



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

Case No. S1 1 K 018013 15 Kri

Pronounced on: 19 May 2017

Written Judgment issued on: 18 July 2017

**Before the Panel of Judges composed of: Mediha Pašić, Presiding
Zoran Božić, member
Mira Smajlović, member**

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

**GORAN MRĐA
MILORAD MRĐA
RANKO MRĐA
MILE KOKOT**

JUDGMENT

**Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina: Ms. Olivera Đurić
Counsel for the accused Goran Mrđa: Ms. Tatjana Savić, Attorney
Counsel for the accused Milorad Mrđa: Mr. Ranko Dakić, Attorney
Counsel for the accused Ranko Mrđa: Mr. Savan Zec, Attorney
Counsel for the accused Mile Kokot: Mr. Kenan Ademović, Attorney**

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Sarajevo, 19 May 2017

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, the Panel composed of Judge Mediha Pašić, as the Panel Presiding, and Judges Zoran Božić and Mira Smajlović, as members of the Panel, with the participation of Legal Advisor-Assistant Amela Spahić, as the record-taker, in the criminal matter against the accused Goran Mrđa *et al.* charged with the criminal offense of War Crimes against Civilian Population in violation of Article 173(1)(c), (e) and (f) of the Criminal Code of Bosnia and Herzegovina (CC BiH), with regard to the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. T20 0 KTRZ 0006582 13 of 19 January 2015, as amended on 6 January 2017, after the oral and public main hearing, with the public excluded in part, held in the presence of Ms. Olivera Đurić, Prosecutor of the Prosecutor's Office of BiH, the accused Goran Mrđa and his Defense Attorney, Ms. Tatjana Savić, the accused Milorad Mrđa and his Defense Attorney, Mr. Ranko Dakić, the accused Ranko Mrđa and his Defense Attorney, Mr. Savan Zec, and the accused Mile Kokot and his Defense Attorney, Ms. Meliha Filipović, replacing Attorney Kenan Ademović, on 19 May 2017 delivered and publicly announced the following:

J U D G M E N T

THE ACCUSED:

1. GORAN MRĐA, also known as **Kinez**, son of Nikola and Zora, née Mutić, born on 18 April 1973 in the place of Lipnik, Municipality of Sanski Most, resident of
bb */no number/*,, Personal Identification Number....., ethnic, citizen of, literate, caterer by occupation, Secondary Catering School completed, married, father of four children, including three minors, compulsory military service served in 1992 in, does not hold a rank of reserve military superior, not kept in the military records, no decorations, indigent, with the following prior convictions: number dated....., for the criminal offense under Article 151(1) and (2) of the CC RS, sentenced to imprisonment for a term of 4

years and 6 months; under the Judgment, No. dated, for the criminal offense under Article 148(2) of the CC RS, under which he received a suspended sentence of imprisonment for a term of 5 months, with the 1-year probation period, which sentence was expunged; under the Judgment, No. dated, for the criminal offense under Article 388(3) of the CC RS, under which he received a fine in the amount of 1,000.00 KM, with a 1-year probation period; under the Judgment, No. dated, for the criminal offense under Article 214(5) of the CC RS, under which he received a suspended sentence of imprisonment for a term of 5 months, with the probation period of 1 year and 6 months,

2. MILORAD MRĐA, also known as Sisa, son of Đurađ and Milka, née Bilbija, born on 4 November 1970 in the place of Lipnik, Municipality of Sanski Most, presently residing in the place of,, Personal Identification Number, ethnic, citizen of, literate, bricklayer by occupation, Secondary Construction School completed, married, father of three children, including two minors, served the compulsory military service in in 1989/1990, holder of no reserve military officer rank, not kept in the military records, no decorations, indigent, with the following prior convictions: under the Judgment, No. dated for the criminal offense under Article 151(1) and (2) of the CC RS, sentenced to 3 years in prison; under the Judgment, No. dated, for the criminal offense under Article 148(2) of the CC RS, received a suspended sentence of imprisonment for a term of 5 months, with a 1-year probation period, the sentence was expunged,

3. MILE KOKOT, son of Ljubomir and Milka, née Praštalo, born on 29 January 1947 in the place of Lipnik, Municipality of Sanski Most, presently residing in,,, Personal Identification Number, ethnic, citizen of, literate, farmer by occupation, four classes of primary school completed, married, father of three adult children, served the compulsory military service in and in 1967/1968, holds no rank of reserve military officer, not kept in the military records, indigent, no prior convictions

ARE HEREBY FOUND GUILTY

because:

during the war in Bosnia and Herzegovina and the armed conflict between the Army of Republika Srpska (VRS) and the Army of the Republic of Bosnia and Herzegovina (ARBiH), in the wider area of the Sanski Most region, at the time controlled by the VRS, as members of the VI Sana Infantry Brigade of the VRS, they acted in violation of the rules of international humanitarian law against Bosniak civilians, who took no active part in the hostilities, and thus violated the rules of Article 3(1)(a) and (c) and Article 27(2) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and Article 4(1) and (2) of Additional Protocol II to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts (Protocol II), in as much as they:

