the injured party-S-4's mother and father who gave evidence as witnesses, the injured party-S-4's evidence, the evidence given by Mirko Božić, Milorad Kalamanda, Mirko Sivonjić, Goran Rakić and Petko Župljanin at the main trial, the statements of witnesses Šerifa Lihović, the injured party S-4's father and Sekula Jurić that were read out, and on the adduced documentary evidence.

30. The Prosecution argues there is no doubt that the injured party was raped on the critical night, and that this ensues from the testimony of the injured party, members of her family as well as from the indirect information the injured party's mother gave to witnesses Petko Župljanin and Sekula Jurić about the incident immediately after the incident occurred. The Prosecution particularly notes that this fact was not contested by the Defense for the Accused either. On the contrary, Defense witness Ilija Raljić directly testified about the incident and confirmed its occurrence. The Defense witness Niko Novaković gave circumstantial evidence based on the information he learned from Ilija Raljić.

31. The Prosecution argues that the Accused's defense in the case is aimed at proving that the rape was actually committed only by Predrag Cicmanović (who died in the meantime), and that the Defense uses this fact in order to acquit the Accused of the charges. Further in his closing argument, the Prosecutor argues that, not only that the

Defense does not contest the act of rape, by such a concept of its basic theory, but also contests the fact of the Accused's presence in the van. The Prosecution also analyzed the testimony of witnesses Ilija Rajlić and Niko Novaković, alleged to have been directed at proving that the Accused were not present in the van when it was halted in Dabovci, and when, pursuant to the Defense's theory, the injured party was raped by only one person, Predrag Cicmanović.

32. The Prosecution further argued that, at the main trial, the injured party clearly confirmed that she had been raped by several persons. The injured party confirmed that, at one moment, a person named Ilija appeared at the van door – obviously it was exactly Ilija Rajlić, the Defense's witness whose testimony in this part confirms the truthfulness of the testimony of the injured party, who was able to notice both his presence at the scene, and the fact that he was also invited to rape her, which he refused to do. This is also consistent with Ilija Rajlić's testimony. Considering the foregoing, there is no reason not to credit the injured party's testimony in the part where she contends that she was raped by several persons. The Prosecution's analysis of the injured party's testimony showed that she gave a coherent and consistent description of the incident at issue, in its key parts, but logically, she could not recall all the details of the events of this night considering her particularly sensitive age at the time when the act was committed, and the fact that the act itself affected the injured party in a very traumatic way.

33. As to the testimony of witness Mirko Božić, the Prosecution argued that he gave several statements regarding the incidents on the critical day. In addition, the Prosecution argued that, in such a situation, in evaluating these statements, the Court should take into account that the referenced witness's position is very complex considering his role in the other events which had also occurred on the critical day, which are not the subject of these proceedings, but which bring him in connection with the Accused in this case. Also, the evidence adduced in relation to the special investigative measures conducted at the time when the witness gave a statement in the BiH Prosecutor's Office about the incident, shows that a history of unresolved personal relations exists between this witness and the Accused, and that, accordingly, the witness was put under pressure to give evidence that would be more favorable to the Accused in the present proceedings. However, given the fact that there are no other direct witnesses/eyewitnesses to the incident at issue, the Prosecution believes that all the evidence given by this witness should be evaluated in unison, and that after such an evaluation no other conclusion can be drawn but that the evidence confirms, beyond a reasonable doubt, that the injured party was indeed raped on the relevant day at the relevant crime scene, and that the Accused were indeed present in the van in which the act of rape took place.

34. The Prosecutor also referred to the testimony of witnesses Milorad Kalamanda and Petko Župljanin, noting the fact that the Accused's presence in the van on the referenced evening was confirmed not only by the Prosecution's witnesses, but by the Defense's witnesses as well. According to the Prosecution, the testimonies of the Defense's witnesses Cvijeta Narić and Luka Narić is unconvincing and contradictory, both internally and mutually. The Prosecution particularly addressed the credibility of witness Cvijeta Narić's testimony. The Prosecution argued<sup>13</sup> that this person is prone to alcohol as a

result of which her mental health has been affected, and supported this fact with both the tendered documentary evidence and her brother's testimony. Considering the elapsed period of time and the referenced circumstances, the Prosecution believes it is not likely that the witness is able to remember the relevant day with such a precision.

35. The Prosecution further argued that the time frame, which these witnesses try to set up together with the other Defense's witnesses, Ilija Raljić and Niko Novaković, contrary to the injured party's and her mother's consistent statements regarding the period of time within which the injured party was abducted from and thereupon returned to her home, is impossible. The injured party and her mother consistently testified that the injured party was abducted some time after 21:00 hrs, and brought back 3-4 hours later, that is, at around midnight. The Prosecution argued that, due to the survived stress, the injured party could have been confused in relation to the duration of her abduction, but her mother certainly could not, as she certainly sat at home during all that time, waiting for her underage daughter to come back, undoubtedly checking the watch and counting each minute. The Prosecution therefore believes that the time-frame set up by the Defense is neither likely nor sustainable, and that it is aimed at excluding the possibility that the Accused indeed raped the injured party S-4 on the relevant occasion.

36. According to the Prosecution, the adduced evidence shows clearly and beyond a doubt that the Accused indeed committed the criminal acts described in the Disposition of the Indictment, and that therefore the Trial Panel should render a decision finding the Accused criminally responsible for the commission of the criminal offense of War Crimes against Civilians under Article 173(1)(e) of the CC BiH, guilty as charged and sentence them by the law.

37. The Prosecution believes that, in meting out the sentence for the Accused, there is no relevant extenuating circumstance on their part that might affect imposing any sentence below the statutory minimum. On the contrary, in ruling on the duration/length of the sentence for the Accused, the Panel must take into account a whole array of the aggravating circumstances, particularly the fact that the Accused showed an exceptional cruelty and callousness in the commission of the act, that as a result of whose actions the lives of one young girl and members of her family have been changed forever, and that the victim herself was traumatized for life. At no moment whatsoever, in the course of the entire criminal act, did the Accused show any compassion for the victim, while after the act itself, they left her inside the van in a state of complete shock, having no concerns about her destiny in the future.

#### **b. The Defense for the accused Bosiljko Marković**

38. In its closing argument, the Defense for the accused Bosiljko Marković did not contest that there was a state of war *tempore criminis*, and that the Accused was a member of the Republika Srpska Army. Also undisputed for the Defense are all the facts presented in the Disposition of the Indictment, concluded with the part of the sentence " .... *wherefore Cicmanović held a knife to her throat*".

39. The Defense considers disputable and unsustainable the Indictment allegations that one of the Accused had pressed his pistol on the victim's forehead; that Predrag Cicmanović had told Božić during the ride towards Vrbanjci and Kotor Varoš to take the road towards the Dabovci village, which he did, halting the vehicle near a bus station, whereupon the suspects Ostoja Marković, Bosiljko Marković and Predrag Cicmanović took turns raping the injured party S-4, forced her into oral sex after the rape, all of which lasted for about 3 hours; that driver Mirko Božić left the van after halting it, and stood all the time in front of the van, some 10 meters away, listening to the tumbling sounds and shouting coming from the van.

40. The Defense analyzed both the evidence the injured party gave at the main trial and her earlier statements. In her statement of 16 July 1992, the injured party stated she had been raped by all four persons present in the vehicle. According to the Defense, this means that Božić also took part in the referenced act. The Defense argues that, at the main trial, the victim stated the same, but that the Prosecution intentionally singled out Božić and placed him into the role of a witness. The Defense considers disputable the fact that, in the referenced part of the Indictment, the Prosecution relies on and credits witness Božić's statement, rather than crediting the victim's statement that four persons had raped her. The Defense has also analyzed witness Božić's statements. The Defense argued that, in the statement the witness gave to the military police authorized persons on 9 November 1992, Bosiljko Marković was not mentioned at all as the perpetrator of this offense. In addition, the Defense argued it is significant that, in his statement of 10 November 1992, the witness again made no mention of Bosiljko Marković as the person who committed the act of rape. The Defense argues that this witness's examination at the main trial was very difficult and painstaking, because he is uncertain about his statement exactly because he had committed the act of rape. The Defense argued that the witness's statement should be evaluated as a whole.

41. Counsel analyzed the contents of the intercepted telephone conversations and argued that, in all of them, it was Božić who called the Accused rather than vice versa, and that it is quite clear from the conversations that Božić is in panic as he fears for his status. In one of the intercepted conversations, Božić stated the following: "They are tapping my phone too," which means he was probably aware of this fact. Also, a disagreement could be noticed at the main trial between him and the Prosecutor.

42. The Defense further argued that the explanation of the fact that the Accused was arrested by the military police clearly ensues from the Defense's documentary exhibit, that is, the Indictment of 1 November 1993 filed by the 1<sup>st</sup> Krajina Corps before the Military Court in Banja Luka against Predrag Cicmanović, Mirko Božić, Bosiljko Marković and Ostoja Marković for the alleged commission of multiple criminal offenses of rape against several Croat women, on the very day of 28 June 1992. The referenced Indictment explains the reasons for which these persons were arrested and detained by the military police, that is, they were not arrested on the suspicion that they had raped the witness-injured party S-4 only.

43. The Defense further argued that the Prosecution unreasonably contests the

Defense's witness, while the Defense does not contest at all that witness Cvijeta Narić is an alcoholic. However, the testimony of witness Luka Narić, which is absolutely consistent with Cvijeta Narić's testimony in relation to the essential issues, also cannot be disregarded. According to the Defense, both these witnesses are consistent regarding the fact that the Accused came to their home at 22:00 hrs, sat there and had a coffee with them, that thereupon Ostoja left while Bosiljko stayed with them until the morning hours. The Defense argues that the fact that both the witnesses remember this was exactly on 28 June 1992 is clearly explained by the witnesses as it was the St. Vitus' Day, and that on the following day Bosiljko Marković was supposed to participate in an action, in which their relatives actually got killed. Quite logically, they remembered the date since something like this does not happen every day, even during wartime. Therefore, the Defense argues it is proved that, *tempore criminis*, these two Accused were at Narić's house in Vrbanjci and that they had come there by a van, as also confirmed by witness Božić. The injured party was abducted from her house at around 21:00 hrs, and the period of half an hour was quite sufficient for them to reach Vrbanjci from her house in Orahovo by van.

44. The Defense argues that the Indictment is inconsistent in whole from the aspect of the facts presented in the Dispositive of the Indictment, the evidence forming the footing of the Indictment, as well as the legal qualification of the offense due to the retroactive application of the Criminal Code of BiH. The Defense moved the Panel to acquit the Accused of the charges pursuant to the principle of *in dubio pro reo*.

### **c. The Defense for the accused Ostoja Marković**

45. In his closing argument, Counsel for the accused Ostoja Marković does not contest the fact that there was an armed conflict in the territory where the concrete incident took place. As to the Accused's very status, the Defense argues that, at the time the disputed incident occurred, he was not a member of the Kotor Varoš Brigade, but rather of some other unit, and that, along this line, written evidence exists in the case record tendered by the Prosecutor. Also, the Defense does not contest the averment that the Accused actually did take part in combats in Kotor Varoš, but no sooner than 29 June 1992, that is, a day after or immediately after the disputed incident had occurred.

46. As to the very act of commission, the Defense regrets the fact that its proposal to investigate the sites where the van was driven, was dismissed. The Defense argues that this was compensated, in part, with the evidence of the Defense's witnesses, who testified about the distances (between the places) on the Orahova-Obodnik-Dabovci-Vrbanjci route. The Defense argues that the injured party-witness S-4's house is approximately 2km away from the place of Obodnik. At this place, the Orahova-Obodnik route joins the Teslić-Banja Luka main road. After taking the left turn, and driving for 2km along the main road, one reaches the place at issue, which is in the present criminal proceedings marked as the crime scene, namely the Dabovci bus station in Vrbanjci. The command of the unit deployed in the area is located only 1.5-2km away from Dabovci. According to the



Defense, this is approximately the distance of around 6-7km, or a 7-8 minute drive along the main road at the longest.

47. The Defense examined the witness S-4's statements of 16 July 1992, 29 April 2013 and 6 April 2010, and concluded they are absolutely inconsistent in the very important segments thereof. According to the Defense, the witness gave summary descriptions of the incident in her 2013 and 2010 statements: that she was forced into a van in Orahova; that, immediately upon entering the van, Predrag Cicmanović commenced the act of rape; that they reached the place of Dabovci, took a turn toward a little wood and a weekend house, driving for about ten minutes, and that when they arrived there, she was allegedly also raped by the two other Accused. The victim also gave a statement 19 days after the incident, where she presented the state of facts in a drastically different way. In that statement, the victim decisively stated that the act of rape did not last from the moment she entered the van in Orahova until their arrival in Dabovci, but rather that they took the right turn from the main road, drove for about 5-10 minutes and stopped the van, whereupon all four men raped her. In this regard, the Defense argues that the witness S-4 presented the important facts in a completely inconsistent way. According to the Defense, her statement must be evaluated critically, and it should be primarily decided which of the statements the protected witness S-4 gave will be credited. If the Panel credits her subsequent statements, given 20 years after the occurrence of the detrimental incident, the problem of inconsistency will appear. If the witness S-4's most recent statement is credited, it is in collision with the testimonies of the other examined witnesses, proposed in these proceedings by the Defense for the Second-Accused. The Defense notes that no other person but the injured party herself mentioned a long road from the bus station in Dabovci towards the crime scene, where the criminal offense was committed pursuant to the first statement. Witness Mirko Božić himself decisively denied the foregoing. In his statements, witness Božić stated that the distance from the bus station itself could be between ten and twenty meters, that this can be noticed at the crime scene as a large stretch, or a broader area within the bus station, and confirmed by the fact that several soldiers stood at the bus station.

48. The Defense questions witness Mirko Božić's credibility, arguing that the case record is filled with at least grounded suspicions that he committed the referenced criminal offense, to which end the documents drafted immediately after 28 June 1992 are being analyzed (the Indictment filed against the four Accused, including Mirko Božić, for raping several women), which does not include the case which is the subject of the present investigation. Therefore, this raises a question as to why that is so. Counsel believes this is not a cover up, because many activities were conducted in order to identify the perpetrators of a number of criminal offenses, including that committed against the protected witness S-4. Therefore, it is strange that this incident is not included in the Indictment. The Defense points to the Official Note made by the Intelligence-Security organ of the Command of the military post 7001/46 of 6 December 1992, indicating in its penultimate line the following: "...a minor girl age 14 was raped at the same time, in the same village. She emigrated to Germany immediately after the incident. All the information suggested that the rape was committed by Mirko Božić from the village of Grabovica." The

Defense believes the foregoing perhaps answers the question why the incident is not included in the Indictment.

49. The Defense further argues that Mirko Božić's statements are consistent in only one fact, namely that he did not see the act of rape committed by either of the accused, Bosiljko Marković or Ostoja Marković, while his evidence regarding the facts decisive for adjudication in this criminal matter is contradictory to that of the protected witness S-4. Their testimonies are largely inconsistent regarding the person who actually brought the protected witness back to her home. The Prosecution witness, Mirko Božić, states he did it alone, after the conflict he had in front of the headquarters in Vrbanjci with Bosiljko Marković, Ostoja Marković and Cicmanović, because Cicmanović insisted on taking her back, but he (Božić) concluded Cicmanović intended to kill her. On the other hand, what the protected witness S-4 stated in her statements was quite different, namely that all the four men together brought her back to her village of Orahova.

50. According to the Defense, witness Ilija Raljić is not a fictitious witness since the protected witness S-4 connected him clearly and undoubtedly with the incident at issue. Witness Raljić clearly stated he stood at the bus station in Dabovci, when both Accused left the van, that several soldiers stood there, that they had a conversation and that thereupon the Accused sat back in the van and headed off towards Vrbanjci. This witness confirms the fact that, at the moment when he peered into the van, he saw Cicmanović raping (the witness) S-4. The Defense argues it is legally inadmissible to divide the statement of one witness in parts, to accept as true one part of his statement, and dismiss the later as untrue. According to the Defense, this is exactly what the Prosecutor has done: he used the part of the witness's statement arguing that the witness confirmed that S-4 was raped, but did not accept the other part of the Raljić's statement that the Accused left the van and Cicmanović stayed in it. Recognizing the fact that, undoubtedly, no actions were undertaken against the injured party from the Dabovci station to Vrbanjci, the Defense believes that witness S-4's and Mirko Božić's statements are at least contradictory, and that no conviction can be based on them.

51. Ultimately, the Defense addressed the period of time elapsed since the moment when the protected witness was abducted from her house to the moment when she was brought back there. The Defense argued that, pursuant to the written documents enclosed with the Indictment, and the undisputed testimonies of witnesses S-4, Mirko Božić and the other witnesses, the abduction might have occurred at around 21:30 hrs, and the return no sooner than at midnight, or most likely, at around 1 o'clock after midnight. The Defense stated that the drive from Vrbanjci to Orahove can last approximately fifteen minutes. According to the Defense, the allegation that there is no evidence relating to the place where the remaining period of time of almost four hours was spent, is disputable. The Defense argues that this issue is not irrelevant. It is one legal situation if the Panel credits the evidence that the victim was brought back home by all four men, and the other one is if only witness Mirko Božić did it. In view of all the foregoing, the Defense moved the Panel to render an acquittal.

**d. The injured party and the claim under property law**

52. In her closing argument, the injured party's Counsel submitted that the judicial institutions in Bosnia and Herzegovina have significantly contributed and continue contributing to a great extent to the criminal prosecution and punishing of sexual war crimes committed in the period 1992-1995. In addition, Counsel submits that both the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court have held that sexual violence certainly results in severe physical or mental pain. Counsel notes that the tendered evidence has clearly showed that the injured party S-4 was brutally raped by several soldiers when she was only age 14, as a result of which she experienced enormous fear, severe physical and mental pain and suffering, the consequence of which is a prolonged impaired state of her health with permanent consequences. All the adduced evidence points to the foregoing, particularly the testimony of the victim-witness S-4, where she convincingly presented the circumstances under which she had been raped and ill-treated. The forensic expert evaluation carried out in relation to the mental pain and fear the victim had suffered as well as the victim's diminished general capacity to live her life also point to the foregoing.

53. The injured party has filed her claim under property law, moved the Court to grant it, and order the accused Bosiljko Marković and Ostoja Marković to compensate her, jointly and severally, by paying to her KM 40,000 of non-pecuniary damages due to mental and physical pain she suffered, the fear arising from the unlawful deprivation of her liberty, violations of her personal rights, dignity and morale by torture, inhumane and degrading ill-treatment and mental pain due to diminished general quality of life. The injured party's Counsel argues this is a unique claim for non-pecuniary damage compensation that implies the following types of damage: the amount of KM 6,000 for the suffered fear; the amount of KM 20,000 for mental and physical pain, violation of the personal rights, dignity and morale by torture, inhumane and degrading treatment, and the amount of KM 14,000 for psychological pain for diminished general quality of life.

54. Counsel argued that the amount of KM 40,000 is reduced in relation to the originally posted claim under property law considering that all the evidence was adduced, and that, in her opinion, it is proved beyond a doubt that the Accused were not the sole participants in this crime. According to the injured party's Counsel, the amount of claim under property is a cumulative amount of a single non-pecuniary damage including the suffered mental and physical pain, experienced fear and diminished general capacity to live the life.