1. The accused GORAN MRĐA, along with a person he knew, armed, in the evening hours of 10 April 1993, in the village of Skucani Vakuf, Municipality of Sanski Most:

a) stopped Bosniak civilian Halid Mehić in a meadow near the village of Skucani Vakuf, from the direction of the village of Behremi, whereupon Goran Mrđa held him at gun point and forced him to lie down on the ground, and pressed a pistol against his temple with one hand, while pressing his neck with a forked item holding it in the other hand and thus suffocating him, as a result of which the injured party/victim subsequently vomited blood, while questioning him at the same time about persons who had owned sheep in the village, seized money from the victim in the amount of 25 DM, which he had with him at the time, cursed his mother and told him that his per diem had to be 500 marks; thereupon he threatened the victim with death asking the other person if he was going to shoot him; thereupon they forced the victim to take them to the hamlet of Pašići, during which time Goran Mrđa constantly held his pistol pressed against his back, all of which caused in Halid Mehić great fear and anxiety for his own life, as a result of which he suffered serious bodily harm and mental pain;

b) they subsequently entered the house of M.P., where Bosniak civilians were present at the time, namely: M.P., his wife Suvada Pašić, Hasan Pašić, Mine Pašić, their son Z.P., and his wife H.P., Sulejman Ćehić and his wife Hasnija, and their minor children; one of

the accused grabbed Hasan Pašić's chest, while the other kicked a lamp held by Mina Pašić in her hand and broke it, and demanded under threats that the present persons hand money over to them; thereupon, one of them hit M.P. in his abdomen, and took him outside under the threat of pistol, while the other man threatened the other household members that he would throw a hand grenade at them; and then one of them forcefully took M.P. to Hasan Pašić's house, searched it all over, and since he found nothing, he went back to M.P.'s house, where both these men seized money and golden items from the present household members under threats that they should not leave the house, as a result of which the present persons suffered great fear and anxiety for both their own lives and the lives of their beloved ones, all of which caused severe mental suffering in them;

c) they subsequently went to Fikret Pašić's house, where Bosniak civilians had stayed at the time, namely: Esmā Pašić, her bed-ridden mother-in-law Aziza Pašić and Jusuf Ćehić, beat Jusuf Ćehić in the corridor for a protracted period of time, asked for his money inflicting on him many injuries all over his body, as a result of which he suffered serious physical pain and suffering, and ultimately found money in his waistcoat and seized it, as well as a golden ring from Esmā Pašić, who was suffering during that time a great fear for her own life and the lives of her beloved ones, which caused severe mental suffering in her.

2. The accused GORAN MRĐA and MILORAD MRĐA, together with M.J. (currently unavailable) and two other persons they knew, armed, on 1 May 1993, in the late night hours, in the village of Naprelje, Municipality of Sanski Most, forced their way into the house owned by Aziz Horozović, where at the time Bosniak civilians Aziz Horozović, Zejfa Horozović, Fehret Horozović, K.Z. and Zenad Horozović took shelter, and mentally and physically mistreated those persons, by threatening them, asking for and seizing their money and other valuables; one of them punched Zenad Horozović in the abdomen, as a result of which he lost his breath, fainted and suffered serious physical pain; one of them set Zejfa Horozović's hair on fire and did not let her put it out of there, pulled her earrings off her ears; beat Aziz Horozović and forced him to kneel in front of the door of the room into which they had just brought K.Z. and continued hitting him with rifle butts and kicking him all over his body, including with pistol on his head and back of his head, which caused him to faint and end up all black and blue, with lacerations on his head, and to suffer serious physical pain; and Goran Mrđa took K.Z. into the room and forced her to undress

under the threat of knife, then pressed her against the floor in a supine position, after which four of the five men who had entered the house urinated on her and took turns raping her, namely Goran Mrđa, Milorad Mrđa, M.J. and another person known to them, with Goran Mrđa being the first to rape her, while the others held her arms and legs, scratching and biting her; she put up resistance for as long as she physically could, cried for help, begged them not to touch her and to let her go, while losing and regaining conscience, all of which instilled great fear in the household members for their own lives and the lives of their beloved ones, caused serious mental pain and suffering, and violation of human dignity;

3. The accused GORAN MRĐA, along with persons he knew, armed, in the evening hours of 2/3 May 1993, in the village of Gorice, Municipality of Sanski Most:

a) arrived in front of the house where Bosniak civilians Mehmed Brakić with his wife Fadila Brakić, son Esad Brakić and his wife, Semira Brakić, and other family members, had stayed at the time, whereupon **Goran Mrđa** and the person he knew entered the house, while the two other men stayed in front of the house to prevent anyone from fleeing; as soon as he entered the house, Goran Mrđa threatened Mehmed Brakić that he would slit his throat pressing a pistol against his head right side and putting a knife on his head left side, kicking him with boots on his feet in the chest, and asking under such threats from the household members for their money and valuables, seized money from Mehmed Brakić; thereupon Goran Mrđa kicked Esad Brakić with boots on his feet, and they left the house, having warned the household members not to leave the house and that they would be back; as a result of all that, Mehmed Brakić sustained physical injuries, suffered serious physical and mental pain, while all household members suffered serious fear for their own lives and the lives of their beloved ones, all of which caused serious mental suffering in them;

b) The accused GORAN MRĐA and MILORAD MRĐA, along with a person they knew, armed, in the night hours of 2/3 May 1993, in the village of Gorice, Municipality of Sanski Most:

arrived in front of a house in which the following Bosniak civilians were present at that moment: Rufad Kuburić, Suvad Kuburić, their mother Enisa Kuburić, Asim Avdić, Fikret Avdić, Ešefa Bačić and Ćamil Bačić; **Goran Mrđa, Milorad Mrđa** and another person

entered the house, cursed their Balija's mothers and warned them that no one should flee as more soldiers stood in front of the house; they forced Rufad Kuburić and Asim Avdić to lie down on the floor and beat them all over their bodies, mostly kicking them with boots on their feet, stepping on Rufad Kuburić's spine and head, pressing a pistol tube on his forehead and telling him that they would kill him; then Goran Mrđa, wearing boots on his legs, kicked Rufad in his head, as a result of which his whole body turned over, bumped against his occipital area and fainted, as a result of which Rufad Kuburić sustained abundant bleeding and suffered serious physical pain; while Asim Avdić had a cut on his face as a result of being kicked in his head by the boots, and sustained other injuries to his body, due to which he suffered serious physical pain and suffering, while Goran Mrđa ill-treated Fikret Avdić, threatened him with a knife pressing it against Fikret's abdomen, forcing him to lie down on the ground, whereupon Goran Mrđa stepped on his back and spine, forcing him to tell him (Goran) that his (Fikret's) name was Srbo, due to which Fikret suffered serious bodily and mental pain, physical and mental harm, and outrages upon human dignity; thereupon they left the house threatening them that no one should leave the house, all of which inflicted great fear and anxiety on the household members for their own lives and the lives of their beloved ones, and caused serious mental suffering in them;

c) The accused GORAN MRĐA, along with the persons he knew, armed, in the evening hours of 2/3 May 1993, in the village of Gorice, Municipality of Sanski Most:

after the two persons that he knew had forced their way through the entrance door of Rasim Velić's house and got inside the house, **Goran Mrđa** stayed outside to prevent anyone from fleeing from the house where Bosniak civilians Rasim Velić, his wife Hava Velić, their son Kasim Velić with his wife Radija Velić and minor children, their other son Hasib Velić and his wife S.V. and minor children, were staying at the time, and together with the two persons he knew, in the house corridor, beat Rasim Velić all over his body, knocked him down and kicked him with his boots on, which caused bruises and hematoma all over his body, the bleeding from his mouth, nose and ears, as a result of which he suffered serious bodily and mental pain and suffering; they mentally mistreated the other household members, asking for money and other valuables; one of those persons took off the scarf from Hava Velić's head with a bayonet, pointed the rifle at her demanding that she take her earrings off, which she did; took a ring off S.V.'s hand, all of which instilled great fear in the household members for their own lives and the lives of their loved ones, and caused serious mental pain; and after Hasib Velić had made an attempt to flee from

the house by jumping through the window, Goran Mrđa fired at the victim from the immediate vicinity, from a pistol make "CZ", caliber 7.65 mm, fabric number 103029, hitting him in the back of his head, as a result of which he died instantly;

d) Goran Mrđa and the person he knew intercepted Bosniak civilian M.P. on the road between the houses, punched and kicked him all over his body, threatening that they would slit his throat, as a result of which he sustained injuries all over his body and suffered serious physical and mental pain and suffering; thereupon they forced him to take them to a house where several people had been present at the time, mostly members of M.P.'s family, demanded and seized from them their money and other valuables.

4. The accused GORAN MRĐA, during 1994, having moved into an abandoned Bosniak house in the settlement of Pobjeđe, in the territory of Municipalities of Sanski Most and Bihać, mentally and physically mistreated Bosniak civilians Omer Drobić and his family, who had lived in Pobjeđe, and thus:

a) on an unspecified day in 1994, he beat Omer Drobić near his family house, knocked him down and continued kicking him with his military boots, thus inflicting on him numerous injuries, as a result of which the victim was all black and blue, full with hematoma and bruises, with his mouth and ears bleeding, and a broken finger on his hand, as a result of which he suffered serious mental and physical pain and suffering, and due to all those blows Omer Drobić ultimately lost his consciousness;

b) on an unspecified day in the autumn 1994, at the Grabež frontline, where Sefer Drobić had served under compulsory work obligation, in a dugout, he started beating Sefer Drobić, and threw a hand grenade under his legs, which did not explode; whereupon Sefer Drobić started fleeing in fear for his own life, but Goran Mrđa caught up with him and started kicking and punching him all over his body, wherein Sefer Drobić was losing and regaining his consciousness, as a result of which he sustained numerous injuries all over his body, and suffered serious physical and mental pain and suffering.