55. The legal ground for posting a claim under property law for the compensation of non-pecuniary damage resulting from the suffered fear, physical pain and permanent mental pain is based on Article 200 of the Law on Obligations and Article 3 the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*", as well as on the European Convention on the Prevention of Torture, Inhumane and Degrading Treatment and Punishment, European Convention on Compensation of Victims of Violent Crimes and the general rules and Laws on

Obligations for damage resulting from the commission of crime.

56. Counsel ultimately submitted that the particular justification for dealing with a claim under property law in the criminal proceeding exists where the injured party is also a protected witness. This is so considering the fact that the referenced status, in fact, prevents the injured party's participation in the civil proceeding without disclosing her identity.

## II. SUBSTANTIVE LAW

57. The Panel has first addressed the issue of the application of substantive law in relation to the charges filed against the Accused, primarily the principle of legality set forth in Article 3 of the CC BiH, the principle of time constraints regarding the applicability of criminal code set forth in Article 4 of the CC BiH and Article 7(1) of the ECHR and Article 15(1) ICCPR. It ensues from the referenced provisions that one of the basic principles is that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the crime (*tempus regit actum*), which it can be derogated from only in favor of the accused, namely the subsequent law may apply only if it is more lenient to the perpetrator.

58. It ensues from the Indictment that the incriminating acts were committed in late June 1992 when the CC SFRY, adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of SFRY, was in effect. The incriminating acts were qualified under the referenced Indictment in compliance with the CC BiH.

59. Considering the issue of the law that is more lenient to the perpetrator in the concrete case, the Panel was mindful of the position the Constitutional Court of BiH taken in several cases where the accused were found guilty of the crimes prescribed by both the old (adopted CC SFRY), and the subsequently adopted law (the CC BiH), or more precisely the criminal offenses of Genocide, War Crimes against Civilians and War Crimes against Prisoners of War. Contrary to the Court of BiH's position and the Constitutional Court's earlier positions in those cases, the Constitutional Court of BiH has recently held that the adopted CC SFRY is more lenient to the perpetrator. The Constitutional Court of BiH found that, following the abolition of the death sentence, the sentence prescribed for the referenced criminal offenses under the CC SFRY is more lenient to the perpetrator with regard to both minimum (sentence of not less than 10 years in prison in relation to 5 years in prison as the minimum sentence prescribed under CC SFRY), and maximum prescribed sentences (long-term imprisonment of 45 years in relation to 15 or 20 years in prison).

60. Considering the foregoing positions of the Constitutional Court of BiH, pursuant to which the subsequent law, that is, the CC BiH is not more lenient to the perpetrator, the Panel finds that, in the concrete case, it is not justified to derogate from the rule of application of the law that was in effect at the time when the acts charged under the

Indictment were committed, that is, the adopted CC SFRY.

### III. FINDINGS OF THE COURT

61. Pursuant to Article 15 of the CPC BiH, the right of the Court is to freely evaluate the evidence.<sup>12</sup> The Panel has carefully evaluated all the adduced evidence and will provide its findings, particularly those relating to the evidence on which its decisions is based, in the part of the Verdict explaining the factual and legal examination of the charges pressed against the Accused.

62. The Panel has evaluated all the evidence pursuant to Article 281 of the CPC BiH, individually and in combination with all other evidence, and on this basis concluded if a certain fact has been proved or not. The evidence not specifically indicated in the reasons for the Verdict was, in the Panel's view, legally irrelevant to the finding of fact, which is why it was not specially reasoned.<sup>13</sup>

#### A. EXAMINATION OF THE EVIDENCE OBTAINED BY CONDUCTING SPECIAL INVESTIGATIVE MEASURES

63. Having acted upon the Order of the Court of BiH number S1 1 K 012024 13 Krn 2 of 16 October 2013, the State Investigation and Protection Agency (SIPA) conducted special investigative measures against the suspects Ostoja Marković, Bosiljko Marković and Mirko Božić, namely surveillance and technical recording of telecommunications, covert following and technical recordings of persons, means of transportation and objects pertaining to the Accused during the period from 18 October 2013 and 18 November 2013.<sup>14</sup>

64. Pursuant to Article 122 of the CPC BiH, examined as witnesses were the persons who conducted special investigative measures, Mirko Sivonjić and Goran Rakić.

65. Witness Mirko Sivonjić – investigator of the State Investigation and Protection Agency BiH stated that the singled out upon the examination of intercepted conversations

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<sup>12</sup> Article 15 of the CPC BiH provides that “... *the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules*”.

<sup>13</sup> This position has been recognized and comprehensively explained in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY): “The Appeals Chamber recalls that, pursuant to Article 23 of the Statute and Rule 98 ter (C) of the Rules of Procedure and Evidence, each accused is entitled to be presented with a reasoned opinion. This requisite, however, pertains to a Trial Chamber's judgment. The Trial Chamber is not obligated to explain its findings in relation to all the arguments presented at the main trial”, “... The Appeals Chamber recalls it is Trial Panel's discretion to evaluate which legal arguments will be assessed. As to the findings of fact, the Trial Panel shall infer only the conclusions relating to the facts essential for finding the guilt under the indictment. Each statement of the witness or each item of evidence tendered in the case record need not be addressed individually”.

<sup>14</sup> T-34.

in the controlled period were several conversations related to the event that was subject of the investigation, namely 12 conversations related to Bosiljko Marković, 4 conversations related to Ostoja Marković and 18 conversations related to Mirko Božić. In addition, the State Investigation and Protection Agency made a Report on the Measures Taken, number P-16-11/3-1-04-2-472-8/13 of 22 November 2013.

66. Witness Sivonjić further explained that the surveillance of telephone conversations revealed that the suspects would meet to make arrangements regarding the way in which they would testify, and that the covert following and surveillance of these two men were organized twice in a catering facility.

67. Witness Goran Rakić, who acted as the SIPA BiH's team leader in war crimes investigations in the present case, stated that, on 29 October 2013, he received information that the suspects Ostoja Marković and Mirko Božić would meet in a catering facility at around 19:30, on the same day, and that Bosiljko Marković, who was according to the intercepted conversations' contents examined in the BiH Prosecutor's Office in Sarajevo on that very day, was also supposed to meet these two men. The meeting was operationally covered, about which an official note was also made by the witness.<sup>15</sup> Several days later, they obtained information that the referenced persons arranged to meet again on the day of Mirko Božić's examination in Sarajevo. This meeting was also operatively covered by other inspectors, who accordingly made an official note too.<sup>16</sup>

68. The Panel has examined the recordings of the intercepted conversations, as well as the video-recordings of the surveilled meetings between the Suspects and witness Mirko Božić, and correlated them both mutually and in relation to the subject of the Indictment. The Panel found that the audio and video recordings concern mutual contacts between the Accused, as well as their contacts with witness Mirko Božić related to the subject of the Indictment, and that they were made after Mirko Božić was served a summons by the Prosecutor in the case to testify.

69. The following communication between Mirko Božić and a woman was recorded in the conversation intercepted on 22 October 2013. Witness Mirko Božić confirmed at the main trial that the woman in question was his wife:

.....You did not call him yesterday, did you?- "Woman, I cannot call him!"- "Why can't you ... you've received a summons. Dragan brought it to you..."- "What summons?"- "I don't know, you have a **summons to testify in Sarajevo.... on November 4 ....**"<sup>17</sup>

70. Several hours later on that very day, a conversation was intercepted between the participants Mirko Božić and Ostoja Marković, with the following contents:

"... We need to see each other, pal." When?- "... when I start off from Varoš?"- ... I am now in Vrbanj, in Debeljaci."- "What are you doing down there?"- "We are working ... we

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<sup>15</sup> Number 16-11/3-1-04-2-472/13-297/13 of 30 October 2013.

<sup>16</sup> Number 16-11/3-1-SZ-472/13-306/13 of 7 November 2013.

<sup>17</sup> Transcript related to number 377 (Target: 38765609922) (T-6).

are laying down a slate.”- “We have to meet. **I received something. I must go to the Court of BiH.**” – “Aha, aha.”- “So, I want to tell you about it. **Also, we have to call that one, and if he does not want, you see, I want us to make an agreement as men, you now.**” – “Yes, yes. Yes.” – “So, we have to meet ... we will get in touch by phone. If I am not there when you arrive, or maybe we can meet earlier in the morning, down there ....My wife notified me that this had come.” - Aha, aha, aha...”- So we will make an arrangement then, and call this one to see, to see what then ....”<sup>18</sup>

71. Subsequently on that very day, a communication was recorded between Mirko Božić and a woman:

“...Well, my wife called me, **I received a summons ... from the Court of BiH to testify as a witness,**...” ... “My God, ... in relation to what you were speaking about, is it? You have to testify, that’s certain...”- “Yes, this has been lasting for 20 years, man! ...”- .”...So, where are you supposed to go? “ - To Sarajevo, on the 4<sup>th</sup>, who knows if I would ever come back from there.” - “But you are a witness, not an accused.”... “Yes, I am. But I did not want to say certain things for 20 years ....” – “ So, you think you will be imprisoned, do you?”- “Well, how can I know what will happen ...”.

72. In the evening hours of the same day, intercepted again was communication between (participants) Mirko Božić and Ostoja Marković as follows:

“..... When are you supposed to go up there?”. – “On the fourth of ...” “... on the fourth, so we will see each other ... (do) nothing then, ... leave it until Sunday and we’ll meet on Sunday ...”- “I... nothing can be done by phone, thus we will see, let him come here if he wants, if not f... him. I cannot stand this any longer, do you understand .... **Contact him and tell him we should meet .... If he wants, and if he does not want.... I will not beg him...**” - “Yes, yes”.<sup>19</sup>

73. The Witness Examination Record for Mirko Božić of 4 November 2013 was tendered in the case record. Its contents showed that the witness was on that date examined by the Prosecutor on the case on the premises of the BiH Prosecutor’s Office.<sup>20</sup>

74. On 23 October 2013, the following communication was recorded between Mirko Božić and a woman:

“ .... Are there any news, anything?”.- “.... Nothing, I was invited by that woman...to visit her on Monday”- “....I see. Nothing until Monday... what and why.”- “I know everything, what and why... **I have nothing to do that much with it .... but why am I a p.... because ‘I did not want to tell it all, and I will not say it now, so let it be whatever is to be’**”- “...Well, then let it fall on your back!” – “I called them and told them to come on Sunday for a meeting ... **to give me back my money that I have given to the attorneys because of them** ...And all this has been lasting for twenty years, you know ...Otherwise, **if they do not bring me the money, I will finally get it off my neck.** I cannot sleep ... and burden myself, and make my folks worry, and all sorts of things ... And they, instead of giving me their money in a double amount... they are simply f..... me. One of them said ... “I do not give a shit about that” ...while attorneys and judges have offered me fifteen years not to appear there at all, but I did not want to accept the offer as I am not that kind of person ... They know it all to the tiniest detail except that there **is no other witness but me.... And I did not want to say anything ... And one (of them) is telling me he does not understand me, why am I involving myself in**

<sup>18</sup> Transcript related to number 74 (Target: 38763353702) (T-6).

<sup>19</sup> Transcript related to number 448 (Target: 38765609922) (T-6).

<sup>20</sup> T-27.

that ...and telling me 'you want to put yourself in there and to save them ... I did all that just to help them, you see ... if I could help them in any way, I wanted to help them ...' <sup>21</sup>

75. On 24 October 2013, intercepted was a conversation between Ostoja Marković<sup>22</sup> and Bosiljko Marković as follows:

".....You know what....Božić called me, I guess **he probably received a summons to come to Sarajevo on November 4**, when he is supposed to be there ....in relation to that case; and he asked me if we could **meet somewhere to see what and how we will (act) ....**" <sup>23</sup>

76. Later on the very same day, intercepted was a call made by Bosiljko Marković to Ostoja Marković, and their conversation with the following contents:

"..... Have you ascertained it well? Is it 100 % true?"; - " ...Well, I did. He told me he was called from Sarajevo. He phoned me.....He does not dare speak by phone."; - " ... Mile says nothing will be done with that ... Mile said he had given an enormous amount of money to Goran Bubić for me and you....He says he does not want to say how much he has given, but he gave a large amount of money and that it is destroyed. **Mile said he gave over 8 - 9 thousand.....that this was suspended in Varoš**; "... You know what, he will show something, but I will tell him that Bosiljko has gone to Montenegro to work, and that he is not in Banja Luka ... because it is illogical to me, this is already the second time that he goes (there). Who knows why he is being pursued ...It is not because of us for certain, he told me. Goran...because (if otherwise) we would have been summoned, both I and you, it cannot be that only he receives it.....Listen, here is what is in question here: **Mile said that it was destroyed, left in Varoš, and that all the blame was put on Peđa, do you understand**....As to that one, big money was given for that, but he did not want to tell me how much, two days ago....You just keep silent. Do not talk to anyone. Do you understand me? ...It is 100% certain that he has fabricated it **because both I and you would have been summoned**; there is nothing in that.... You know what is in question? He perhaps did not pay the attorney, that's that; or perhaps there is more to it .....and what was ours, **our (thing) is destroyed for certain**..... That's 100 % certain, so you just keep silent if you are summoned, and if not... No, there is no....Mile said he has given big money, do you understand me ..... He simply does not want to say how much. He said it's more than 300, and I and you are with Goran, you see.... Now he wants to get something from us, but that will not be the case ....We have Goran, and goodbye, you may freely tell him that...You should inquire a little about it, and...Tell me, show me, ...say Bole ...you may freely say that I am in Montenegro and that you have phoned me..." <sup>24</sup>

77. The following conversation was intercepted on 24 October 2015 between Mirko Božić and a male person nicknamed Brane:

..... Brane, what can I do when the time (nowadays) is such" ..."- "Have those two men said anything to you ...?" – Nothing. They said that we would meet on Sunday, and Jasminka called me subsequently ...and I have to go on Monday. When I come down

<sup>21</sup> Transcript related to number 550 (Target: 38765609922) (T-6).

<sup>22</sup> Witness Mirko Sivonjić explained that the phone number used by Ostoja Marković at that moment was not under surveillance because the investigators were unaware of it, and that the surveillance showed that he (Ostoja) has another number that he has frequently used, that appeared in these conversations. The investigators concluded based on the contents of the intercepted conversations and the voice that he (Ostoja) is in question – this number was intercepted when Ostoja had communicated with the two other targets covered by the order, page 12 - Transcript of 28 August 2014.

<sup>23</sup> Transcript related to number 22 (Target: 38765757199) (T-6).

<sup>24</sup> Transcript related to number 24 (Target: 38765757199) (T-6).



there I will tell you when, ... Brane, I will tell them what she has told me to say: I will say **whether they want it, or not. I will get it off my neck, and it will be over.** Why would I do that to myself any more for no reason ...” “ ...Yes, you’re right, f..k his mother; you are giving money and ....”- “ ....But Brane, I have just asked for a half of my own money. I haven’t even asked for the entire amount, just for a half of my money ...**But now, I will ask for all of it, or I will get this off my neck, and it will be over, let it be what will be** .... I do not give a s... after all...” – “OK, pal, hear from you soon....”- Plan to come with me when I am to go there...”<sup>25</sup>

78. The following conversation was intercepted on 26 October 2013 between the participants Bosiljko Marković and Ostoja Marković, with the contents recorded as follows:

“...Here it is: I have also received a summons today ....” - “...Yes, I have received it too, but I haven’t read anything yet...”- “...It’s because of the relocation of the population. There is nothing written ... any count ... we will now ... go to see... Mile, we will go down there to see Goran. I have just started off to Banja Luka to see...what is this point and what... **relocation of the population, perhaps it’s not about that r... you know?**”<sup>26</sup>

79. Recorded on that very day was an intercepted conversation between Bosiljko Marković and a male person nicknamed Mile, with the following contents<sup>27</sup>:

“...Hello, Bole!”- “Where are you?” - I am having a breakfast in the factory. What are you doing?”; - “Well, here it is ... **I have been summoned. I have to go to Sarajevo. We have to see with Goran which count is in question,** whether in relation to the population relocation, this, that. I have to be in Sarajevo on Monday, at 10:00 hrs .....unclear..... So, we should see him to find out in relation to which count this is... **has he destroyed that or hasn’t he, and what this is. Ostoja has probably received it too, up there ...**”; - “I’ll call you in 5-10 minutes to find it out.”- “OK, fine, fine...”<sup>28</sup>

80. On 27 October 2013, the following voice mail sent by Ostoja Marković to Mirko Božić was recorded:

*“Mirko, you should come, we have to go to Čelinac to meet Bosiljko.”*<sup>29</sup>

81. On the very same day, a conversation was intercepted between Ostoja Marković and Mirko Božić:

“Hello, where are you, pal?.... I have seen Bosiljko and that’s why I have called you ....He wanted to come to Čelinac, so we went to Banja Luka, I and Drago, the man I have talked to. I will tell you about it when you and I meet somewhere today .. Where are you now? “I am not, I am at home.... **All three of us should have met** together.. why didn’t you arrange to ....”- “I did see it, and I will tell you all what he has been told. You know, did he see Goran? I’ll tell you all about what happened. It’s the best if we sit together to arrange it all. You may be somewhere in Varoš, and we are leaving Banja Luka now ...’**thus, we**

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<sup>25</sup> Transcript related to number 644 (Target: 38765609922) (T-6).

<sup>26</sup> Transcript related to number 30 (Target: 38765757199) (T-6).

<sup>27</sup> Witness Mirko Sivonjić explained at the main trial that the operative observations and checks confirmed that Bosiljko Marković’s brother in in question - page 15 of the transcript from the main trial of 28 August 2014.

<sup>28</sup> Transcript related to number 31 (Target: 38765757199) (T-6).

<sup>29</sup> Transcript related to number 158 (Target: 38763353702) (T-6).

will be at Ognjen's place in about half an hour, forty minutes... so you may phone me when you come down there, when you reach his place. Ok, see you, OK.<sup>30</sup>

82. In a conversation intercepted on 29 October 2013 at 18:32 hrs, the following communication was recorded between Bosiljko Marković and a male person called Mile:

"...Hi, Bole, where are you?" – "I am in Derventa."; – "Are you coming back?"- "Yes.."- "Are you alone? With whom you are?"- "...Well, I am almost in a bus." "So, what's up? Have you settled anything?"- " .... You said that she was, **that the girl age 14 was killed...**"....I am not saying anything."- "Yes, Peđa was probably there Peđa was.. maybe, and Božić as a witness. We will meet tonight, I and Ostoja, and we will tell him and he will meet Ostoja down there and Ostoja should keep silent, (do) you understand?.....We were not there at all, ha?" Have you been there? Yes you have."- "I have. I gave a statement that I was not present there and that there is nothing of it, do you understand."- "Well, normally, you have nothing to do with it, I have, you are."- "She got married, she has somebody,.... a man, this and that, her parents died. It's all Peđa's fault, no one is, she was age 14, you understand..."- "You need not worry, yes, yes. I have just wanted to ...you. Will you be there tomorrow? You will..."<sup>31</sup>

83. Also tendered in the case record were the Suspect Questioning Records the contents of which show that the Prosecutor in the case questioned the suspect Bosiljko Marković on the premises of the BiH Prosecutor's Office in Sarajevo on 29 October 2013, and the suspect Ostoja Marković on 30 October 2013.

84. The contents of the testimony of witness Goran Rakić, who was a member of the team of investigators which conducted the special investigative measures of covert surveillance, show that the investigators concluded that the persons under surveillance would meet on 29 October 2013 after Bosiljko Marković's return from Sarajevo, where he was on that very day questioned in the capacity of a suspect. The meeting was held in a catering facility. The witness stated he had heard certain parts of their conversations and accordingly drafted an official report. The witness heard that, upon his arrival, Bosiljko Marković said he saw "Prosecutor Dragan", and that "he did not say anything important, that he would cause no trouble to them, and that he also hoped that the other men would also give no headache to him." At one moment, Mirko Božić asked Bosiljko Marković to give him the amount of KM 20,000. Responding to Mirko Božić's request, Bosiljko Marković said he did not have that money, and they continued drinking.

85. On 30 October 2013, intercepted was a conversation between Mirko Božić and a male person, with the following contents:

"...Nothing, my brother, but ... now, Mićo asked if he was there?- "Yes."- "What can you say?" – "So, I went there, and I will go on Monday again." – Is it something horrible, or ...it won't be the worst one, God forbid?"- **It should not be. It should not be.... Only they can get in a jam... if they did not give me the money ... I am only a witness there...**"<sup>32</sup>

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<sup>30</sup> Transcript related to number 850 (Target: 38765609922) (T-6).

<sup>31</sup> Transcript related to number 90 (Target: 38765757199) (T-6).

<sup>32</sup> Transcript related to number 1229 (Target: 38765609922) (T-6).

86. On 5 November 2013, at 17:55 hrs, intercepted was a communication between Mirko Božić and a male person, previously nicknamed Brane:

“...Has he called you? I am so interested in that ... has he any sense of shame: Did he at least manage to phone you?...” – “Yes, yes, he phoned me and told me that the guy did not come. He said it’s 100% certain it would be settled tomorrow. You know what I have told him on all that? I told him: **“Pal, listen to me! It is not a problem if I wait for that until tomorrow. If it is not settled, if it is not resolved... because I only ask for what is mine. I ask for nothing yours. If you do not settle this for me tomorrow, I will take from the man, and I will respect it, but you will be in trouble because of me.”**”

“...He said, told me...he will call me tomorrow million per cent for sure. When will you come...?”- “I would just like to see that ...but I do not believe it Mirko...I told him so. I told him I p... on **EUR 1000!**... Do you understand? I said I will take it from the man, it means I will settle it. And if you do not call me tomorrow, do not call me at all. I know what I will do to them, and that’s that! .....Have you seen, what a piece of impudence! Yes, yes. - Mile does not have EUR 1,000. When I told him all that, **the other one called me, you know, and told me he guaranteed that Mića said he would be there tomorrow 100% for sure** ....<sup>33</sup>”

87. On that very day, at 23:49 hrs, intercepted was a conversation between Mirko Božić and Bosiljko Marković:

“What’s up, pal?” – “I am watching tennis ....I have called him, and he will come to my place tomorrow morning.”- “Look, pal, here is the situation...**You can consider me your brother ... If I do something for you, and you know what I am doing for you, you know all that, and I am behind it ...**”- “...I know. I know...” – “So, you see, I expect from you to ... **I will wait until 12:00 hrs tomorrow. After 12:00 hrs, if you want to have the worst enemy or the best friend, tell me freely. I think, my friend, I have been fair enough, which means....It means that I did for you over there all what you have said, and ...do you understand me?!**” - “OK, OK, let us...- “I think that we understand each other?” OK, I understand you....it’s not a problem, I’ll do that tomorrow, that’s that.”- “Do it, when I beg you like a brother, call me, call me by noon ... And all that means...**even if your own brother were in question, he would not have said what I said for you.**”- “OK, OK...”- “I mean, then...you’ll see all, you will see that all ....”; “Do it when I beg you. I will not call you. If you can, call me by noon tomorrow....”...”OK, let us, let us...here from you soon...” We’ll hear from each other soon...<sup>34</sup>”

88. On 6 November 2015, at 07:26 hrs, the following conversation between Bosiljko Marković and Ostoja Marković was recorded:

“...Good morning, what’s up?”- “...Nothing, **this one is getting angry. He says you should settle that for him today if you can. He told me to call Goran and said that he need not call him after this time passed...**” – OK, good. I will call Goran immediately and I will go there to see what and how to do...”Do it, for God’s sake, and call me to, to see what needs to be done.”<sup>35</sup>

89. On 6 November 2013, at 08:16 hrs, the following conversation between Bosiljko Marković and Ostoja Marković was intercepted:

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<sup>33</sup> Transcript related to number 1742 (Target: 38765609922) (T-6).

<sup>34</sup> Transcript related to number 1760 (Target: 38765609922) (T-6).

<sup>35</sup> Transcript related to number 186 (Target: 38765757199) (T-6).

"...I have just spoken with Goran, you know."- Yes.- "He told me he knew why that one is putting pressure on us. ...It does not matter if he receives it today or tomorrow, no one will cheat on him, he said, you know" "Yes, yes.- "But he said that during the day.... he is currently in Varoš up there ... and he said he would see about that during the day, and the question is **if I will also get a statement. He said he was supposed to get a statement, but as a witness perhaps, he was not supposed to receive the statement, you know**, it's irrelevant, but he will check this again because it may be the case that he ... all this...you understand me."- "Yes, yes. I know. I know." - "Then ... it's no problem for him. Tell him to go and meet him by noon. Tell him that he will get it hundred per cent, thousand per cent, it's not a problem, do you understand me...Thereupon, I and Goran will sit down, tell him that the man is coming from Austria and he said this and that." "...Yes, OK, good, good". "... Because we also must be sure, perhaps he cannot be trusted anything..." "...I know, I know it all. It's all clear to me." - "Goran says it's a problem, because he knows why he is pressuring us; perhaps he wants to take it from you, and finally, who knows, to get you into a mess..." "Yes, yes". "...Do you know what is in question, **the money is not a problem. F... the money, you understand me.....rather than to put pressure on someone, everything will be resolved when the statement is read...**" "**OK, OK.**" "**...And I will give no money before that!** I will not give it, normally .... How can I give him anything if he incriminates me over there. I am not that crazy..."<sup>36</sup>

90. Ten minutes later, intercepted was a conversation between Mirko Božić and Ostoja Marković:

"Hi, pal, tell me..." "I have heard from him. He told me he spoke with Goran this morning, and he told him he had not received the statement yet ... and as soon as he received it, it would be no problem whatsoever..." - "...Ask him to have it faxed, have the attorney fax it, and he will receive it ..." - He has something (to do) in Varoš, at 08:30 hrs this morning...so he cannot do it" "...I told him last night, I told him there is no need... **I will wait until noon today, or otherwise, he need not call me thereafter, or do anything else...do not make me cause problems for no reason. I do not ask for anything that belongs to him, only for what's mine...**"<sup>37</sup>

91. After two hours, intercepted was a conversation between Mirko Božić and Bosiljko Marković:

"Hello. What's up?"- "I am working." - "I have just finished talking with Goran, here in the Court...so, everything is at it is ...He told me he will contact you today, he will contact you..." - "OK..."- I told him not to cause problems for no reason. **He said, he will say that you stick to the agreement you have made, to have it done like that.** " - OK, OK..."- "Eh...so, when will you call me today?"- "Well, he told me he would call me at 13:30hrs ....that he will come here, and that he would call me from Varoš. As soon as I hear from him, I will call you promptly." - "Look, **I have told him here in front of the Court,... and I have told you as well, what the situation is... that I do not ask for anything that belongs to someone else, nor did I ask for ... Do not force me to cause problems for no reason; it's not a problem for me to go there again...do you understand.** ...So, he says, he will call and tell him to stick to the agreement you have made. It will be OK if it is done that way."- "OK, OK..." Nothing else, I'll wait for your call today".- "Good buy now."..."Ciao..."<sup>38</sup>

92. On the very same day, at 17:00 hrs, intercepted was the conversation between Bosiljko Marković and Ostoja Marković with the following contents:

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<sup>36</sup> Transcript related to number 191 (Target: 38765757199) (T-6).

<sup>37</sup> Transcript related to number 1771 (Target: 38765609922) (T-6).

<sup>38</sup> Transcript related to number 1790 (Target: 38765609922) (T-6).

"Yes," Hello, **you should all come to the same place.... He got it all.** Come over here. But, you know, only you, he and I must be there."- "Yes.OK."- "Come on, come here. Yes, **he must also sign something, just do not say anything. If something is incorrect, he should return the money, you see.**" – "OK. OK."<sup>39</sup>

93. On the same day, at 17:05 hrs, intercepted was a conversation between Mirko Božić and a male person Brane:

"Hello, old man, where are you? "I am in Varoš." "Nothing, I am going to, **this one is calling me to come and pick him up, and to go down there to the very place as everything has been finished.** Thanks to God!"- "That Bosiljko, isn't he?" - "Yes.Yes....**Well, he knows, my friend, what I have told him, and he certainly told him that and...Ostoja called and asked me to come, and pick him up at the same place so that we can finish all that. He said it will be all finished. ....**" "OK, Brančo, we will speak tonight...Goodbye..."<sup>40</sup>

94. The surveillance report shows that, on the very day of 6 November 2013, at 15:50 hrs, the surveilled person, Bosiljko Marković, visited Attorney Goran Bubić's office, as well as that, later during the day, he went to the catering facility where thereupon the surveilled persons, Mirko Božić and Ostoja Marković, entered, that they all sat together at the same table and spoke for around half an hour.<sup>41</sup>

95. On 7 November 2013, intercepted was one SMS message sent by Ostoja Marković to an unidentified recipient, that reads as follows:

"Sorry, Vojo, I was busy last night, but as the matters stand now, it will be better, but the best information will come in about fifteen days when the Attorney goes to Sarajevo; **Mića probably gave a statement.** Regards."

96. Having correlated the intercepted conversations' contents with the documentary evidence (Records of the Accused persons' questioning in the capacity of the suspects, Witness Examination Record for Mirko Božić, the reports on the undertaken measures of secret following and surveillance), the Panel found that, on 22 October 2013, witness Mirko Božić was informed by his wife that he was summoned for examination in the BiH Prosecutor's Office scheduled for 4 November 2013. Subsequently on the same day, witness Božić contacted the accused Ostoja Marković, notified him of the summons, and asked him to inform Bosiljko Marković too, so that they can "make a deal". The accused Ostoja Marković accordingly notified the accused Bosiljko Marković, who had doubts that this was related to Božić's and their case, since certain actions were taken in the course of the investigation to destroy evidence in the case, for which "a big money" was given, and "all the blame put on Peđa".

97. A correlation made between the conversations' contents and the subject of the Indictment clearly showed that the Accused are aware which case is in question. This is supported with the contents of the intercepted conversations between the two Accused

<sup>39</sup> Transcript related to number 213 (Target: 38765757199) (T-6).

<sup>40</sup> Transcript related to number 1846 (Meta: 38765609922) (T-6).

<sup>41</sup> Official Note of the State Investigation and Protection Agency, Regional Office Banja Luka, number: 16-11/3-1-04-2-472/13-311/13 of 11 November 2013, signed by the Inspectors, Mirko Sivonjić and Rajko Bogić.

following their receipt of the BiH Prosecutor's Office's summonses for examination. All the foregoing is also connected with a part of the conversation indicating that the summons was related to forcible relocation of the population, rather than perhaps to "that (act of) rape". It ensues from the contents of the intercepted conversations and the Reports on secret following and surveillance that, having contacted Attorney Goran Bubić, he (Bosiljko) agreed with the accused Ostoja Marković that they would give nothing to Božić until they saw the statement Božić gave to the Prosecution. The conversations' contents further show that Božić asked the Accused to give him money before giving his statement, as well as after he gave it, claiming that unless they gave him the money by noon on 6 November 2013, they would make him their worst enemy, and that he could change his statement as well.

98. In addition, the conversations intercepted on 5 November 2013 show that, having given his statement on 4 November 2013, witness Božić contacted a male person and told him he expected to receive the amount of EUR 1,000 from one Accused, otherwise he would give them a headache as he could change his statement. Recorded on the same day was the intercepted conversation between Mirko Božić and one Accused, where Božić stated "*I hope that the thing will be settled by noon of the following day, otherwise I would become your worst enemy*", as well as the conversation between Mirko Božić and one of the Accused of 6 November 2013, when he told the Accused that "*they must comply with the agreement by noon tomorrow, and that the statement could be faxed too*". Intercepted on the same day was a conversation between the two Accused, where one of them said "*he spoke with Goran (Attorney Goran Bubić), who said they had to stick to the agreement because otherwise it was not a problem for him to go there again and change the statement*". On the same day, intercepted was a conversation in which Mirko Božić speaks with a male person, and tells him that he "*spoke with Ostoja and Bosiljko, who told him that everything was settled and that they would meet him at the same place*".

99. In addition, it can be inferred from the contents of the intercepted conversations of 6 November 2013 that, having contacted the Attorney, the Accused decided to give money to Božić, and agreed that he would sign a document to make sure he would not change his statement, or that he would return the money to them in case it happened. Subsequently on the same day, the three men met in a catering facility, kept under surveillance of the investigative bodies. In this regard, an Official Note was made in the form of Report on the taken measures and actions, that was thereupon submitted to the BiH Prosecutor's Office.

100. In rendering its decision, the Panel evaluated the relevant parts of the intercepted conversations from which it can be clearly concluded that, having learned that he was summoned for questioning, Mirko Božić clearly shows, in all his conversations with the Accused and other persons that, in relation to the two other Accused, he acts as a witness in relation to the incident which is being investigated, and therefore puts pressure on them to give him money which he has been allegedly paying to attorneys over the past 20 years, the culprits for which, in his opinion, are exactly the two Accused. In one of the conversations, Božić clearly said that "*he is not that much connected with the thing*" but he has been suffering the consequences "*for twenty years as he does not want to tell about it,*

*and if they do not return the money he has given to the attorneys, he will tell it all and get it all off him”.*

101. Also significant is the fact that, in any of these conversations, the Accused do not deny their participation in the incident which is the subject of the investigation, and do not mention, even as an option, that Božić participated in the acts at issue, but on the contrary, by insisting to first see the statement Božić gave to the Prosecution, and upon becoming satisfied with its contents, they consented to give money to him, but prepared a document he was supposed to sign to ensure that he would not subsequently change his statement (*...he must also sign something, just do not say anything. If it is not true, he must return the money, do you understand.*” -“OK, OK.”)

102. In one conversation, witness Mirko Božić tells the accused Bosiljko Marković “... (you may) *consider me your brother ... If I do a favor to you, and you know what I am doing for you, and you know all that, and that I stand behind it*” - to which Bosiljko Marković responds: “.. *I know. I know.*” This clearly points to a conclusion that the accused Bosiljko Marković is aware of the situation which enables Mirko Božić to do him a favor with his statement. Such a conclusion also ensues from the other relevant parts of the conversation with the accused Ostoja Marković.

103. The referenced conclusions will be significant to evaluating the adduced evidence, and the examining witness Mirko Božić’s evidence given in relation to the statements he gave previously in the course of the investigation.

## **B. EXAMINATION OF EVIDENCE PROVING THE INDICTMENT ALLEGATIONS**

104. Based on the evaluation of all adduced evidence, individually and in combination, the Panel found beyond a doubt that the acts of the accused Bosiljko Marković and Ostoja Marković, comprehensively described in the Operative Part of the Verdict, satisfied all the essential elements of the criminal offense of War Crimes against Civilians under Article 142(1) of the CC SFRY, in as much as, during the state of war in BiH and the armed conflict between the ARBiH and VRS, in the territory of the Kotor Varoš municipality, as members of the Kotor Varoš VRS Brigade, they acted in violation of the rules of international humanitarian law, in the way that at the time and the place described in the Operative Part of the Verdict, they forced the injured party into sexual intercourse, and the related sexual acts, that is, in complicity with Predrag Cicmanović (killed in 1995), they raped and accorded inhumane treatment to the injured party.

105. The Panel found the accused Bosiljko Marković and Ostoja Marković guilty of the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the CC SFRY, the relevant part of which reads as follows:

*“Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation orders ..... that civilian population be subjected to killing, ..., **inhumane treatment, .... rape** .....or **who commits** one of the foregoing acts, shall be*

*punished by imprisonment for not less than five years or the death penalty.”*

106. The following underlying elements of a criminal offense ensue from both the legal definition of the crime and the case law:

- (a) Violation of the rules of international law must be committed at the time of war, armed conflict or occupation;
- (b) The act of the perpetrator must be related to the war, armed conflict or occupation;
- (c) The act of the perpetrator must be committed in violation of the rules of international law;
- (d) The perpetrator must order or perpetrate the offense.

(a) **The acts charged against the Accused were committed during the armed conflict**

107. The Indictment alleged that the acts of the Accused persons satisfy the elements of violation of the rules of international humanitarian law (IHL), namely the breach of Article 3 of the IV Geneva Convention that provides for the sanctioning of the conduct prohibited in an armed conflict which is not international in its nature.

108. The Panel notes that the courts, both national and international, have held that the referenced Article shall apply not only to internal conflicts, but also to conflicts of international character considering that its contents form part of customary international law. Specifically, it does not matter if the grave breach was committed in the context of international or international armed conflict if the following requirements are satisfied: the violation must constitute an infringement of a rule of international humanitarian law; the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met; the violation must be ‘serious’, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim, and the violation of the provisions must entail the individual criminal responsibility of the person breaching the rule. In the concrete case, the Panel has found that all the foregoing elements were satisfied as explained further in the Verdict.

109. In addition to violations of common Article 3 of the Conventions, the Accused are also charged with breaching, or acting in violation of Article 27(2) of the IV Geneva Convention safeguarding the fundamental rights of the protected persons (*inter alia*, against discrimination of women and any outrages upon personal dignity, particularly against rape), at the time of non-international armed conflict or occupation, as defined under Article 2 of the Convention.

110. During the proceedings, however, the Prosecution offered no evidence on the mandatory application of the referenced Convention provisions in the armed conflict relevant to the Indictment, that is, it did not prove the character of the conflict in



compliance with the referenced Article 2 of the Conventions, and did not explain that it is a violation of the provision of customary law (that is) applicable regardless of the character of the conflict. Considering that the requisites for the application of substantive law were not proved, the Panel did not evaluate at all whether the acts charged against the Accused were committed in violation of this provision of the Convention.

111. The Panel has dealt with the violation exclusively in relation to common Article 3 of the Conventions as it applies to the concrete case, considering that the Prosecution was proving that the acts were committed in the context of armed conflict (to be explained further below), and considering that the applicability of this provision of the Convention is independent from the character of the armed conflict (international or non-international).

112. An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. As already indicated, the nature of the concrete armed conflict is irrelevant in terms of common Article 3 of the Geneva Conventions.