5. The accused GORAN MRĐA and MILORAD MRĐA, on an unspecified day in the winter of 1994, in Pobjeđe, having entered Muharem Jakupović's house, where Bosniak civilians Muharem Jakupović and his wife Zumra Jakupović, Omer Drobić, his wife Vasva

Drobić and children Sefer Drobić, Nedžad Drobić and Emdžad Drobić, Sakib Jakupović and his wife Đemila Jakupović had stayed at the time, immediately beat Muharem Jakupović in the house corridor, due to which he sustained injuries all over his body and suffered serious mental and physical pain and suffering; whereupon they searched the whole house, found and seized money and a TV set, all of which instilled a serious fear and anxiety in the present persons for their own lives and the lives of their loved ones, and caused serious mental suffering;

6. The accused MILE KOKOT, armed, on 25 July 1992, in the settlement of Fajtovci, Municipality of Sanski Most, entered a yard of the family house owned by Bosniak civilian Tahir Cerić, banged on the entrance door, and after Tahir Cerić came out of the house to the frontyard, Mile Kokot pointed a rifle at him; while Tahir Cerić was moving backwards along the frontyard, Mile Kokot fired from the rifle at the injured party's abdomen from the immediate vicinity, due to which Tahir Cerić sustained injuries in the spine flank area and died on the same day,

therefore, by violating the rules of international law, during the armed conflict between the VRS and the ARBiH, the accused Goran Mrđa and Milorad Mrđa took part in inhuman treatment, torture and rape; in addition, Goran Mrđa took part in the killing of a civilian, and the accused Mile Kokot also in the killing of a civilian,

whereby:

the accused Goran Mrđa, by the acts described in Sections 1a), b) and c), 2, 3 a), b), c) and d) and Section 5 of the convicting part of the Judgment enactment clause, committed the criminal offense of War Crimes against Civilians in violation of Article 142(1) as read with Article 22 of the Criminal Code of the Socialistic Federative Republic of Yugoslavia (CC SFRY), that was adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY¹, and in Sections 4a) and b) of the convicting part of the Judgment enactment clause, committed

¹ Hereinafter: CC SFRY – the SFRY Assembly adopted the Criminal Code of Bosnia and Herzegovina at the Federative Council held on 28 September and published it in the Official Gazette of the SFRY, No. 44, of 8 October 1976. Following the declaration of BiH's independence, the CC SFRY was, pursuant to the Decree with the Force of Law of 22 May 1992, adopted as the Code of the Republic of Bosnia and Herzegovina (with minor amendments), and took its legal effect on the day when it was published.

the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1) of the CC SFRY,

the accused Milorad Mrđa, by the acts described in Sections 2, 3b) and 5 of the convicting part of the Judgment enactment clause, committed the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1) as read with Article 22 of the CC SFRY,

and **the accused Mile Kokot**, by the acts described in Section 6 of the convicting part of the Judgment enactment clause, committed the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1) of the CC SFRY,

wherefore the Court, by applying Articles 33, 38 and 41 of the CC SFRY, hereby

S E N T E N C E S

**THE ACCUSED GORAN MRĐA TO IMPRISONMENT FOR A TERM OF
14 (FOURTEEN) YEARS**

**THE ACCUSED MILORAD MRĐA TO IMPRISONMENT FOR A TERM OF 8 (EIGHT)
YEARS**

THE ACCUSED MILE KOKOT TO IMPRISONMENT FOR A TERM OF 10 (TEN) YEARS

**

Pursuant to Article 50(1) of the CC SFRY, the time the accused Goran Mrđa and Milorad Mrđa spent in custody, namely Goran Mrđa during the period from 24 December 2014 to 16 September 2015, and Milorad Mrđa during the period from 24 December 2014 to 22 January 2015, shall be credited towards the prison sentence imposed.

Pursuant to Article 188(4) of the CPC BiH, the accused Goran Mrđa, Milorad Mrđa and Mile Kokot shall be relieved of the obligation to reimburse the costs of the proceedings, which shall be paid from within the Court's budget appropriations.

Pursuant to Article 198(2) of the CPC BiH, as read with Article 200 and Article 202 of the Law of Contractual Obligations, the property claim filed by the victim K.Z. is granted, in part, wherefore the accused Goran Mrđa and Milorad Mrđa shall pay to victim K.Z., by way of non-pecuniary damage compensation, in solidarity, the total amount of KM 20,000.00 KM, namely for:

- mental pain due to diminished general living activities in the amount of KM 7,000.00,
- mental pain due to the violation of freedom or personal rights in the amount of KM 13,000.00,

all within the time limit of 30 (thirty) days after the day of the Judgment finality, under threat of enforcement.