113. During the proceedings, the parties did not dispute the existence of an armed conflict at the relevant time in the territory relevant to the Indictment. Based on the consistent testimony of the examined witnesses for both the Prosecution and the Defense, and the reviewed documentary exhibits, the Panel also found that the referenced conflict indeed existed.

114. The fact that the state of war existed at the time when the acts charged under the Indictment were committed undoubtedly ensues from the Decision of the Presidency of the Republic of BiH Declaring the State of War of 20 June 1992. The Decision stated that the Republic of BiH came under attack by the Republic of Serbia, the Republic of Montenegro, the Yugoslav Army and SDS terrorists, as established by the UN Security Council Resolution 752 of 18 May 1992.<sup>42</sup> It ensues from the foregoing that there was no resort to armed force between the states, or protracted armed violence between governmental authorities and organized armed groups. The violence ended in December 1995, as it ensues from the Decision of the RBiH Presidency Abolishing the State of War of 22 December 1995.<sup>43</sup> All the witnesses for both the Prosecution and the Defense testified about the armed conflict in which members of the Republika Srpska Army, including the Accused, participated in the territory of the Kotor Varoš municipality, which also includes the villages of Vrbanjci and Orahova as the crime scene.

115. Witness Mirko Božić testified that the conflict broke out on 11 June 1992. The witness stated that, already since 1991, he was engaged with the military in the region of

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<sup>42</sup>T-44 - Decision of the RBiH Presidency Declaring the State of War, Official Gazette of the RBiH of 20 June 1992.

<sup>43</sup>T-45 - Decision of the RBiH Presidency Abolishing the State of War, Official Gazette of the RBiH of 28 December 1995.

Slavonia, Croatia. When he returned in 1992, he was assigned to a unit within the Kotor Varoš Brigade of the Republika Srpska Army, that is, in the Pioneers Platoon in Čepak. Certain members of the referenced platoon were deployed to the platoon which held the position toward the village of Večići, among whom the witness also remembered Bosiljko Marković, Ostoja Marković and Predrag Cicmanović. When the witness's brother and several members of the Brigade were captured, the Marković men volunteered to participate in action.

116. Witness Božić's statement was also confirmed by witness Milorad Kalamanda. At the critical time, witness Kalamanda was an intelligence officer in the 1<sup>st</sup> Battalion of the Kotor Varoš Brigade. Witness Kalamanda knows that Božić was a member of the 1<sup>st</sup> Company, whose brother was captured in May 1992 in the villages of Večići. Witness Kalamanda stated that, on 25 June 1995, the Commander of the referenced Battalion was wounded in an armed attack, and that an action to "cleanse" the villages of Večići and Hanifići was planned to take place on St. Vitus' day (28 June) in order to seize arms. However, the action was launched a day after it was planned, that is, on 29 June, when eighteen members of the Battalion were killed. Witness Kalamanda also confirmed that Predrag Cicmanović, whom he had known from before, was also a member of the referenced Battalion.

117. Witness Petko Župljanin testified that, in May 1992, he was recruited to a unit deployed in Slavonia, Croatia. Since the war was "transferred" from Slavonia to Bosnia, the Command of his unit, that is, the 1<sup>st</sup> Battalion of the 22<sup>nd</sup> Brigade, where he served as a military police officer, was seated in Maslovare, with an outpost in the Vrbanjci village.

118. It ensues from the read out statement, which the father of the injured party had given as a witness, that the security situation in the village of Orahova (predominantly inhabited by the Croat population) near Kotor Varoš, was good until 13 June 1992, when representatives of the Serb authorities and the military called upon the villagers to surrender their weapons, which they actually did on the premises of the *Šumarija* Company in the village of Obodnik. The witness further stated that the Orahova village was surrounded by Serb soldiers, who searched their houses, and that the movement of villagers to other villages was restricted.

119. The witness-brother of the injured party<sup>44</sup> stated that, until 11 June 1992, villagers of his village Orahova stood self-organized guard over nights, and that on that very day, the VRS with heavy weaponry was stationed in the village of Jurići, located across from their village. They stayed there until 13 June 1992, when their infantry held captured around 150 civilians at the site near the cemetery. These civilians' release was conditioned with the surrender of the weapons of the men hiding in the woods. The men surrendered their weapons in the village of Obodnik. Thereafter, their houses were searched on a daily basis.

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<sup>44</sup> The Verdict does not indicate the witness's full name as it would disclose the injured party's identity.

120. It ensues from the read out statement of witness Sekula Jurić that, in early June 1992, he was recruited in the reserve police force and deployed to a guard post at the Obodnik checkpoint. The Defense witnesses Ilija Raljić and Niko Novaković, as well as Cvijeta Narić and Luka Narić, also gave evidence about the facts relating to the armed conflict.

(b) **The acts charged against the Accused in relation to the armed conflict**

121. According to international jurisprudence, to qualify an offense as a war crime there must be a sufficient *nexus* with the war or armed conflict, namely the accused's acts must be "*closely related to the war, armed conflict*". Furthermore, "the war, armed conflict need not have been causal to the commission of crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed".<sup>45</sup>

122. Having evaluated the adduced evidence, the Panel concluded that the acts charged against the Accused were to a decisive extent related to the armed conflict. At the charged period covered by the Operative Part of the Verdict, the accused Bosiljko Marković and Ostoja Marković were members of the VRS. The Defense for the accused Bosiljko Marković did not contest this status of the Accused. The Defense for the accused Ostoja Marković argued there is no doubt that their client was indeed a member of some other unit of the VRS, rather than that of the Kotor Varoš Brigade, and that his participation in the conflict started the day after the event at issue occurred, that is, on 29 June 1992, when the action about which the witnesses Mirko Božić and Milorad Kalamanda gave evidence was launched.

123. Based on the adduced documentary exhibits – review of the military record extract tendered in the case record, the Panel found that the accused Bosiljko Marković became a member of the VRS Kotor Varoš Brigade VRS on 11 June 1992, as entered in the military master file.

124. In addition, the Panel found based on the adduced documentary exhibits – review of the military record extract, that Ostoja Marković was a member of the VRS from 1 November 1991. Witness Mirko Božić testified that the accused Ostoja Marković waged war as a volunteer at frontlines in the Republic of Croatia prior to returning to Kotor Varoš, when he was, pursuant to the same military record of 11 June 1992, registered as a member of the Kotor Varoš Brigade. Notwithstanding that the date of 11 June 1992 is crossed out in the accused Ostoja Marković's master file and 9 July 1992 entered instead, as the date when his military service in the Kotor Varoš Brigade started, the Panel found that, even before 9 July 1992, the Accused had been a member of this Brigade, as it

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<sup>45</sup> The ICTY's Appeals Chamber Judgment in *Kunarac et al.*, para. 102.

ensues from the testimony of witnesses Božić, Kalamanda and Župljanin, who were also members of the referenced Brigade.<sup>46</sup>

125. Witnesses Milorad Kalamanda and Petko Župljanin consistently testified that they had occasionally seen the accused Ostoja Marković, armed and uniformed, in Kotor Varoš some time before the action of 29 June 1992 was launched. Witness Milorad Kalamanda identified Ostoja Marković as a participant in the military action launched by the Kotor Varoš Brigade on 29 June 1992, namely he confirmed that the accused was, already at that very time, active as a member of the Kotor Varoš Brigade. Witness Kalamanda stated it was not uncommon that soldiers were *de facto* active in other formations, particularly if soldiers were originally from that respective area, or were more experienced soldiers who carried out more demanding activities. Witness Petko Župljanin clearly stated that, at the referenced time, he had seen the accused Ostoja Marković uniformed and armed; in particular that he, as a member of the military police, apprehended this Accused from one of the houses where soldiers of the Kotor Varoš Brigade had been quartered; and that he did it upon an order issued by the Brigade Command.

126. Considering that all the witnesses confirmed that, at the time of the commission of the acts described in the Operative Part of the Verdict, the Accused were uniformed and armed, they clearly undertook all the actions in the framework and in relation to the armed conflict. Also indicative of the foregoing is the fact that the accused Ostoja Marković, being armed and uniformed, also seized a motor vehicle-van from the Lihović family who owned it.

127. It ensues from the read out statement of witness Šefika Lihović that the accused Ostoja Marković, armed and uniformed, together with Predrag Cicmanović and Mirko Božić, seized a red-white (color) van from the Lihović family. Witness Lihović stated that, before 1992, her son had been a cab driver in the territory of the Kotor Varoš municipality and drove a red-white van. The witness further stated that, in June 1992, Ostoja Marković, son of Gojko, one Cicman whose name she did not know, but whose father's name is Dane, and one Božić from Grabovica (located in the direction of Šiprage, Kotor Varoš municipality) arrived in her house's frontyard. They wore camouflage military uniforms and had automatic rifles. They asked for a key of the van parked in a garage. They drove the van out of the garage and headed towards the village of Vrbanjci. The witness stated she had known Ostoja Marković "*since his childhood*" as he was her neighbor.

128. That this is the same van by which the injured party was driven away on the critical night the Panel found by correlating the statement of witness Šefika Lihović with the injured party's father who recognized Huso Lihović's van which he had used as a cub driver.

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<sup>46</sup> T-38-Document of the Ministry of Labor and Protection of War Veterans and Disabled Persons: 16-03/3.2-1-835-1549/13 of 29 November 2013, with a verified copy of an extract from VOB-8 to the name of Bosiljko /Nenad/ Marković, under number 217, and a verified copy of an extract from VOB-8 to the name of Ostoja /Gojko/Marković, under number 224.

129. In addition, the Panel also took into account the fact that, according to the Operative Part of the Verdict, the persons who participated in the referenced incident, Predrag Cicmanović and Mirko Božić, were also members of the same Battalion, that is, members of the same company as the Accused (as witnesses Kalamanda and Božić also testified). According to the testimony of the injured party S-4 and witness Mirko Božić, they were all, including the Accused, uniformed and armed on the critical occasion. The injured party S-4 was taken out from her house under the excuse/explanation that she was needed for the exchange of captured soldiers, on which occasion Cicmanović fired a burst of fire from his automatic weapon into the air.

130. The conclusion that the Accused's acts were closely related to the armed conflict undoubtedly ensues also from the fact that the investigations into this incident, as well as the other incidents that occurred on the very same day when Croat women were raped in the villages in the territory of the Kotor Varoš municipality, were conducted by the military, rather than the District Prosecutor's Office Banja Luka.<sup>47</sup> Specifically, the criminal proceedings against the Accused were conducted on a grounded suspicion that they had, on the very day, ill-treated the other Croat women in the territory of the referenced municipality.

131. In view of all the foregoing, it is clear that all the acts the Accused undertook on the referenced day were directed against the unprotected and minority Croat or Bosniak population of the Kotor Varoš municipality, including the injured party S-4, whose family house was located in the village inhabited by the Croat population. The Accused abused the position of members of the armed forces of the warring party, which is why the Panel finds that, in the concrete case, there is a clear *nexus* between the armed conflict and the acts charged against the Accused.

**(c) The acts charged against the Accused are in breach of the rules of international humanitarian law**

132. As stated above, the Court has examined the breaches of the rules of international humanitarian law in relation to Article 3 of the Geneva Convention on the Protection of Civilians in Time of War of 12 August 1949. The part of this Article relevant to the factual description of the Indictment and the legal qualification reads as follows:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

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, shall in all circumstances be

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<sup>47</sup> **O-I-4-** Indictment of the Military Prosecutor's Office within the Command of the 1st Krajina Corps Banja Luka, Republika Srpska number 395/94 of 1 November 1993.

treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

.....

c) outrages upon personal dignity, in particular humiliating and degrading treatment;

133. In order to find a violation of the referenced common Article 3 of the Conventions, the Court needs to determine the target of the committed prohibited act, that is, whether the act was directed against a particular category of the population protected under this Article, or a person taking no active part in the hostilities.

134. The testimony of witness S-4, her parents and brother, as well as all tendered documentary exhibits, clearly show that, at the time of the commission of the criminal act the injured party was a civilian, minor and age 14. Thus, there is no dispute that she indeed had the status of a person protected pursuant to the Geneva Convention on the Protection of Civilians in Times of War of 12 August 1949 (Article 3(1) of the IV Geneva Convention). As explained above, the injured party was of different ethnicity in relation to the Accused (pursuant to their personal details provided in the Examination Record T-20 and T-21 and confirmed at the main trial), which is why she was obviously subject to the prohibited discrimination covered by the common Article 3 of the Conventions.

135. The perpetrator need not be aware that his acts are in breach of the rules of international law. In the description of the crime at issue, the breach of international law is an objective requisite for punishment, which is why the perpetrator's awareness of the essential elements of the crime, that is, its intellectual component, does not also involve his awareness that by the commission of any of the acts he violates the rules of international law. It must be established that the perpetrator knew or had reason to know that the victim was taking no active part in the hostilities when the crime was committed.<sup>48</sup> The Panel's finding that the Accused were aware that the victim was taking no active part in the hostilities need not be particularly reasoned in the present case considering that the injured party was a girl, age 14, and abducted from her parents' house.

136. In view of the foregoing, as well as the fact that the Panel found, based on the witness S-4's testimony, that on the critical occasion she was subject to violence to her life and person and outrages upon personal integrity due to the humiliating treatment the Accused accorded to her, as well as that she experienced severe physical and mental pain and suffering. It is therefore clear that the criminal acts indicated in the Operative Part of

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<sup>48</sup> Judgment of the ICTY's Appeals Chamber in *Prosecutor v. Boškoski et al.*, para.66.

the Verdict, committed by the Accused (to be explained further below), were in breach of the mandatory human treatment laid down in the rules of international law, or in violation of Article 3(1)(a) and (c) of the Geneva Convention, and, as such, sanctioned under Article 142 of the CC SFRY, which prescribes such treatment of civilians in times of war or armed conflict as the criminal offense of War Crimes against the Civilian Population.

(d) **The Accused committed the acts as charged under the Indictment**

137. Having evaluated the adduced evidence, the Panel found that, on 28 June 1992, at around 21:00 hrs, the accused Bosiljko Marković and Ostoja Marković, together with Predrag Cicmanović (killed in 1995), in a van owned by Huso Lihović from the village of Dabovci, driven by Mirko Božić, arrived in the village of Orahova, mostly inhabited by the Croat population, whereupon Predrag Cicmanović came out of the vehicle, and abducted minor S-4, age 14 at the time, from the house owned by A.A. – the injured party's father, in the presence of members of her family, under the excuse that she would be exchanged for the captured members of the VRS in the village of Večiči, while in the meantime the accused Ostoja Marković and Bosiljko Marković waited in the van together with driver Mirko Božić.

138. The Panel reached such a finding of fact by evaluating and correlating the consistent testimonies of the Prosecution witnesses which were credited, namely that of the injured party S-4, witness Mirko Božić, the injured party's parents and brother, and the already explained testimony of witness Šefika Lihović. In addition, the Defense for the Accused did not contest the referenced facts in their closing arguments.

139. The read out statement of witness-injured party's father clearly shows that the incident at issue occurred in the evening hours of 28 June 1992. The Court finds this statement reliable since this is a significant and difficult incident by which both his daughter and family were affected. In addition, the statement is also consistent with the testimony of the injured party's brother, who stated that it occurred on the Orthodox family patron saint's day (celebration), as well as with the testimony of the injured party herself, accepted by the Panel in relation to the date regardless of the fact that she was a girl at the time, which is why her memory needs not be accurate when it comes to the date precision. The Panel compared the injured party's testimony with that of her mother's. The victim's mother stated that, on this very date each year after the referenced incident, the injured party cried all day long, and locked herself in her room. This is why it is quite clear that she has remembered the date accurately.

140. At the main trial, the witness-injured party S-4 testified in relation to the incident at issue. She stated that, in the evening hours of 28 June 1992, someone knocked on the door of their family house; that her father opened the door and saw a soldier wearing a camouflage uniform, with a rifle; that the soldier ordered everyone in the house to leave the house and stand in front of the door. The soldier singled out her (the witness) and her sister and told them they had to be exchanged for soldiers captured in the village of Večiči.

Their parents offered the soldier to take them instead of the girls, but he refused to do so, telling them that only children were to be exchanged. The soldier asked her sister about her age. When her sister responded she was 12, he sent her back. A van was parked by the road, some 200 m away from the house. They heard someone calling the soldier by name Peđa. The soldier ordered her to enter the van. While she was entering the van, she noticed three other men inside. One man was at the wheel, another one was sitting next to him at the front seat, while the third one was sitting in the back seat.

141. The injured party S-4's mother testified at the main trial that, in the evening of 28 June 1992, at around 21:00hrs, her husband opened the house door at which a soldier had strongly knocked. The soldier wore a uniform and carried an automatic rifle. The soldier told them to get out in front of the house and line up, which they did. Thereupon, the soldier told them that soldiers had been captured in the village of Večići and that he would take the children for exchange, pulled out her older daughter from her hands. The witness saw a van parked on the road near a bridge, and heard male voices calling the soldier by the name "Peđa", hurrying him up. Thereupon she heard the soldier fired a burst of fire at the gate, and took the injured party S-4 towards the van, which is when she fainted.

142. The injured party S-4's brother stated that, on the day of celebration of the Orthodox family patron saint's day in late June, at around 21:00 hrs in the evening, a soldier banged the door of their house, telling them he was a soldier of the Republika Srpska Army. He ordered them all to leave the house. Consistently with his mother's and sister's testimony, he stated that the soldier told them that some Serb soldiers had been captured in the Večići village and that they needed someone for exchange. The witness had known the soldier from before because he frequently travelled with him by bus. The injured party's brother knew the soldier by his nickname Peđa, and his full name Predrag Cicmanović. The witness also knows that he (Peđa) lived in a place located in the direction of (the village of) Donji Obodnik. The witness further stated that the soldier singled out his two sisters, to which his parents opposed. His mother cried and told the soldier to take them (the parents) instead of the children. The soldier thereupon returned the younger sister, age 12 at the time, but took away the older one, who was age 14. A van was parked on the road, from which they heard voices shouting "*Peđa, where are you, hurry up*". The parents followed the soldier, begging him to leave his sister. The soldier, however, told them that everything would be fine, and on leaving the frontyard he fired a burst of fire into the air. In addition, the injured party's father stated that he identified Cicmanović subsequently, when he saw him once in the prison where he had been detained with other Croat men. The witness learned in the prison that Cicmanović also took part in the rapes of other women, including the wife of one of the men imprisoned together with him.

143. Consistently with their testimonies, the testimony of the injured party's father, read out at the main trial, shows that, on 28 June 1992, at around 21:00 hrs, a soldier wearing a camouflage uniform and carrying an automatic rifle came to the front of his family house where he had lived with his family. The soldier wanted to take away some of his children, telling him he needed them for exchange. While the soldier stood in front of the house, the injured party's father heard someone calling<sup>40</sup> the soldier from the road by the nickname



“Peđa”, and telling him to hurry up. A red-white van was parked in front of a bridge leading towards the house. As stated above, the witness realized it was the van owned by Huso Lihović from the Dabovci village. The witness explained he was quite familiar with the van because Huso used to drive it as a cab-driver in the Kotor Varoš territory.

144. It ensues from the testimony of the referenced witnesses, as well as from witness Mirko Božić’s testimony that the Accused arrived in the village of Orahova by a red-white van driven by Mirko Božić, who parked it near the house of A.A. – the injured party’s father. Witness Mirko Božić testified that he, Cicmanović and the two Accused were heading towards (the village of) Vrbanjci, and arrived in the Orahova village, inhabited by Croats. Predrag Cicmanović aka Peđa cocked his rifle and told him to halt the van near the bridge, which he did. Witness Božić further stated that Cicmanović told them to wait for him until he returned from the village. After some time he showed up, and put a female person into the van. Witness Božić’s testimony in this part is consistent with all the statements he had previously given to the investigative bodies in the course of the proceedings.

145. The Panel further found beyond a reasonable doubt that, on the referenced evening, the injured party S-4 was forced into sexual intercourse and the related sexual acts in the van, by use of direct threat and force to her life and person. The foregoing ensues from the testimony of witness S-4 herself, her parents, witnesses Sekula Jurić, Milorad Kalamanda and Petko Župljanin as indirect witnesses, and witnesses Mirko Božić and Ilija Raljić as the eye-witnesses. In their closing arguments, the Defense for the Accused did not contest that the injured party was raped in the referenced van. The fact that witness Ilija Raljić, as a Defense witness, confirmed that he had seen Predrag Cicmanović aka Peđa “hugging” a female person in the van, also shows that the Defense does not dispute the foregoing.

146. Testifying about the referenced incident, the injured party’s mother stated it was some time “after midnight” when her daughter came back crying, and that due to her tears she could not speak up. The witness took her to the bathroom, where her daughter told her she had been raped. The witness noticed injuries and traces of blood on her body. Her daughter subsequently told her that they had driven her towards the village of Donji Obodnik. The witness stated that, on the following day, she went to the check-point near the bridge and addressed soldier Sekula Jurić, who stood guard, and who told her that he would send an ambulance to her home as soon as he had an opportunity. Driver Kalamanda came by the ambulance and drove them to the Health Center in Kotor Varoš, where a physician examined her daughter and gave her some medicines. The witness also stated that, several days later, an officer came to their house, spoke to her and her husband about the incident and told them he would try to identify the perpetrators.

147. The injured party’s father stated in his statement that he and his wife waited to see if their daughter would come back, that she returned after midnight, that she was crying in the state of shock. His wife took her to the bathroom. Daughter told him nothing except that they had driven her in the van, but he assumed what had happened to her. In the morning, his wife told him that four soldiers had raped her in the van. Several days after

the incident, an officer of the Republika Srpska Army visited them, and his daughter gave him a statement. The officer told them he would try to identify the perpetrators of the crime.

148. Witness Sekula Jurić confirms their testimonies. It ensues from his statement, read out at the main trial, that the injured party's mother addressed him at the check point near the village of Obodnik, where he stood guard in the early morning hours, and asked him to help her. She asked for an ambulance to be sent to her home so that she could take her child to the hospital. The woman claimed her underage daughter had been raped. In the afternoon hours of that very day, he notified the ambulance driver and they went to the injured party's home to take her to the hospital.

149. Witness Petko Župljanin does not remember the accurate date. However, he remembers the event when he saw two persons, a mother and her daughter, whom he had known from before, standing near the Health Center in Vrbanjci. The mother told him that, on the previous night, her daughter was taken away by a van, and brought back before dawn, and that she was raped, which is why she brought her for medical examination by a physician.

150. The injured party's examination in the Health Center was registered in the Health Center's Protocol book under number 4422 on 2 July 1992. It was recorded that the diagnosis upon an examination was ..... and ....., and that the patient was administered therapy, an Apaurin ampulla intramuscularly.<sup>49</sup>

151. Witness Milorad Kalamanda stated that, in late November 1991, he was recruited as a reserve officer in the Territorial Defense Staff Kotor Varoš for the formation duty of an intelligence officer; that he was informed that Croat women had been raped in the territory of the Kotor Varoš municipality – the village of Orahova; and that he learned from soldiers' subsequent comments that one underage girl was also among the women raped.

152. At the main trial, the injured party herself unwillingly spoke about what happened in the van. However, regardless of the severity and traumatizing effect of the survived incident, the injured party describes the chronology of the events in a rather clear manner, except for the fact that, in certain parts of her testimony, the witness avoids providing detailed descriptions of the act by using the verb "raped" or "the raping started". The Panel finds that such a way of the presentation of facts is not uncommon for victims of sexual violence/abuse. The injured party states that, upon entering the van, they ordered her to sit down and stop crying, and that they headed off towards Kotor Varoš. She further states that, after some 10-minute drive, the soldier the others called Peđa ordered her to take off her clothes and put a knife against her throat. She begged him to release her and return her to her home, but he put the knife on her neck, and the man sitting on the back seat put a pistol against her head. They ordered her to stop crying. The soldier the other soldier called Peđa striped off his trousers to his knees and ordered her to sit in his lap, where he

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<sup>49</sup> T- 30- Verified copy of the extract from the Protocol Book of the *St.Pantelejmon* Health Center; T-29 Letter from the *St.Pantelejmon* Health Center, Kotor Varoš – No. 04-203/10 of 14 April 2010.

raped her. Then he ordered her to please him and forced her into oral sex. On the road between Obodnik and Vrbanjci, they took a right turn to a side road leading towards the woods and stopped the van. The other men raped her there repeatedly while she lied on the van floor, between the seats. In addition to Peđa, one of the men also forced her into oral sex.

153. Responding to a specially posed question, the injured party explained that she considers she was raped because the male sex organ penetrated her sex organ. In addition, the witness sensed for several times that someone pulled her hair and slapped her, which is why she believes she was unconscious in certain moments. Before she was ordered to get dressed, they opened the van. She heard some other voices outside. They invited a man named Ilija to join them, but Ilija refused, and went away from the van. The injured party-witness concluded so because after that she heard no voices any more.

154. The injured party-witness adds that from this very place they headed off towards Kotor Varoš, and stopped again at the bus station in Vrbanjci, which is a 5-6 min drive, where a woman ordered her to get out of the van. When she stood up, intending to get out, one of the men pulled her hand and told her to sit down. At this spot, they turned the van back towards Šiprage, that is, towards her house. The van stopped again near the house, close to the *Šumarija* (Company facility). Ultimately, she left the van near the bridge and went to her house where her parents waited for her.

155. Contrary to the position of the Defense for the Second-Accused in their closing argument, that the witness's previous statements differ in relation to the essential facts, the Panel finds that, at the main trial as well as in all other statements of hers, the witness is decisive in relation to the key facts: that the rape occurred in the van; that four persons were present in the van; and that nobody else entered the van before and during the abuse. In this regard, the witness stated, in a very clear way, that she was raped by several persons present in the van, and that they raped her while telling each other "It's my turn now". In addition, the witness stated very clearly that two men (one of them being Peđa) forced her into oral sex.

156. It is concluded beyond a doubt from such a testimony of witness S-4, fully credited by the Panel, that the injured party was forced into sexual intercourse and the related acts by the men present in the van on the referenced night; that the injured party only knew that one of them was nicknamed Peđa; and that it was determined based on witness Božić's testimony that this person was exactly Predrag Cicmanović. The Panel identified the other men, about whom witness S-4 testified, by correlating the contents of witness Mirko Božić's testimony with the documentary exhibits tendered in the case file, with the contents and examination of evidence obtained after conducting special investigative measures. As already reasoned in the Verdict above, the Panel found beyond a reasonable doubt that the perpetrators are the two accused – Bosiljko Marković and Ostoja Marković.

157. The Panel finds that the essential parts of the injured party S-4's testimony were confirmed by witness Mirko Božić at the main trial. Witness Božić stated that, at one moment during the drive, he turned back and saw Cicmanović on the van floor (lying) over

the female person, and that when he turned back his head once again, he saw Cicmanović raping her. This part of witness Božić's testimony given before the Trial Panel slightly differs from the witness S-4's statement in relation to the exact place in the van where the girl was positioned since the injured party S-4 stated she was on the van floor between the seats, rather than in the van rear, as Božić claims.

158. The Panel has attributed witness Božić's description to Božić's intent to give evidence by providing minimum details, which is why he moves the injured party, and thereby all the activity in the van, to a less visible location in relation to his place of a driver. In support of this finding stands the fact that, in his investigative statement, witness Božić stated that Predrag entered the van with a female person, sat behind him and said "This is mine", and that during the ride he saw that woman lying *between the seats* while Predrag positioned himself over her (body).<sup>50</sup>

159. The fact that witness Božić tried to keep secret, at the main trial, that he had heard a woman crying and Predrag, Ostoja and Bosiljko shouting also shows his intention to provide as few details as possible in his testimony about what he had seen and heard also. The Prosecutor reminded him that he had stated the foregoing for the investigative record, and witness Božić responded he could not remember this fact. Considering the reasons presented above, the Panel credited Božić's investigative statement in this part, particularly taking into account the fact that it is impossible that, in such a small space like that in the van, even with the running engine sounds, Božić could not have heard the voices of the persons present in the van, and especially taking into account what was going in the van at the specific moment, as witness S4 testified.

160. In addition, testifying at the main trial, witness Božić confirmed what he had stated for the record during the investigation. Božić stated that Predrag had told him, at the Dabovci cross roads, to take the right turn and turn the van engine off. Božić drove for some 20-30 m away from the turning spot, stopped the van near a bus station in Dabovci, turned the van engine off and left the van.

161. At this point, the Panel notes that, in his main trial testimony, witness Božić tried again to depart from his previous statements and avoid confirming what he had stated already in the 2011 investigation. At the time, witness Božić gave a statement before the District's Prosecutor's Office, CJB Banja Luka, indicating that, after he had left the van in Dabovci, the three men (Cicmanović, Ostoja Marković and Bosiljko Marković), stayed in the van for around half an hour. The witness repeated the same for the examination record No. 08-02/1-357/11 of 22 December 2011 made in the CJB Banja Luka. Testifying at the main trial, witness Božić now states, similarly to what he had stated for the record in the Prosecutor's Office on 4 November 2015 (when he believed the Accused would give him money if he gave a statement in their favor), that after several minutes he had noticed the accused Bosiljko Marković also standing outside, by the van.

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<sup>50</sup> T- 27- Witness Examination Record; T-20- KTRZ 0005827 12 of 4 November 2013, and T-25- Witness Examination Record 08-02/1-357/11 of 22 December 2011, CJB Banja Luka.

162. Considering the contents of Božić's intercepted conversation with the accused Bosiljko Marković, that took place after the Accused had obviously learned about Božić's statement given in the BiH Prosecutor's Office on 4 November 2013, when he stated: "...You may consider me as your brother ...If I am doing a favor to you, and you know what I am doing, and I stand behind it...This means that all what you have said, I did it for you back there, and ...even your own brother would not have said what I did", it is clear that Božić consciously altered his statement in favor of Bosiljko Marković, by stating for the record of 4 November 2013, as well as at the main trial, that Bosiljko left the van several minutes after him.

163. Yet, pressured by the confrontation with his previous statements, as well as the fact that the intercepted conversations obviously showed that he made agreements with the Accused, witness Božić stated at the main trial, as well as for the record made in the Prosecutor's Office on 18 February 2014 (having learned that the special investigative measures were conducted against him), that the period of "several minutes" elapsed between his and the accused Bosiljko Marković's leaving the van, as he claims, could also be the period of half an hour.

164. In addition, the Panel finds that, for the very same reasons, at the main trial, witness Božić consciously departs from his previous statements in favor of the Accused, claiming that he could not remember if he had turned the engine off before leaving the van. In his investigative statement given for the record on 18 February 2014, witness Božić clearly stated that he had turned the engine off before he left the vehicle, that the engine was off while he stood in front of the van, and that he heard the sounds of beating and shouting coming from the van, although he allegedly did not see what was going on inside. The Panel credited witness Božić's 2014 statement considering it is consistent with witness S-4's statement that she was raped by the men in the van, and considering the fact that witness Božić conscientiously altered his statements in favor of the two Accused.

165. Therefore, considering the undoubtedly established facts in the present case based on the evidence of witness S-4, who claims that four men were present in the van, including one nicknamed Peđa, and the evidence of witness Božić, who also claims there were four of them, namely Cicmanović (Peđa), he himself driving the van, and the two Accused, the Panel accepted and along this line credited the injured party's statement that she was repeatedly raped by the men in the van, and that no other persons entered the van during this period. Therefore, the sole possible conclusion clearly ensuing from the foregoing is that the injured party was raped by the men present in the van on the critical night, including the two Accused.

166. Having credited witness Mirko Božić's evidence (in the way as examined above), the Panel finds proved that, after taking the turn towards Dabovci, Božić stopped the vehicle and went out of it; that the accused Bosiljko Marković, Ostoja Marković, Cicmanović and the young girl stayed in the van; and that the sounds of shouting and beating were heard from the van during the period of minimum half an hour. The Panel has correlated the foregoing with witness S-4's statement, that after Peđa the other men in the van also forced her into sexual intercourse "one after another", which took place after the van

stopped once it turned off the main road. The Panel finds proved the Indictment allegations, that the men about whom the injured party S-4 gives evidence and whose identity is unknown to her, were none other than the accused Bosiljko Marković and Ostoja Marković.

167. As already explained above, the contents of the intercepted conversations also undoubtedly point to such a conclusion, clearly showing that, under Božić's pressure, the referenced two Accused consented to give money to Božić in return for his statement in their favor, and that during the entire period, in addition to denying their responsibility, the Accused intensively worked on obstructing the investigation in the present case, not only from the moment they received the summonses from the Prosecutor in the case, but also even from before, when the case was under the jurisdiction of the District Prosecutor's Office in Banja Luka. Since the moment when Božić notified them of the summons he received, the Accused made again the intensive arrangements concerning the way in which they would defend their case as the suspects. Thus, in their statements given to the Prosecution, the Accused completely denied their participation in the incident. As it ensues from the contents of the Records tendered in the case record, the Accused also agreed with Božić on how he would give evidence in the capacity of a witness.

168. The earliest findings of the investigative bodies related to the referenced incident, about which witness Milorad Kalamanda gave evidence, also undoubtedly point to such a conclusion. Witness Kalamanda stated he was informed by inspector Pejić that the persons, whose last names are Cicmanović, Božić and Marković, were mentioned as the perpetrators. The witness stated he had tried to discuss this with Cicmanović, who made threats to him with his arms. Witness Kalamanda subsequently overheard soldiers' comments that, in addition to Cicmanović, the names of Ostoja Marković, Mirko Božić and Bosiljko Marković, exactly the persons who were members of the 1<sup>st</sup> Company together with Cicmanović, were also connected with the rapes of women in the village of Orahova, including an underage girl.

169. Witness Petko Župljanin stated that the day after he had met a mother and a daughter in front of the Health Center he received an order from the Maslovare Command to apprehend three persons charged with rape, namely Peđa Cicmanović, Ostoja Marković and the third person whose name he could not recall. Witness Župljanin apprehended Cicmanović and Ostoja Marković. The witness did not apprehend the third person, assuming that someone else did.

170. Truly, tendered in the case record was the evidence showing that, on the referenced days, other women were also raped in the same area. These incidents were also connected with Predrag Cicmanović and the Accused. The Panel has correlated all the evidence already examined and found that the statements of witnesses Milorad Kalamanda and Petko Župljanin support all the other evidence, which points beyond a reasonable doubt to the conclusion that the Accused indeed perpetrated the acts about which witness S-4 gave evidence.

171. The Defense does not question the Indictment allegations that the Accused were

present in that van on the night when witness S-4 was raped in the van, and that Predrag Cicmanović raped her in the van during the drive. However, the Defense argues that the testimony of the injured party S-4 and witness Mirko Božić are contradictory and insufficient to conclude based on them, beyond a reasonable doubt, that the two Accused also raped the injured party on the referenced night. Along this line, the Defense points to certain inconsistencies between their statements and, *inter alia*, to the fact that the injured party claims that the van stopped in the woods after turning off the road, contrary to witness Božić's statement, that they stopped near the bus station. The Defense also points to the fact that the injured party stated that no one had left the van, and to their inconsistent statements regarding the issue of whether, after all, Božić alone drove her to the village of Orahova, as he claims, or all the four men were in the van, as the injured party S-4 claimed.

172. According to the Panel, all the alleged inconsistencies in their statements are irrelevant to the clarification of the Indictment allegations. When it comes to the decisive facts in the proceedings, these inconsistencies do not, in any way, bring into doubt the injured party's and witness Božić's testimony.

173. Truly, the injured party claims that nobody left the van after it was stopped. The Panel, however, cannot rely on the accuracy of this part of her testimony as the injured party herself stated she thinks that, while the men abused her in the van, she probably lost her consciousness. Considering her position and what was happening to her on the van floor between the seats, the possibility that she could not have noticed someone leaving the van, as witness Božić claimed, cannot be excluded. The Panel accepted as true this part of witness Božić's testimony. The footing for such a finding is in the contents of the intercepted conversations, which clearly shows that, at no moment whatsoever, none of the Accused suggested to Božić a possibility that he is also responsible for the acts of rape possibly undertaken by him.

174. Also indisputable for the Panel was the part of the injured party's testimony where she stated that, during the drive, they took the right turn and stopped in the woods. According to the Defense, this is contrary to witness Božić's statement that they stopped at the bus stop. Witness Božić himself stated that, after turning away from the main road, he drove on for some twenty-fifty meters ahead and stopped near the bus station, rather than at the bus station itself, as the Defense submits. Clearly, this was the same crime scene considering that the injured party remembered the turn mentioned by Božić, and that the vehicle stopped shortly after taking the turn. The Panel finds that the injured party's impression, that the woods was all around the place, bears no particular relevance or significance in relation to her position and circumstances at that particular moment.

175. The fact of decisive significance is the injured party's statement that, after the man called Peđa by the others, the other men present in the van also forced her into sexual intercourse at the place where they stopped, and that she heard on this very place the voices of the other men and one Ilija. In view of the foregoing, the Panel finds that her testimony is consistent with Božić's statement that, after he had stopped the van and left it,

the two Accused and Cicmanović stayed in the van, and that, upon leaving the van, he spoke to some soldiers present nearby.

176. According to the Panel, also irrelevant is the alleged inconsistency between the witness S-4's and Božić's testimony in relation to the person who brought her back home, that is, was it Božić alone, or all four men together. Considering both the injured party's condition after being ill-treated for several hours and her age, the Panel finds that she absolutely did not have to notice who drove her back home. This was fully irrelevant to her after all that she had been through. In addition, the Panel notes that, considering her testimony in its entirety, the injured party obviously uses plural in describing the incident at issue. Thus, in relation to both her abduction from home and the return, she uses the same terms: "they stopped", "they took a turn", "they ordered me", even when it is clear that one person is in question. Thus, for example, the injured party states that "they invited one Ilija", while witness Ilija testified that one person invited him to enter the van.