With regard to the remaining part of the pursued claim under property law, the victim is instructed to file a civil action.

Pursuant to Article 198(2) of the CPC BiH, the injured parties were instructed that they may pursue their respective claims under property law in a civil action.

Pursuant to Article 284(c) of the CPC BiH, the accused GORAN MRĐA and MILORAD MRĐA, with the respective personal details as in the case record, and the accused

RANKO MRĐA, son of Lazo and Jovanka, nee Radaković, born on 5 October 1963, in Sanski Most, currently residing in the settlement bb /no number/, Prijedor, Personal Identification Number, ethnic, citizen of and, literate, worker by occupation, elementary school completed, married, father of two adults, served the compulsory military service in in 1982/1983, holder of no reserve

officer rank, not kept in the military records, average financial standing, with prior convictions as follows: under the Judgment of in, No., for the criminal offense under Article 231(1) of the CC RS, received a suspended sentence and a fine in the amount of KM 1,500.00, with a 1-year probation period

ARE HEREBY ACQUITTED OF THE CHARGES

that:

during the war in Bosnia and Herzegovina and the armed conflict between the Army of Republika Srpska (VRS) and the Army of the Republic of Bosnia and Herzegovina (ARBiH), in the wider area of the Sanski Most region, controlled by the VRS at the time, as members of the VI Sana Infantry Brigade of the VRS, they acted in violation of the rules of international humanitarian law against Bosniak civilians, who took no active part in the hostilities, and thus violated the rules of Article 3(1)(a) and (c) and Article 27(2) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and Article 4(1) and (2) of Additional Protocol II to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts (Protocol II), in as much as:

3. The accused RANKO MRĐA, together with Goran Mrđa, Milorad Mrđa and a person they knew, armed, in the evening hours of 2/3 May 1993, in the village of Gorice, Municipality of Sanski Most:

a) arrived in front of the house where Bosniak civilians Mehmed Brakić with his wife Fadila Brakić, son Esad Brakić and his wife, Semira Brakić, and other family members, at the time took shelter, whereupon **Goran Mrđa** and the person he knew entered the house, while the two other men stayed in front of the house to prevent anyone from fleeing; immediately upon entering the house, Goran Mrđa threatened Mehmed Brakić that he would slit his throat, pressing the pistol against his head right side while putting a knife on his head left side, kicking him in the chest with the boots on his feet, and under such threats demanded money and valuables from the household members, seized money from Mehmed Brakić, and Goran Mrđa kicked Esad Brakić with boots on his feet, whereupon they left the house, by warning them that no one should leave the house and that they would be back, as a result of which Mehmed Brakić sustained physical injuries, suffered

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serious physical and mental pain, while all household members suffered serious fear for their own lives and the lives of their loved ones, all of which caused serious mental suffering in them;

c) The accused Ranko Mrđa, together with the person he knew, forced his way through the entrance door of Rasim Velić's house, and got inside the house, while **Goran Mrđa** stayed outside to prevent anyone from fleeing from the house where Bosniak civilians Rasim Velić, his wife Hava Velić, their son, Kasim Velić with his wife Radija Velić and minor children, their other son Hasib Velić with his wife S.V. and minor children, at the time took shelter, and together with the two persons he knew, in the corridor, beat Rasim Velić all over his body, knocked him down and kicked him with his boots, due to which he suffered hematoma all over his body, bled from the mouth, nose and ears, suffered serious bodily and mental pain and suffering, while they mentally mistreated other household members, demanding from them their money and other valuables; one of those persons took off the scarf from Hava Velić's head with a bayonet, pointed the rifle at her demanding that she take her earrings off, which she did; and pulled ring off S.V.'s hand, all of which instilled great fear in the household members for their own lives and the lives of their loved ones, and caused serious mental pain; after Hasib Velić's had made an attempt to flee from the house by jumping through the window, Goran Mrđa fired at the victim from the immediate vicinity, from a pistol make "CZ", caliber 7.65 mm, fabric number 103029, hit him in the back of his head, as a result of which he died instantly;

whereby the accused Ranko Mrđa would have committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (f), as read with Article 29 of the CC BiH.