177. Ultimately, completely irrelevant is the fact that the period of time elapsed between the moment when the injured party was abducted from her home and thereupon brought back is not consistent with Božić's statement, analyzed in terms of the length of the travel and the time spent at certain places. As the Panel stated above, witness Božić is quite clearly a witness who mentioned only the details he had to mention, and who makes efforts to help the Accused avoid their criminal responsibility both during the investigation and the main trial. This is best apparent from the section of the intercepted conversation where he said: "*... I did it all to help them, you understand ... if there can be any help for them, to help them...*".

178. In evaluating the testimony of the witnesses who gave evidence in these proceedings, primarily the evidence of witnesses S-4 and Mirko Božić, the Panel took into account their conduct and behavior while giving evidence, examined the consistency of the statements they gave in the courtroom, compared the facts they testified about with the facts the other witnesses testified about, and the facts established based on the documentary exhibits, all with a view to establishing if they are supported or contested by the other evidence in the present case.

179. Along this line, the Panel found no significant discrepancies between the witness S-4's testimony given at the main trial and the previously given statements. In addition, relating to the minor discrepancies in the injured party's evidence, in compliance with the ICTY's position in *Furundžija*, the Panel finds that those persons who were subjected to such a traumatic experiences as rape is "cannot reasonably be expected to remember small details of the incident such as the date or time. Also, it is unreasonable to expect them to remember each element individually of the complex and traumatic sequence of the events. In fact, under certain circumstances, the inconsistencies can point to the truthfulness and the fact that no influence was imposed on the witnesses."

180. In particular, the Defense pointed to the inconsistencies related to the injured party's statement (O-2-5), which she made in handwriting immediately after the incident. The Panel, however, finds that this testimony is unreliable and cannot be credited



considering the manner and the time when it was produced (in the injured party's house and in the presence of her parents). This is so particularly because its contents are not in full compliance with the manner in which a girl-age 14 would present the facts. Thus, for example, the injured party stated that one soldier was approximately age 35, and his height was 1.70 cm */sic/*. This fact shows to the Panel that, in addition to the injured party, who made the statement in handwriting, other present persons also took part in its production. This was also confirmed by the injured party's mother. Also significant is the fact that the statement is not a witness examination record containing the instructions prescribed by the CPC BiH. It is also the fact that, after being presented with the referenced statement, the injured party could not remember the situation when she actually wrote it, despite confirming it was her handwriting indeed.

181. In the course of the investigation, witness Mirko Božić's statements were subject to certain changes, primarily made in favor of the Accused and aimed at shifting the blame for the committed acts onto Predrag Cicmanović, who got killed in 1995. The intercepted conversations' contents also indicate the foregoing reliably and obviously, as already reasoned above.

182. The Panel further notes that Sub-Rule 96(i) of the ICTY's Rules of Procedure and Evidence provides that no corroboration of the victim's testimony shall be required. Such a rule is in compliance with the ICTY Trial Chamber's position taken in the *Tadić* Judgment, as quoted in the *Akayesu* Judgment. Specifically, it accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something long denied to victims of sexual assault by the common law. Therefore, in compliance with the ICTY's case law, the testimony of victims of sexual assault, as a rule, is not less reliable than the testimony of any other witness.

183. In addition, there is no legal requirement that the testimony must be corroborated in order that a single witness testimony about documentary facts be tendered into evidence. What matters is the reliability and credibility accorded to the testimony. In addition, the Panel notes, in compliance with the view of the Appellate Panel of the Court, that, as a standard, the quality of testimony rather than the mere quantity of evidence, is of decisive significance to establishing the relevance of the facts, namely that: "*the power inherent in the judge as a finder of fact to decide solely on the basis of free evaluation of evidence and on the basis of his or her intimate conviction. This wide discretionary power is subject to a limited number of restrictions. However, the principle reflected in Latin maxim unus testis nullus testis (one witness is no witness)*<sup>51</sup> which requires testimonial corroboration of a single witness's evidence as to a fact in issue, is in almost all modern continental legal systems no longer a feature<sup>52</sup>."

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<sup>51</sup> See the ICTY case Prosecutor v. *Duško Tadić aka Dule* before the Trial Chamber, Opinion and Judgment of 7 May 1997, para. 537.

<sup>52</sup> *Ibidem*, para. 536.: "The general principle which the Rules require the Trial Chamber to apply is that any relevant evidence having probative value may be admitted into evidence, unless its probative value is substantially outweighed by the need to ensure a fair trial (Sub-rule 89(C) and (D)). Rule 96(i) alone deals

184. Therefore, the Panel has relied on the principle that, in rendering its decision, it is within its discretion to evaluate the highlighted inconsistencies and assess whether the witness, when the testimony is taken as a whole, was reliable and whether the evidence was credible. Small inconsistencies cannot suffice to render the whole testimony unreliable.<sup>53</sup> The Panel's final decision was primarily based on the oral and direct evidence the injured party gave at the main trial, wherein certain inconsistencies are indeed the relevant factor in evaluating its probative value. At the same time, it should be noted that the referenced inconsistencies will not necessarily discredit the witness's testimony in whole. Therefore, if the witness gave a decisive account of the essence of the events at issue, and the Panel is satisfied that the injured party S-4 and witness Mirko Božić indeed did so, the irrelevant inconsistencies will not necessarily bring into question the truthfulness of such a testimony.

185. Having correlated all the foregoing, the Panel found proved the facts indicated in the Operative Part of the Verdict that Predrag Cicmanović brought the injured party S into the vehicle, forced her into sexual intercourse that lasted throughout the entire drive, despite the injured party's resistance with crying and screaming, due to which Cicmanović put a knife against her throat, and one Accused a pistol on her forehead; that during the drive towards Vrbanjci and Kotor Varoš, Predrag Cicmanović told Božić to take the road towards the village of Dabovci, which he did and stopped the vehicle near the bus station; that thereupon Predrag Cicmanović, the accused Marković Ostoja and Bosiljko Marković successively raped the injured party S-4, also forcing her into oral sex after the rape, while driver Mirko Božić left the van after halting it, and stood during all that time in front of the vehicle around ten meters away, listening to the tumbling and noise coming from inside the van.

186. Certain parts of the Indictment were deleted from the factual description of the Operative Part of the Verdict because they were harmonized with the finding of facts established after the evidentiary proceedings, with regard to which the Panel had certain doubts. Also, the deleted facts are of no decisive significance for the subject of charges, namely the words: "several times" in front of the phrase "raped/committed rape". This is so considering the injured party's statement that the men raped her one after the other, which does not necessarily mean that each of them had indeed individually raped her repeatedly, as well as the phrase "all of which lasted for approximately three hours", while bearing in mind that, based on the tendered evidence, only the fact of time elapsed between the abduction of the injured party from her house and her return, could be determined, rather than how long the acts undertaken by the Accused in the van itself lasted.

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with the issue of corroboration, and then only in the case of sexual assault, where it says that no corroboration is to be required. The function of this Sub-rule is stated in *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia*, by Morris and Scharf. It is explained that this Sub-rule accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something long denied to victims of sexual assault by the *common law*. Thus, what the Sub-rule certainly does not do is to justify any inference that in cases of crimes, other than sexual assault, corroboration is required. The proper inference is, in fact, directly to the opposite."

<sup>53</sup> ICTY, Appeals Chamber Judgment in *Čelebići*, para. 498.

187. The Panel is satisfied that, in the concrete case, the altered facts do not change the identity of the offense, and these changed circumstances as such do not extend the indictment, but rather only specify more accurately the criminal offense on trial, that is, the factual description of the criminal offense was made more precise, while no changes were made to the decisive facts, nor were the Accused brought into a less favorable position by the changes made.

#### **WITNESSES FOR THE DEFENSE AND THE ALLEGED ALIBI**

188. With regard to the alibi, the Defense for the accused Bosiljko Marković tendered evidence by examining witnesses Cvijeta Narić and Luka Narić. These witnesses confirmed that, exactly on the critical night, the Accused arrived at around 21:30 hrs, that they had a coffee in front of their house and that thereupon the accused Ostoja Marković went away, while the accused Marković Bosiljko spent the night at Cvijeta Narić's house.

189. The Defense for the accused Ostoja Marković tendered evidence by examining witnesses Ilija Raljić and Niko Novaković. The Defense argued that, after stopping the van at the bus station, the two Accused got out of the van, while Cicmanović raped the injured party S-4, and that Mirko Božić stayed in the van at the driver's seat, and that having had a conversation in front of the van, the Accused entered the van again, whereupon they drove away towards Vrbanjci.

190. With regard to the Accused's alibi, witness Cvijeta Narić stated that, in 1992, she lived in Banja Luka with her late husband and two minor sons. The witness has known Bosiljko Marković and Ostoja Marković from the neighborhood in Vrbanjci where she grew up. Witness Cvijeta Narić remembers that, on the St. Vitus' Day in June 1992, the Accused came to her parents' house where she had lived with her children, and that they had a coffee and chat. They came on foot, before nightfall, at around 22:00 hrs. Ostoja went away at around 23:00 hrs, while Bosiljko stayed with her and the children and spent the night in the house. The witness did not wake him up early in the morning fearing that he might be killed in action (if he participated), so he left after having a breakfast.

191. The Panel member asked the witness how often Ostoja and Bosiljko visited her house during her one-month stay in Vrbanjci. Witness Cvijeta Narić responded that her parents' house is located across from the main command building, where the military was interned, that she made coffee for them when they passed by her house, had a chat with them, whereupon they were gone.

192. Witness Luka Narić stated he was deployed at the Kupres frontline since April 1992, and that he arrived in Vrbanjci on 26 or 27 June, that is, prior to the St. Vitus' Day. He was approved to take leave because of his mother's illness. He took his mother to his aunt's place in Maslovare, left her there, and went back to the Kupres frontline a day after the action launched on 29 June 1992. The witness recalls the foregoing because several members of his family were killed at the time, namely his wife's brother and his son. Witness Luka Narić also stated that, at the time, his sister was married and had two

sons, but that she spent most of the time at their mother's place in Vrbanjci than in Banja Luka, where she had lived. His sister's marriage was not stable, namely she had lived for 20 years in an extra marital relationship, during which time she gave birth to two sons, but never got married. The witness recalls that Bosiljko and Ostoja Marković, armed and uniformed, came in the evening hours of 28 June, before nightfall. The witness, his sister Cvijeta, his wife and his wife's brother, who got killed on the following day, had a coffee with them in front of their house. The witness's mother was also in the house. On that very night, the witness's mother was taken to Maslovare by his aunt's son. The witness stated they had sat there for around an hour, whereupon Ostoja went away with soldiers, while Bosiljko stayed with his sister. The two of them were intimately involved. Having so realized, the witness had a quarrel with his sister because she had two sons, and because he thought what she did was wrong. The witness stated that thereupon the two of them (his sister and Bosiljko) entered the house, while the witness and his family went to the other part of the house, which had a separate entrance. On the following morning, he saw Bosiljko at the station. Bosiljko told him he had overslept, and missed the action. The witness added that his sister and Bosiljko had been involved even before the war. At the time, his house was around 100 m away from the Command in Vrbanjci.

193. The Panel has analyzed these witnesses' statements, and correlated them with the Indictment allegations and the testimony of the Prosecution witnesses, Mirko Božić and S-4. Considering witnesses Cvijeta Narić's and Luka Narić's claims that, as alleged in the Indictment, Bosiljko Marković and Ostoja Marković had a coffee exactly in the evening hours of the critical date, in front of their house located near the Command, that thereupon Ostoja Marković went away, and Bosiljko spent the night in Cvijeta Narić's house, the Panel notes that these witnesses' statements do not bring into question the testimony of witnesses S-4 and Mirko Božić. The Defense also does not contest the facts that the two Accused were present in the van when S-4 was abducted from the house, and that they do not contest the Indictment allegation that they were in the van all the way until stopping in Dabovci. The Panel correlated all these facts with witness S-4's clear statement that she was raped by the men from the van after the van had stopped, and that no one else entered the van. Considering the foregoing, completely irrelevant is the Accused's defense, according to which the fact that they allegedly had a coffee in a frontyard of the house located near the crime scene excludes a reasonable possibility that they are actually the perpetrators of the acts charged against them.

194. Despite the facts that the alleged event occurred in front of the Narić's house more than twenty years ago and that the event itself as these two witnesses described it (having a coffee in front of the house) is of no particular significance for them, even if they remembered it by the action launched a day after, in which several members of their close family were killed, they actually remembered the precise hour when Bosiljko and Ostoja Marković allegedly came to their house. Both witnesses insist that it was in the evening, at around 21:30 hrs. The Panel, however, did not credit their statements, primarily because they contradict witness Božić's statement that, on the referenced night, the two Accused and Cicmanović were with him, and because of the comparison between their statements

and the contents of the intercepted conversations between the two Accused and Božić.

195. Also important is the fact that witnesses Cvijeta Narić and Luka Narić confirmed that their house was near the Command, and that soldiers were frequently present in the vicinity of their house, including the two Accused. Witness Cvijeta Narić confirmed that the Accused frequently passed by the house, and that she had coffee and chats with them. In view of the foregoing and the fact that the accused Bosiljko Marković had a love affair with Cvijeta Narić, which is why he visited her more frequently, the Panel finds that the witnesses' testimony cannot be credited in relation to the time when the Accused arrived in the Narićs' frontyard, even assuming that they indeed remember the event and the date at issue.

196. All the foregoing clearly points to the conclusion that this was not a unique event, and that there is no reasonable possibility that the two witnesses remember precisely the exact hour of the arrival of the two Accused. This is the reason why their statements relating to the Accused's whereabouts on the referenced night do not, in any way, bring into question witness Božić's statement that they were exactly in the van in which the injured party S-4 was raped, and thereby the Panel's finding that they also took part in the incriminating acts.

197. As already explained, the Panel established, based on the testimony of the witness-injured party S-4, her parents and brother, that she had been abducted from her house in the evening hours, between 20:30 and 21:00 hrs, and brought back after midnight. Also, the Panel credited the witness Božić's statement that, before taking her back home, Cicmanović and both Ostoja and Bosiljko Marković left the vehicle in Vrbanjci near the Command. Considering that the Narićs' house was near the Command, their movement after leaving the van could also include the event about which witnesses Luka and Cvijeta Narić gave evidence at the main trial (having a coffee and chatting in front of the house, and Bosiljko Marković spending the night there). However, bearing in mind the reasons already explained in relation to the precise time, these statements do not, in any way, bring into question witness Božić's statement that the Accused were present in the van in which the injured party S-4 was raped.

198. Finally, the Panel also took into account the fact that witness Cvijeta Narić has consumed alcohol over a long period of time, whereby the credibility of her testimony, in terms of reliability in the accuracy of her memories related to certain events from the distant past was brought into question. In addition, the Panel took into account the fact that the Cvijeta Narić's testimony differs from her brother's testimony in their essential parts.<sup>54</sup>

199. The Panel accepts the analysis of Cvijeta Narić's evidence as presented in the Prosecution's closing argument. It is symptomatic that, being explicitly asked by the Court about the St. Vitus' Day, the witness clearly stated it was some time in June, but she did

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<sup>54</sup> T-50 Letter from the Public Institution „Social Welfare Center“ Banja Luka, number 03-UP/1-60140-83/14/15BeP of 13 February 2015, with attachments.

not know the date, as it was a long time ago. The Court asked the witness about her whereabouts on the St. Vitus' Day of the following year, and the witness could not respond. Only after the Prosecutor's suggestion, the witness correlated the critical date with her birthday. In addition, there is a slight likelihood that that the intimate relation the witness allegedly had with the Accused indeed started when the witness so indicated, namely even before her marriage, because the Accused was only age 13 at the time. The witness stated that she was in her family's house in Vrbanjci at the critical time, because she had come there to take care of her mother. According to her brother, this was not true. The witness further stated that, in the morning of the critical day, her mother was taken to another village, which is also untrue according to her brother, because he claims that the mother was present there even late in the evening. The witness claims that both her sons were present there, while her brother claims that only one of them was there. The Panel correlates all the foregoing with the fact that the witness is obviously in close relation with the accused Bosiljko Marković. The Panel finds that their testimony cannot be credited, and that they were presented, in part or in whole, with the aim to support the Accused and help them avoid their criminal responsibility.

200. The Panel has also examined witness Ilija Raljić's and witness Niko Novaković's testimonies. Witness Ilija Raljić recalls that, on St. Vitus' day in June, as a member of the Kotor Varoš Brigade, together with Niko Novaković, he patrolled around the station, or on the main road in Dabovci, when a red-white van, coming from the Obodnik direction, pulled over at the road turnout. Ostoja and Bosiljko Marković went out from the van and told the witness that Peđa invited him to enter the van, and that Peđa asked him if he would also like to rape the girl in the van. The witness states that, while standing at the van's door, he saw Peđa and the girl "hugged", with no clothing on them. The young girl was crying and the witness immediately went away from the van towards Niko and Ostoja. Witness Raljić testifies that, during this period, the van driver was inside the van, sitting in the driver's seat. The witness knows that the driver was Mirko Božić. The witness is rather uncertain in relation to the precise time when he learned that the name of the referenced person is Mirko Božić and whether he had known him from before. They stayed there for around five-ten minutes, whereupon Ostoja and Bosiljko returned to the van, and headed off towards Vrbanjci. During cross-examination, the witness confirmed that a non-asphalted road existed nearby, leading to a weekend-house, but that during that time the van did not turn to that road, as they could have certainly seen it. The witness recalls the event because of the action that was launched on the following day, in which many members of the Brigade were killed, including his neighbors. Half an hour later, the van returned along the same road towards Obodnik.

201. During cross-examination, witness Raljić stated that it was nighttime, and that the light was coming from a nearby coffee bar. Responding to the Prosecutor's question, the witness stated that, having seen what was going in the van, he asked Ostoja and Bosiljko nothing about what they had been doing there.

202. Responding to the specific questions asked by the Panel members, witness Raljić explained that the van stopped exactly at the station, where buses usually stop, that it was around five meters away from the nearby<sub>54</sub> coffee bar, and that, in fact, he and Niko

stopped the van at the referenced place intending to check them out. Also, the witness stated that, having seen Cicmanović raping the young girl, he neither filed a report, nor undertook any action in this regard, despite the fact that they carried weapons. Witness Raljić explained this passive conduct by the fact that they did not dare do anything as they knew Cicmanović was a notoriously bad person.

203. Witness Niko Novaković confirmed witness Raljić's statement that he patrolled together with him, on 28 June 1992, or on St. Vitus' Day. Witness Novaković stated they saw a van stopping around fifty meters away from the station in Dabovci. While the two of them were approaching the station, Ostoja and Bosiljko went out of the van. The witness states he did not get any closer to the van, that he stood around ten meters away from the van, and that a person from the van invited Ilija to come closer. Witness Novaković heard no shouting, but did hear a female voice. When he looked better, he saw a woman's head and Peđa Cicmanović. Ilija peered into the van and immediately stepped back. The witness noticed Ilija was trembling all over. They stayed there for around ten minutes, whereupon Ostoja and Bosiljko sat in the van, and the van headed towards Vrbanjci. Ilija thereupon told the witness that he had seen a female person, Peđa and driver Mirko Božić in the van.