4. The accused MILORAD MRĐA, together with Goran Mrđa, during 1994, once they had moved in abandoned Bosniak houses in the settlement of Pobrjeđe, in Municipalities of Sanski Most and Bihać, repeatedly mentally and physically mistreated Bosniak civilians, Omer Drobić and his family, who had lived in Pobrjeđe, and thus:

a) on an unspecified day in 1994, Goran Mrđa beat Omer Drobić near his family house, knocked him down on the ground and continued kicking him with his military boots, and thus inflicting on him numerous injuries, as a result of which blows Omer Drobić lost his

consciousness, and, after regaining it, Omer Drobić saw **Milorad Mrđa** standing above him with a rifle pointed at him, during which he sustained numerous injuries all over his body, and was black and blue with bruises, bled from his mouth and ears, had a broken finger on his hand and suffered serious mental and physical pain and suffering,

whereby the accused Milorad Mrđa would have committed the criminal offense of War Crimes against Civilians under Article 173(1)(c), as read with Article 29 of the CC BiH, and that:

6. The accused GORAN MRĐA, together with Mile Kokot, armed, on 25 July 1992, in the settlement of Fajtovci, Municipality of Sanski Most, entered a frontyard of the family house owned by Bosniak civilian Tahir Cerić, banged on the entrance door, and after Tahir Cerić went out of the house to the frontyard, Mile Kokot pointed a rifle at him; and while Tahir Cerić was moving backward along the yard, Mile Kokot fired from the rifle at the injured party's abdomen from the immediate vicinity, due to which Tahir Cerić sustained injuries in the spine flank area, and died on the same day,

whereby the accused Goran Mrđa would have committed the criminal offense of War Crimes against Civilians under Article 173(1)(c), as read with Article 29 of the CC BiH.

**

Pursuant to Article 189(1) of the CPC BiH, the accused Goran Mrđa, Milorad Mrđa and Ranko Mrđa are relieved of the obligation to compensate the costs of the proceedings, which shall be paid from within the budget appropriations.

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

Reasoning

A. CRIMINAL PROCEEDINGS THE INDICTMENT AND MAIN TRIAL

1. On 19 January 2015, the Prosecutor's Office of Bosnia and Herzegovina brought an Indictment No. T20 0 KTRZ 0006582 13 against the accused Goran Mrđa, Milorad Mrđa, Ranko Mrđa and Mile Kokot charging them with the commission of the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), (e) and (f), as read with Article 29 of the CC BiH. The referenced Indictment was confirmed on 20 January 2015.
2. At the plea hearing held on 26 February 2015, the Accused pled not guilty on any Count of the confirmed Indictment, whereupon the case was forwarded to the Trial Panel.
3. The main trial in the case commenced on 13 April 2015 with the reading out of the Indictment of the Prosecution of BiH and with the opening statements presented by the Prosecution and the Defense teams for both the accused Goran Mrđa and the accused Ranko Mrđa.
4. During the main trial, the evidence of Prosecution of BiH, the injured party K.Z. as well as the evidence of the Defense teams for all Accused persons was presented. The referenced evidence is listed in Annex to the Judgment, and form an integral part of the Judgment. The main trial was completed on 20 April 2017 by the presentation of the closing argument of the Defense for the accused Mile Kokot.
5. On 6 January 2017, the Prosecution submitted an amended Indictment pursuant to Article 35(2)(i), Article 226(1) and Article 275 of the CPC BiH.

B. CLOSING ARGUMENTS

a) Closing argument of the Prosecutor's Office of BiH

6. In its closing argument, the Prosecution of BiH indicated that, during the proceedings, it proved beyond a doubt that the general elements underlying the criminal offenses charged against the Accused indeed existed.

7. In relation to Count 1 of the Indictment, the Prosecution argued that it has proved that the referenced events indeed occurred on 10 April 1993, which was also confirmed by both testimonial and physical evidence.

8. The BiH Prosecutor's Office argued that the presented physical evidence, the testimony of witnesses as well as the testimony of the victim K.Z. herself, who confirmed and described the event that took place on 1/2 May 1993, during which her parents and brother were beaten up and mistreated, while she herself was raped by four men, including Goran Mrđa and Milorad Jovanović, effectively proved the charges under Count 2 of the Indictment.

9. When it comes to Count 3a) of the confirmed Indictment, amended during the trial, the Prosecution of BiH also argued that, among others, witnesses Mehmed Brakić, Esad Brakić and Semira Brakić gave consistent evidence in relation to the incident when four men forced their way into their house, including Goran Mrđa and Ranko Mrđa, whom they had known from before the war. Once they had forced their way into their house, the referenced persons beat and mistreated them, and ultimately pillaged them. Witnesses Esad Brakić and Mehmed Brakić also consistently testified that, after forcing their way into the victims' house, the attackers went to a house where Rufad Kuburić and Suvad Kuburić had gathered.

10. In relation to the event described under Count 3b) of the Indictment, the evidence was given by witnesses Rufad Kuburić, Suvad Kuburić and Fikret Avdić, who had been present in Fadil Velić's house at the moment when the Accused forced their way into the house, and who identified Goran Mrđa and Milorad Mrđa, whom they had known from before the war. All the referenced witnesses testified that they were beaten, mistreated

and pillaged on that occasion, which, according to the Prosecution, undisputedly proved this Count of the Indictment.