204. During cross-examination, however, witness Novaković stated that, while the van was parked on the spot, nothing happened inside the van. Specifically, when asked why he did not report or prevent (the incident), the witness responded: "... *had they committed any act, normally, I would have prevented them. However, they did nothing, namely nothing was happening in the van at the time, or otherwise, I would have certainly noticed any pushing or commotion...*".

205. Considering the injured party's statement that someone (from the van) invited one Ilija to join them, indisputable for the Panel is the option, introduced by the Defense, that exactly witness Ilija Raljić is in question, and that he was indeed present near the van on the referenced night and could eye-witness the events of the critical night. However, their statements are contradictory, both mutually and to witness Mirko Božić's statement credited by the Panel. Thus, for example, witness Raljić explicitly claims that he saw Cicmanović undertaking the acts against the injured party. On the other hand, witness Niko Novaković claims that Raljić approached the van, that he obviously got upset, and that he subsequently told him what he had seen. Asked why they omitted to report the incident to anyone, the witness provided quite a controversial explanation, stating that nothing indeed happened that would require filing any report. Contrary to Ilija Raljić's statement, that the two of them in the patrol stopped the van, witness Novaković stated that first the van had stopped, and thereupon they approached it. Also, witness Raljić stated that the van stopped exactly at the bus station itself, which is contrary to witness Božić's statement that it stopped just before the bus stop. Witness Raljić's statement is also contrary to the part of Božić's statement where he stated that Božić stayed in the van with Cicmanović, and that the two Accused left the van. Božić claims he went out of the van before the two Accused. Their denying that they heard anything happening in the van is striking and unreliable, considering witness Božić's statement that the van engine was

turned off while the injured party S-4 was ill-treated inside the van.

206. Due to the aforementioned inconsistencies and collision with witness Božić's testimony, the Panel finds that witness Ilija Raljić's and witness Niko Novaković's testimonies are unreliable and aimed at aiding the Accused to avoid the responsibility for the acts charged against them.

207. In view of all the foregoing reasons, the Trial Panel has rejected the alibi of the accused Bosiljko Marković and Ostoja Marković. Also rejected as unreliable are the testimonies of the Defense witnesses Ilija Raljić and Niko Novaković in the part where they stated that the Accused left the van immediately after it had stopped, and that only Peđa Cicmanović forced the injured party into sexual intercourse. The Trial Panel finds that both the alleged alibies and the testimonies of the two witnesses contradict all other evidence credited by the Panel, and that they are aimed at aiding the Accused to avoid the responsibility for the acts charged against them in Indictment.

### C. RESPONSIBILITY OF THE ACCUSED

208. In Article 142 of the adopted CC SFRY, the legislator provides no definition of the term of rape or inhumane treatment. However, statutory rules relating to torture or inhumane treatment have been well defined by customary international law, as well as by the ICTY's and ICTR's jurisprudence.

209. Having examined the meaning of inhumane treatment in the context of both the international jurisprudence and the Court of BiH's case law<sup>55</sup>, the Panel found that inhumane treatment means an intentional act or omission, that is, an act which is, objectively speaking, intentional rather than accidental, which causes severe mental or physical suffering and which is a serious infringement upon human dignity or integrity.

210. Bearing in mind all the facts established in relation to the incident covered by the Indictment, the Panel finds that the Accused's acts, committed in complicity with the acts undertaken by Predrag Cicmanović, resulted in the consequences which, by their intensity, duration, and the fact that a minor girl was affected, may qualify as the acts of inhumane treatment. At the same time, pursuant to the existent case law, these acts qualify as the acts of rape.

211. The relevant jurisprudence of the ICTY and ICTR (International Criminal Tribunal for Rwanda) provide the definitions of rape. Thus, the ICTY Judgment in *Kunarac, Kovač and Vuković* (Appeals Chamber), of 12 June 2002, provides in paras. 127-132 as follows:

“the *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the

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<sup>55</sup> *Sreten Lazarević et al.*, Verdict of the Court of BiH, No. X-KR-06/243 of 29 September 2008.



perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim”.

212. In this regard, the ICTY’s Trial Chamber in *Kunarac* Judgment defines the element of force as a situation where

“sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances”).

213. Also, in the ICTY’s case *Kvočka et al.* (Trial Chamber), Judgment of 2 December 2001, paras 175 and 180, rape was articulated as

“physical invasion of a sexual nature, committed on a person under circumstances which are coercive”.

214. The view of the ICTY’s Trial Chamber in *Furundžija* was that sexual penetration will amount to rape if it was committed without the victim’s voluntary will or consent. The relevance of not only force, threat of force or coercion, but also the lack of consent or voluntary participation is explained in the *Kunarac* case, where it was noted as follows: “... all jurisdictions surveyed by the Trial Chamber require an element of force, coercion, threat or action without the consent of the victim: force is given a broad interpretation and includes rendering the victim helpless”. Like torture, rape is aimed at: intimidation, degradation, discrimination, punishment, control or destruction of a person. In the same case, articulated were the following factors which must be satisfied (alternatively, rather than cumulatively) for the existence of the crime of rape:

- the sexual activity is accompanied by force or threat of force to the victim or a third party;

- the sexual activity is accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal, or

- the sexual activity occurs without the consent of the victim”.

215. The *mens rea* required for the crime of rape is the intention to effect sexual penetration, and the knowledge that it occurs without the consent of the victim.

216. In *Furundžija*, the Panel has found that any form of detention denies the option of consent for sexual penetration. Even though the Appeals Chamber in *Kunarac* added the element of the victim’s lack of consent to the definition of rape, it noted that in the majority of cases involving war crimes or crimes against humanity, the circumstances will be almost universally coercive, and will thereby exclude the possibility of consent. Also explained in *Kunarac* was that it is not required (for the Prosecutor) to prove that the victim offered resistance in order to prove the lack of the victim’s consent.

217. The Appeals Chamber in *Gacumbitsi* further elaborated on the definition provided in

*Kunarac* by concluding that “the Prosecution can prove non-consent by proving the existence of coercive circumstances under which meaningful consent is not possible”, and that in order to do that, it is not necessary for the Prosecution “to introduce evidence concerning the words or conduct of the victim and the perpetrator” or “the evidence of force” but rather that “the Trial Chamber is free to infer non-consent existed due to the circumstances such as genocide or the detention of the victim.”

218. Complicity in terms of Article 22 of the CC SFRY, *inter alia*, also exists if several persons jointly commit a criminal act by participating in the act of commission or in some other way. In addition to the joint decision to commit the act, complicity also requires an objective contribution to the commission of the act, which assumes undertaking the act of commission or some other act in the process of the commission of the act.

219. That the Accused committed the referenced acts against the injured party conscientiously and intentionally, together with Predrag Cicmanović, is also apparent from the following facts: from the very beginning, they accepted all the acts undertaken by Predrag Cicmanović; they even enabled Cicmanović to force the injured party into sexual intercourse, primarily by being present as armed and uniformed adult men in the van which the injured party could not leave; plus one of the Accused held a pistol against the injured party’s head, as described above in the Verdict; they personally took part in coercing the injured party into sexual intercourse (penetrated the victim with their sexual organ), and other similar sexual acts (penetrating the injured party’s mouth with their sexual organ), during which time they clearly expressed their intention by saying “It’s my turn now”, disregarding even the fact that the young girl was in such a condition that she lost her consciousness, in addition to which they slapped her face and pull her hear.

220. It is clear that the injured party’s physical integrity was violated by all the referenced acts. Some of these acts were undertaken by Predrag Cicmanović, while the Accused, armed and uniformed soldiers present in the closed van, enabled him to do so by pressing their pistols against the injured party’s head, thereby giving decisive contribution to his acts; and thereupon by personally raping the injured party. It is also clear that the Accused inflicted on the injured party severe physical and mental pain, outrages upon her human dignity, despite being aware that the injured party is a civilian. In this way, the Accused acted in breach of the mandatory prescribed minimum protection of such persons during the armed conflict in connection with which the violation was committed (*actus reus*).

221. In addition, the Panel found the existing voluntary component, *mens rea*, which is apparent from the Accused’s awareness that by their acts they commit the concrete criminal offense, bearing in mind all the circumstances surrounding the acts committed against the injured party, particularly the brutality and intensity of ill-treatment, as well as other circumstances. The Accused were aware of their acts, and the fact that the prohibited consequences would result from such acts. It is clear from their conduct that they wanted the occurrence of such consequences. Considering that no evidence was introduced to bring into doubt the sanity of the Accused at the time when they committed the referenced acts, they are held criminally responsible for the criminal offense of War Crimes against Civilians under Article 142(1) of the CC SFRY, adopted pursuant

to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of SFRY, as read with Article 22 of the CC SFRY.

222. In view of all the foregoing, the Panel found that the Accused committed the criminal offense of which they are found guilty, having acted with the direct intent, knowingly and willingly, being aware of the character of the undertaken acts, namely that by the acts committed in complicity, described in the Operative Part of the Verdict, the accused Bosiljko Marković and Ostoja Marković, along with Predrag Cicmanović, violated the injured party's physical integrity, inflicted on her severe mental suffering and pain, outrages upon her human dignity, which is strictly prohibited under Common Article 3 of the IV Geneva Convention, namely that they raped her and treated her inhumanely in terms of Article 142(1) of the adopted CC SFRY.

#### **D. METING OUT THE PUNISHMENT**

223. Deciding on the type and length of the criminal sanction determined pursuant to Articles 33, 38 and 41 of the CC SFRY, the Panel imposed on the accused Bosiljko Marković and Ostoja Marković a prison sentence for a term of 10 (ten) years each.

224. In fixing the sentence for the Accused, the Panel started from the general purpose of punishment set forth in Article 33 of the CC SFRY, complying with the punishment fixing rules provided for in Article 41 of the CC SFRY. The Panel also bore in mind the legal framework of the punishment prescribed for this criminal offense, as well as all the relevant circumstances, and imposed on the Accused the referenced prison sentences. The Panel particularly assessed the gravity of the crime, namely the degree of danger or violation of the protected value and the degree of the criminal responsibility of the Accused. The gravity of the criminal offense charged against the Accused has been determined on the basis of its effect on the victim or the persons connected with the criminal offense and members of the closest family.

225. The Panel has held that the consequences of the crime are severe, since the offense itself was humiliating for the victim at the moment when it was committed, and left traumas for the protracted period of time, that is, for lifetime. The injured party states she is still under permanent medical supervision, but she has managed to achieve a certain level of psychological balance owing to the support of members of her family, and the comfort she found in her religion. In addition, the injured party stated that, due to her faith, she succeeded to forgive, rather than forget the traumas she had suffered as a young girl.

226. As to the degree of criminal responsibility, the Panel has found that the Accused acted with direct intent, namely that they were aware that they were committing a criminal offense by their acts, and that they indeed wanted the occurrence of the circumstances resulting from the commission of the criminal offense. Also, in rendering its decision, the Panel assessed the motives for which the offense was committed as well as the circumstances under which the offense was committed. To this effect, the Panel finds that the Accused benefited from the helplessness of the injured party's parents

to protect her in an armed conflict situation, and prevent her abduction from the parents' house. The Panel bore in mind the fact that the injured party was a member of the ethnic group which constituted minority in the Kotor Varoš municipality during the wartime, and that members of her family lived in fear for their lives and safety as they had been already apprehended for questioning by members of the military to which the two Accused also belonged.

227. In deciding on the length of sentence, the Panel also took into account the previous life of the two Accused, their personal and private circumstances, and their conduct after the commission of the crime.

228. Among the aggravating circumstances, the Panel assessed the ruthlessness and cruelty the two Accused showed in the commission of the crime of which they are found guilty, particularly correlating the victim's age and the physical and numerical superiority of the perpetrators of the crime. In the Panel's view, an aggravating circumstance was also the fact that, as it ensues from the intercepted conversations' contents, the Accused undertook actions over the years following the commission of the crime, to conceal and destroy evidence, as well as to exert influence on the witnesses. On the other hand, the Panel found no extenuating circumstances in relation to the Accused, other than the fact that their conduct during the trial was proper. However, this fact is being relatively assessed in the proceeding considering that such a conduct is implicit and expected from any accused.

229. The Panel also took into account as an extenuating circumstance the physical disability of the accused Ostoja Marković. However, considering all the above described aggravating circumstances, particularly his conduct and behavior after the commission of the crime and new crimes of similar nature he undertook (conviction for the criminal offense of rape under the final Judgment of the District Court in Banja Luka, No. .... of 14 November 2005), the Panel has held that this extenuating circumstance bears no major significance.

230. Therefore, based on all the adduced evidence, the Panel found beyond a doubt that the acts the Accused committed with the intent satisfied all the essential elements of the criminal offense of which they are found guilty. The Panel finds that the imposed sentence of imprisonment for a term of 10 (ten) years is commensurate with the gravity of the committed offense and its consequences, and that the purpose of punishment will thereby be achieved. In addition, the Panel finds that the length of the sentence is proportionate with the above mentioned circumstances pertaining to the two Accused.

#### **IV. DECISION ON THE COSTS OF THE PROCEEDINGS**

231. Pursuant to Article 188(4) of the CPC of BiH, the Accused shall be relieved of the obligation to reimburse the costs of the proceedings considering that the evidence proving the disability of the accused Ostoja Marković was submitted during the proceedings, as well as the evidence showing that the <sup>60</sup>Accused are unemployed, and have no

steady income, wherefore the payment of the costs would undermine the accused persons' subsistence.

## V. DECISION ON THE CLAIM UNDER PROPERTY LAW

232. The injured party-protected witness S-4 has filed a claim under property law in the criminal matter against the accused Bosiljko Marković and Ostoja Marković, asking the Court to order the Accused to pay to her, jointly and severally, the amount of KM 40,000.00 by way of compensation for the non-pecuniary damage resulting from the commission of the crime charged against them.

233. The factual substratum of the claim indicates that, at the critical time covered by the Indictment, the Accused raped her in the way comprehensively described in the Indictment, and thereby committed the criminal offense of War Crimes against Civilians. The injured party filed her claim under property law moving the Court to grant it, and order the accused Bosiljko Marković and Ostoja Marković to pay to her, jointly and severally, the amount of KM 40,000.00 by way of compensation for the non-pecuniary damage for the suffered mental and physical pain, for the fear experienced due to the unlawful deprivation of liberty, violations of her rights, outrages upon her dignity and personal morale by torture, inhumane and degrading treatment and mental pain caused by the diminished general quality of life. This is a single combined non-pecuniary damage claim, compensating for the following types of damages: the amount of KM 6,000 for the suffered fear; the amount of KM 20,000 for the mental and physical pain, violation of personal rights, outrages upon human dignity and person's morale by torture, inhumane and humiliating treatment, and the amount of KM 14,000 for the mental pain caused by the diminished general quality of life.

234. Since the Accused have been found guilty of the commission of the crime charged against them, by the acts comprehensively described in the Operative Part of the Verdict, conditions have been met, in addition to the other satisfied prerequisites, for the Court to decide on the claim under property law filed by the injured party-protected witness S-4.

235. The claim under property law is well-founded.

236. Pursuant to the claim under property law, having committed the referenced criminal offense against the injured party, the Accused acquired the status of the injurers-respondents, and the victim the status of the injured party-plaintiff, which is why the objection concerning the lack of standing to be sued, raised by the Accused-respondents, is ill-founded.

237. The forensic expert opinion shows that the injured party experienced an acute – stressful reaction to the incident at issue, and developed symptoms of a post-traumatic detrimental incident, lasting over a protracted period of time, whereby the diagnostic criteria for the lifetime post-traumatic stress disorder were satisfied. The expert opinion further noted that the injured party still suffers from certain symptoms of post-traumatic stress disorder, such as intrusive thoughts,<sup>61</sup> hyper-incitement and avoidance

phenomena. The expert findings also show that the injured party's general quality of life has been permanently diminished by 12% as a result of the suffered trauma and the above referenced symptoms. According to the expert witnesses' opinion, the injured party's general quality of life would have been diminished to an even greater extent had the injured party not succeeded in achieving a relatively satisfactory psychological balance by way of using positive strategies of stress confrontation, to which the support and help of her spouse and family also contributed.

238. Based on the injured party's testimony, the Panel is convinced of the effects the traumatic incident caused to the injured party. The Panel finds that the fact that with the support of both her family and her resort in faith, as she stated before the Court, the injured party succeeded to socialize to a certain extent and reintegrate into the social community, and that she has created her own family and home, cannot diminish all the monstrosities of the trauma she had been through. This is so considering the fact that, as a girl age 14 and on the eve of her sexual maturity, she became a victim of such a severe criminal offense, and that this trauma has indelibly and irrevocably deprived her of her dreams as a young girl about her future and trust into people, and changed her life forever. The fact is that, despite her family's support, the injured party is still under psycho-therapy treatment, and that she still needs professional medical help to achieve a satisfactory psychological balance. All the foregoing has caused enormous mental pain and suffering to the injured party and left immeasurable consequences for her life and health.

239. The injured party – protected witness S-4 proves the reasonableness of the claim under property law primarily with the Finding and Opinion of the team of expert witnesses, specialists in neuropsychiatry. The expert witnesses have provided a comprehensive explanation of their findings at the main trial and responses to the questions the parties asked of them. The expert witnesses responded to all the tasks of the expert evaluation, and made their findings based on the overall available medical documentation pertaining to the injured party-protected witness S-4, the statements she gave in relation to the criminal proceeding at issue, and a comprehensive psychiatric interview made with her. The expert witnesses note that the injured party-protected witness S-4 has satisfied all the diagnostic criteria concerning the lifetime PTSD, certain symptoms of which are still present (intrusive thoughts, hyper-incitement and avoidance phenomena), which are in the causal relation with the inflicted sexual torture to which she was subjected at age 14.

240. As a result of the critical incident, the injured party suffered severe mental pain during the period of several hours until she was brought back home, medium-intensity mental pain over a six-month period and permanent mental pain of mild intensity. The injured party suffered severe fear over a several-hour period until she returned home, medium-intensity fear over a two-month period, and permanent, mild-intensity fear related to the PTSD symptoms. As a consequence of the critical incident, the injured party's general quality of life is permanently diminished and amounts to 12%. Considering both the severity of the traumatic incident to which she was subjected and her age, a progressive diminishment of the injured party's quality of life is to be expected as well.

241. Therefore, by the acts of the two Accused described in the Indictment, and

the criminal offense indicated in the Operative Part of the Verdict, the Accused brought the injured party-protected witness S-4 into an inferior position, forced her into sexual intercourse and similar sexual acts, as a result of which the injured party-protected witness S-4 suffered and still suffers mental pain as described above. The foregoing ensues from the expert findings of a team of medical doctors, specialists in neuropsychiatry. As a result of the committed offense, the injured party's general quality of life has been diminished by 12%, which proves the justifiability of her claim under property law, filed for the compensation of non-pecuniary damage. Regardless of the manner in which the types of non-pecuniary damage are set up – as indicated in the claim under property law, the Panel took into account only the types of non-pecuniary damage prescribed in Article 200 and Article 202 of the Law on Obligations. The Panel bore in mind the manner in which the criminal offense at issue was committed (underlying the criminal offense of which the Accused were found guilty, i.e. rape), as well as the consequences the injured party-protected witness S-4 has suffered as a result of the commission of the referenced crime. The Panel has found that, essentially, the injured party is entitled to the compensation of non-pecuniary damage for the suffered mental pain, violation of personal liberty and the rights under Article 202 of the Law on Obligations. The compensation shall be awarded in a single amount, to which the compensation for mental pain suffered as a result of diminished quality of life may be added.