11. Witness Denis Velić confirmed in his testimony that, in the night of 2/3 May 1992, the attackers invaded his father Hasib Velić's house, mistreated and beat members of the household, and demanded money from them. During the identification procedure, witness Denis Velić recognized Ranko Mrđa as the person who had been present in his room during the critical incident. During the main trial, witness S.V., corroborated Denis Velić's testimony, and the physical evidence tendered by the Prosecution shows beyond a doubt that Hasib Velić was killed by Goran Mrđa's pistol and that several persons were beaten up, wherefore the Prosecution considers that Count 3c) of the Indictment is proved.

12. Witness M.P. confirmed at the main trial that he was beaten, threatened with death, and thereupon taken to a house, where he was staying at the time, and where they demanded that he surrender his golden items and money, and where his brother Fajko was also beaten. The statement given by witness Suvada Pašić during the investigation was read out because the witness could not attend the trial due to her illness. The witness's statement confirmed the testimony of her husband M.. On the basis of the referenced evidence, the Prosecution considers that this Count of the Indictment was also proved.

13. According to the Prosecution of BiH, witness Omer Drobić fully corroborated Count 4a) of the Indictment at the main trial. The witness comprehensively described that Goran Mrđa had halted him in front of the house, punched him in his face, and, after he fell on the ground, kept kicking him with his military boots. Witness Drobić also stated that he lost his consciousness due to these blows, and when he regained it, he saw Milorad Mrđa standing above him with a rifle pointed at him. The other witnesses, who gave evidence in relation to this Count of the Indictment, consistently confirmed witness Omer Drobić's testimony.

14. Witness Sefer Drobić testified about the circumstances referred to in Count 4b) of the Indictment, and comprehensively described how he was brutally beaten up by Goran Mrđa aka Kinez at the site of Grabež, which was also confirmed by witnesses Besim Islamčević, Omer Drobić and Izet Kamber.

15. Witness Sefer Drobić gave evidence in relation to Count 5 of the Indictment, namely he confirmed that he recognized Goran Mrđa and Milorad Mrđa when they forced their way into Muharem Jakupović's house where he was also present, and that on this occasion Muharem Jakupović was beaten and pillaged. Witness Omer Drobić confirmed Sefer Drobić's testimony within the scope of his perception, considering that they were present in different parts of the house at the moment when these men forcefully made their way into the house.

16. According to the Prosecution, at the main trial, witness Almaz Cerić fully confirmed Count 6 of the Indictment, namely that, on July 25, Goran Mrđa and Mile Kokot arrived in front of their family house; that the accused Mile Kokot pushed his father Tahir towards the front part of the house, holding him at gunpoint; that he heard a shot; and that, having looked through the glass door, he saw his father getting hold of his abdomen. The witness stated that, during his father's transportation to the hospital, the then wounded Tahir Cerić told D.Š. "*Dejan, Mile Kokot just killed me.*" In this regard, witnesses N.V. and D.Š. confirmed the substantial parts of the testimony of eye-witness Almaz Cerić. These witnesses limited their testimonies to and confirmed the incident itself, with no particular dealing with details, particularly with no identification of the perpetrators, which is understandable, according to the Prosecution, given the witnesses' position. The Prosecution considers that Count 6 of the Indictment was proved by both the tendered documentary evidence and the witnesses' testimonies.

17. The Prosecution argues that the evidence tendered by the Defense teams for all the Accused is irrelevant because, by its substance, it cannot be categorized as evidence. The Prosecution also considers the Defense's objections concerning the lawfulness of the Prosecution's evidence as unjustified and arbitrary.

b) Closing argument by the Defense for the accused Goran Mrđa

18. Attorney Tatjana Savić, Counsel for the accused Goran Mrđa, objected in her closing argument to the retroactive application of the criminal code, as well as to the lack of general elements of the criminal offense provided for by the law.

19. In relation to the inhuman treatment and property pillage as a war crime against civilians, the Defense referred to the case law and indicated that the property was not seized on a large-scale, and that the violations of the Geneva Conventions were not serious, wherefore the offenses at issue should not have been considered as war crimes against civilians.

20. The Defense indicated in their closing argument that the witnesses' memories of the war events at issue were contaminated because the Prosecution used leading questions at the investigation stage, and that it also violated its obligation under Article 152(2) of the CPC BiH while taking the investigation examination records. The Defense also submitted that the witnesses are in family or other relations, the effects of which may be contamination of their memories or harmonization of their accounts in relation to possible perpetrators of the criminal offense.

21. When it comes to Count 1a) of the Indictment, the Defense submits that the Trial Panel cannot base a judgment of conviction solely on one witness's testimony, which was not corroborated by any other piece of evidence whatsoever, and which is also contradictory in and out of itself.

22. In relation to Count 1b) of the Indictment, the Defense indicated that the Prosecution did not comply with the legally prescribed procedure during the identification, and that it exceeded its powers by presenting its assumptions as to what the witnesses allegedly wanted to state. The Defense also submitted that the witnesses, who testified about the circumstances pertaining to Count 1b) of the Indictment, are unreliable and contradictory, wherefore the Accused should be acquitted of the referenced charges by the application of the principle of *in dubio pro reo*.