242. The Panel decided on the amount of compensation of non-pecuniary damage concerning the suffered mental pain resulting from the violation of personal liberty and rights under Article 202 of the Law on Obligations. The Panel took into account the intensity and duration of the injured party's mental pain, particularly considering the fact established in the expert opinion issued by the team of expert witnesses, specialists in neuropsychiatry, that lower-intensity mental pains are still present and will remain permanent, that the injured party was age 14 when the critical incident occurred, that due to the disturbances she had experienced after the critical incident she had to abandon the secondary school in her first year there. Compensation for this type of non-pecuniary damage is awarded in a single amount. According to the Panel, a fair compensation for this type of non-pecuniary damage is KM 20,000.00, to which a fair compensation for the mental pain due to diminished quality of life may be added in the amount of KM 6,500.00.

243. Pursuant to Article 206(1) of the Law on Obligations, the Panel found that the Accused shall compensate for the damage jointly and severally, given the fact that they caused the damage together.

244. In deciding on the amount of compensation for this type of non-pecuniary damage, the Panel primarily took into account the expert findings made by the team of neuropsychiatrists that, as a result of the critical incident, the fact that general quality of the injured party-protected witness S-4's life has been permanently diminished by 12%, and that this percentage cannot be reduced in the future, but rather only increased. Therefore, the fair monetary compensation payable to the injured party for the both types of non-pecuniary damage amounts to KM 26,500.00 in total. The injured party-protected witness S-4 is hereby instructed that she may pursue her claim for the compensation of non-

pecuniary damage exceeding the awarded amount, namely the amount of KM 13,500.00, in a civil action.

245. During the proceedings, the injured party-protected witness S-4 filed no claim for a default interest to be awarded pertaining to the awarded amount of non-pecuniary damage, nor a claim for the reimbursement of possible expenses incurred in relation to the proceeding conducted with reference to the claim under property law. Therefore, the Court did not address the referenced part at all.

**Minutes-taker  
Legal Advisor**

**Sabina Hota-Ćatović**

**PANEL PRESIDENT  
JUDGE**

**Šaban Maksumić**

**NOTE ON LEGAL REMEDY:** This Verdict may be appealed before the Appellate Division, Section I of the Court of Bosnia and Herzegovina, within 15 (fifteen) days following the receipt of a written copy of the Verdict.

\*Sufficient number of copies of the appeal shall be submitted to the Court.



## VI. ANNEX

### PROSECUTION EVIDENCE

T-1	Witness Examination Record for Slavko Antunović, BiH Prosecutor's Office, No. T20 0 KTRZ 0005827 12 of 27 May 2013	Introduced on 2 September 2014
T-2	Record of the Statement taken from witness Milorad Kalamanda in the CJB Banja Luka, No. 08-02/1-328/11 of 8 December 2011	Introduced on 9 September 2014
T-2a	Witness Examination Record for Milorad Kalamanda, BiH Prosecutor's Office, No. T20 0 KTRZ 0005827 12 of 1 April 2014	Introduced on 9 September 2014
T-3	Proposal to issue an order to conduct special investigative actions, No. T20 0 KTRZ 0005827 12 of 14 October 2013	Introduced on 4 November 2014
T-4	Order of the Court of BiH, No. S1 2 K 012024 13 Krn 2 of 16 October 2013	Introduced on 4 November 2014
T-5	Letter of the BiH Prosecutor's Office, No. T20 0 KTRZ 0005827 12 of 16 October 2013	Introduced on 4 November 2014
T-6	Transcripts of the audio-recordings, pp. 22 - 1846	Introduced on 4 November 2014
T-6a	Transcripts of the audio-recordings, pp. 22 - 1846	Introduced on 4 November 2014
T-7	Order of the BiH Prosecutor's Office, No. T20 0 KTRZ 0005827 12 of 12 February 2014, for Slađana Šešelj, interpreter for the Russian language	Introduced on 4 November 2014
T-7a	Shorthand record of the conversation between Ostoja and a female citizen of Belorussia	Introduced on 4 November 2014
T-8	Order of the Court of BiH, No. S1 1 K 012024 13 Krn of 16 May 2013 for seizure of the health card of witness S-4 from <i>St. Pantelejmon</i> Health Center, Kotor Varoš	Introduced on 4 November 2014
T-9	Letter of the State Investigation and Protection Agency, No. P-16-11/3-1-04-2-472-2/12 of 11 June 2013	Introduced on 4 November 2014
T-9a	Report of the State Investigation and Protection Agency, No. P-16-11/3-1-04-2-472-2/13 of 11 June 2013, with attachments	Introduced on 4 November 2014
T-10	Letter of the BiH Prosecutor's Office, No. T20 0 KTRZ 0005827 12 of 11 September 2013 addressed to the State Investigation and Protection Agency	Introduced on 4 November 2014
T-11	Report of the State Investigation and Protection Agency concerning the undertaken measures and actions, No. P-16-11/3-1-04-2-472-5/13 of 24 September 2013	Introduced on 4 November 2014

T-12	Official Note of the State Investigation and Protection Agency, Regional Office Banja Luka, No. 16-11/3-1-04-2-472-268/13 of 24 September 2013, signed by Inspectors Mirko Sivonjić and Rajko Bogić,	Introduced on 4 November 2014
T-13	Report of the State Investigation and Protection Agency concerning the undertaken measures and actions, No. P-16-11/3-1-04-2-472-8/13 of 22 November 2013	Introduced on 4 November 2014
T-14	Official Note of the State Investigation and Protection Agency, Regional Office Banja Luka, No. 16-11/3-1-04-2-472-295/13 of 28 October 2013, signed by Inspectors Mirko Sivonjić and Rajko Bogić, with three attachments	Introduced on 4 November 2014
T-14a	“ZORA” Summary of the conversations of security interest, made during the period from 18 October 2013 through 27 October 2013 - TARGET 1 - 065757199	Introduced on 4 November 2014
T-14b	“ZORA” Summary of the conversations of security interest, made during the period from 18 October 2013 through 27 October 2013 - TARGET 2 -063353702	Introduced on 4 November 2014
T-14c	“ZORA” Summary of the conversations of security interest, made during the period from 18 October 2013 through 27 October 2013 - TARGET 3 065609922	Introduced on 4 November 2014
T-15	Official Note of the State Investigation and Protection Agency, Regional Office Banja Luka, No. 16-11/3-1-04-2-472/13-301/13 of 4 November 2013, signed by Inspectors Mirko Sivonjić and Rajko Bogić	Introduced on 4 November 2014
T-15a	“ZORA” Summary of the conversations of security interest, made during the period from 27 October 2013 through 3 November 2013 - TARGET 1 - 065757199	Introduced on 4 November 2014
T-15b	“ZORA” Summary of the conversations of security interest, made during the period from 27 October 2013 through 3 November 2013- TARGET 2 -063353702 and 066246822	Introduced on 4 November 2014
T-15c	“ZORA” Summary of the conversations of security interest, made during the period from 27 October 2013 through 3 November 2013 - TARGET 3 065609922	Introduced on 4 November 2014
T-16	Official Note of the State Investigation and Protection Agency, Regional Office Banja Luka, No. 16-11/3-1-04-2-472/13-311/13 of 11 November 2013, signed by Inspectors Mirko Sivonjić and Rajko Bogić	Introduced on 4 November 2014
T-16a	“ZORA” Summary of the conversations of security interest, made during the period from 4 November 2013 through 10 November 2013 - TARGET 1 - 065757199	Introduced on 4 November 2014
T-16b	“ZORA” Summary of the conversations of security interest, made during the period from 4 November 2013 through 10 November 2013 - TARGET 2 066246822	Introduced on 4 November 2014

T-16c	“ZORA” Summary of the conversations of security interest, made during the period from 4 November 2013 through 10 November 2013 - TARGET 3 065609922	Introduced on 4 November 2014
T-17	Official Note of the State Investigation and Protection Agency, Regional Office Banja Luka, No. 16-11/3-1-04-2-472/13-297/13 of 30 October 2013, signed by Inspector Goran Rakić	Introduced on 4 November 2014
T-18	Official Note of the State Investigation and Protection Agency, Regional Office Banja Luka, No. 16-11/3-1-SZ-472/13-306/13 of 7 November 2013, signed by Inspectors Đorđo Lužija and Siniša Rošić	Introduced on 4 November 2014
T-19	Witness Examination Record for Šerifa Lihović made in the First Police Administration Bihać, No. 05-1/06-1-452/10 of 26 May 2010	Introduced on 18 November 2014
T-19a	Medical documentation related to witness Šerifa Lihović, with attached Official Note of the Witness Protection Section of the Court of BiH and Official Note of the BiH Prosecutor’s Office	Introduced on 18 November 2014
T-20	Suspect Questioning Record for Ostoja Marković, BiH Prosecutor’s Office, No. T20 0 KTRZ 0005827 12 of 30 October 2013	Introduced on 13 January 2015
T-21	Suspect Questioning Record for Bosiljko Marković, BiH Prosecutor’s Office, No. T20 0 KTRZ 0005827 12 of 29 October 2013	Introduced on 13 January 2015
T-22	Record on the statement taking from the injured party S-4, CJB Banja Luka, No. 08-02/1-108/10 of 6 April 2010	Introduced on 13 January 2015
T-23	Examination Record for the injured party S-4, BiH Prosecutor’s Office, No. T20 0 KTRZ 0005827 12 of 29 April 2013	Introduced on 13 January 2015
T-24	Record on the statement taking from witness Ivka Antunović, CJB Banja Luka, No. 08-02/1-357/10 of 4 October 2010	Introduced on 13 January 2015
T-25	Record on the statement taking from witness Mirko Božić, CJB Banja Luka, No. 08-02/1-357/11 of 22 December 2011	Introduced on 13 January 2015
T-26	Witness Examination Record for Mirko Božić, District Prosecutor’s Office Banja Luka, No. T13 0 KTARZ 0006380 10 of 27 December 2011	Introduced on 13 January 2015
T-27	Witness Examination Record for Mirko Božić, BiH Prosecutor’s Office, No. T20 0 KTRZ 0005827 12 of 4 November 2013	Introduced on 13 January 2015

T-28	Witness Examination Record for Mirko Božić, BiH Prosecutor's Office, No. T20 0 KTRZ 0005827 12 of 18 February 2014	Introduced on 13 January 2015
T-29	Letter of the <i>St. Pantelejmon</i> Health Center, Kotor Varoš No. 04-203/10 of 14 April 2010 forwarded to the CJB Banja Luka	Introduced on 13 January 2015
T-30	Letter of the BiH Prosecutor's Office sent to the <i>St. Pantelejmon</i> Health Center, No. T20 0 KTRZ 0005827 12 of 11 April 2013 and Extract from the Protocol Book of the Health Center in Kotor Varoš, No. 4422 concerning the injured party S-4, dated 2 July 1992	Introduced on 13 January 2015
T-31	Motion of the BiH Prosecutor's Office filed with the Court of BiH to issue an Order for temporary forfeiture of items, No. T20 0 KTRZ 0005827 12 of 9 May 2013	Introduced on 13 January 2015
T-32	Letter of the BiH Prosecutor's Office sent to the State Investigation and Protection Agency, No. T20 0 KTRZ 0005827 12 of 7 June 2013	Introduced on 13 January 2015
T-33	Letter of the BiH Prosecutor's Office sent to the State Investigation and Protection Agency, No. T20 0 KTRZ 0005827 12 of 28 November 2013	Introduced on 13 January 2015
T-34	Document of the State Investigation and Protection Agency (SIPA) forwarded to the BiH Prosecutor's Office No. P-16-08-04-2-472-10/13 of 5 December 2013, with the SIPA Report on the conducted special investigative measures-Surveillance and technical recording, No. P-16-08-04-2-472-10/13 of 5 December 2013	Introduced on 13 January 2015
T-35	Monitoring Report by the State Investigation and Protection Agency, No. P-16-08-04-2-472-7/13 of 18 November 2013, with photo and video recording on a CD (6 November 2013)	Introduced on 13 January 2015
T-36	Document of the BiH Prosecutor's Office forwarded to the RS Ministry of Labor and Protection of War Veterans and Disabled Persons, No. T20 0 KTRZ 0005827 12 of 9 December 2013	Introduced on 13 January 2015
T-37	Document of the Ministry of Labor and Protection of War Veterans and Disabled Persons forwarded to the BiH Prosecutor's Office, No. 16-03/3.2-1-835-1549-3/13 of 12 December 2013 with a photo copy of the VOB-8 extract for Ostoja/Gojko/Marković, No. 126	Introduced on 13 January 2015
T-38	Document of the BiH Prosecutor's Office forwarded to the RS Ministry of Labor and Protection of War Veterans and Disabled Persons, requesting a delivery of VOB-8 for Ostoja Marković, Bosiljko Marković and Mirko Božić, No. T20 0 KTRZ 0005827 12 of 25 November 2013	Introduced on 13 January 2015

T-39	Document of the Ministry of Labor and Protection of War Veterans and Disabled Persons, No. 16-03/3.2-1-835-1549/13 of 29 November 2013 with a verified copy of the VOB-8 extract for Bosiljko/Nenad/Marković, No. 217 and verified copy of the VOB-8 extract for Ostoja /Gojko/ Marković, No. 224	Introduced on 13 January 2015
T-40	Document of the BiH Prosecutor's Office forwarded to the General Administration Department, Kotor Varoš Municipality, Request for official records review, No. T20 0 KTRZ 0005827 12 of 27 November 2013	Introduced on 13 January 2015
T-41	Document of the Administrative Service – General Administration Department, Kotor Varoš Municipality, forwarded to the BiH Prosecutor's Office delivering the record data, No. 03/4-835-38-/13 of 2 December 2013, containing military record data related to Bosiljko/Nenad/Marković, No. 3.1 1-2, ves 11101, VOB 2; and military record data related to Bosiljko/Nenad/Marković, No. 3.1 1-2, ves 11101, VOB 3; military record data related to Ostoja/Gojko/Marković, No. 3.1 1-2, ves 12601,VOB 2 and military record data related to Ostoja/Gojko/Marković, No. 3.1 1-2, ves 12601,VOB 3	Introduced on 13 January 2015
T-42	Document of the Crime Police Sector, Banja Luka - Extract from the criminal record relating to Bosiljko Marković forwarded to the BiH Prosecutor's Office, No. 08-02/3-6-234-850/13 of 18 June 2013	Introduced on 13 January 2015
T-43	Document of the CJB Banja Luka, PS Kotor Varoš – Extract from the criminal record relating to Ostoja Marković forwarded to the BiH Prosecutor's Office, No. 08-9/01-234-51/13 of 4 June 2013	Introduced on 13 January 2015
T-44	Decision of the BiH Presidency Declaring the State of War (Official Gazette of the R BiH, No. 7/92)	Introduced on 13 January 2015
T-45	Decision of the BiH Presidency Abolishing the State of War (Official Gazette of the R BiH, No. 50/95)	Introduced on 13 January 2015
T-46	Document of the Border Police, No. 17-04-3-04-31/2515/13-MC of 6 November 2013	Introduced on 13 January 2015
T-47	Document of the Border Police sent to the BiH Prosecutor's Office, No. 17-04-3-0-31/2515/13-MC of 21 January 2014	Introduced on 13 January 2015
T-48	Official Note made by the team leader Zijad Šišman No. 17-RG-0408-19/14 of 18 January 2014	Introduced on 13 January 2015

T-49	Record on the statement taking from witness A.A. in the CJB Banja Luka, No. 08-02/1-358/10 of 4 October 2010	Introduced on 3 February 2015
T-49a	Extract from the Death Register in the name of A.A. No. 251-07-21/3-15-158 of 20 January 2015	Introduced on 3 February 2015
T-50	Letter of the PI "Social Welfare Center" Banja Luka, No. 03-UP/1-60140-83/14/15BeP of 13 February 2015, with attachments	Introduced on 3 March 2015
T-51	Letter of the Basic Court in Banja Luka, No. 071-0-Su-14-00 300 of 13 February 2015, with attachments	Introduced on 3 March 2015
T-52	Letter of the Basic Court in Banja Luka, No. 071-0-Su-14-00 301 of 13 February 2015, with attachments	Introduced on 3 March 2015
T-53	Record on the statement taking from witness Sekula Jurić, No. 08-02/1-266/10 of 9 August 2010	Introduced on 21 April 2015

### EVIDENCE OF THE DEFENSE FOR THE ACCUSED BOSILJKO MARKOVIĆ

O-I-1	Record on the statement taking from witness A.S., made by the CJB Banja Luka, No. 08-02/1-220/10 of 21 June 2010	Introduced on 17 February 2015
O-I-2	Letter of Attorney Nebojša Pantić of 4 February 2015 sent to the Basic Court in Kotor Varoš with reference to its Letter No. 73 0 K 003038 05	Introduced on 17 February 2015
O-I-3	Letter of the Basic Court in Kotor Varoš, No. 73 0 K 003038 05 of 12 February 2015 sent to Attorney Nebojša Pantić	Introduced on 17 February 2015
O-I-4	Indictment brought by the Military Prosecutor's Office within the Command of the I Krajina Corps Banja Luka of the Republika Srpska, No. 395/94 of 1 November 1993	Introduced on 17 February 2015
O-I-5	Questioning Record for the accused Mirko Božić by the investigative judge of the Banja Luka Military Court of 10 November 1992	Introduced on 17 February 2015
O-I-6	Official Note of the Command of VP 7001/46 Kotor Varoš of 6 December 1992	Introduced on 17 February 2015
O-I-7	Mirko Božić's statement of 9 November 1992	Introduced on 17 February 2015

## EVIDENCE OF THE DEFENSE FOR THE ACCUSED OSTOJA MARKOVIĆ

O-II-1	Certificate of the injuries sustained by Ostoja Marković, No. 3-1040-21, date of issuance unknown, signed by Commander Jovo Vukobrad	Introduced on 3 March 2015
O-II-2	Decision of the Municipal Secretariat for Social Activities and General Administration Affairs, Kotor Varoš Municipality, No. 02/XI-560 of 11 October 1994	Introduced on 3 March 2015
O-II-3	Certificate of the General Administration Sector, Administrative Department of the Kotor Varoš Municipality, No. 03/6-835-1-238/08 of 13 June 2008	Introduced on 3 March 2015
O-II-4	Medical documentation in the name of Ostoja Marković, 6 attachments in total	Introduced on 3 March 2015
O-II-5	Hand-written statement of S-4 dated 16 July 1992	Introduced on 3 March 2015

## EVIDENCE OF THE COUNSEL FOR THE PROTECTED WITNESS S-4

<b>P-1</b>	Order to conduct expert evaluation of the protected witness S-4, No. T20 0 KTRZ 0005827 12 of 9 October 2014 and Expert Finding and Opinion of Expert Witnesses Alma Bravo-Mehmedbašić and Senadin Fadilpašić, of 28 October 2014	Introduced on 28 April 2015
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