23. In terms of the charges under Count 1c) of the Indictment, the Defense submitted that the Prosecution tendered no piece of evidence whatsoever concerning the personality of the perpetrators of the offenses described in this Count of the Indictment, except for witness Esma Pašić's testimony, from which the Trial Panel cannot determine with certainty the identity of the perpetrators of the referenced criminal offense.

24. When it comes to Count 2 of the Indictment, the Defense notes that the samples submitted for analysis, as well as the expert witness' report on the completed DNA analysis, constitute evidence that is in violation of the provisions set forth in the CPC of BiH, which means they are unlawful evidence. As for the witnesses who testified about the foregoing Count of the Indictment, the Defense argues they are unreliable as witnesses and as such their testimony could not be credited, especially if one bears in mind the examination of four defense witnesses who provided alibi to the accused Goran Mrđa during the events referred to in Counts 2 and 3 of the Indictment.

25. In relation to Count 3a) of the Indictment, the Defense pointed to both the inconsistency in the testimony of Prosecution witnesses and the lack of the Accused's identification by the witnesses from the photo-albums presented to them, which renders these witnesses unreliable, and that therefore the single reasonable conclusion is that the witnesses do not know the accused Goran Mrđa.

26. The Defense submitted that the witnesses who gave evidence about Count 3b) of the Indictment are unreliable and inconsistent, and that the Court cannot credit them.

27. When it comes to Count 3c) of the Indictment, the Defense indicates that the Indictment is based on the unlawful evidence and the unlawful expert analysis because not all procedures were complied with, which was mandatory under the then effective law, and that the Prosecution of BiH offered no piece of evidence whatsoever proving the identification of the perpetrator of the criminal offense described under this Count of the Indictment.

28. As to Count 3d) of the Indictment, the Defense submits that the Prosecution of BiH offered no piece of evidence to prove it, and that it cannot be concluded with certainty from M.P.'s testimony that the accused Goran Mrđa indeed committed the offense charged against him under this Count of the Indictment.

29. In relation to Count 4a) of the Indictment, the Defense argues that it is indisputable that a conflict indeed occurred between Goran Mrđa and Omer Drobić. However, the conflict was exclusively of personal nature and unrelated to the armed conflict, wherefore it cannot be the criminal offense of war crime against the civilian population.

30. With regard to Count 4b) of the Indictment, the Defense argues that, undoubtedly, Sefer Drobić's testimony cannot be credited because no medical documentation supported his testimony, and that as a result of the alleged commission of the criminal offense the witness cannot suffer from such consequences for his health as the witness indicated in his testimony.

31. In relation to the incident referred to in Count 5 of the Indictment, the Defense indicates that the testimony of the witnesses, who gave evidence about this Count, is contradictory and unconvincing and therefore cannot be credited.

32. Ultimately, when it comes to the charges under Count 6 of the Indictment, the Defense argues that even the testimony of the single eye-witness to the incident addressed in this Count of the Indictment shows that the accused Goran Mrđa took no part in Tahir Cerić's murder in any way whatsoever.

c) Closing argument of the Defense for the accused Milorad Mrđa

33. Defense Counsel for the accused Milorad Mrđa, Mr. Ranko Dakić, indicates in his closing argument that the Prosecution did not prove the existence of general elements of the criminal offense charged against his client.

34. In relation to the charges under Count 2 of the Indictment, defense counsel argues that the charges were based on unlawful evidence which compromised the entire proceeding, bearing in mind the "*fruit of a poisonous tree*" doctrine.

35. When it comes to the charges under Count 3b) of the Indictment, Counsel argues that the Prosecution did not prove, beyond a reasonable doubt, that the accused Milorad Mrđa took part in the incident referred to in Count 3b) of the Indictment. Counsel submits that the witnesses who mentioned Milorad Mrđa's participation in these incidents lack credibility considering the inconsistencies between the statements they gave during the investigation and their respective main trial testimonies.

36. In relation to the charges under Count 4 of the Indictment, the Prosecutor argues that the Prosecution did not prove Milorad Mrđa's criminal responsibility and that the injured party Sefer Drobić personally confirmed that Milorad Mrđa had never ill-treated him. In addition, Counsel argues that witness Omer Drobić changed his statements several times and that therefore his testimony cannot be considered as credible and reliable.

37. Counsel submits that the testimony of witnesses who testified at the main trial in relation to the charges under Count 5 of the Indictment is not credible and reliable and that the Prosecution did not specify the concrete acts committed by each Accused individually, which renders the Indictment deficient and imprecise.

38. As to the application of substantive law, Counsel argues that the CC SFRY should have been applied to the case.

d) Closing argument of the Defense for the accused Ranko Mrđa

39. In relation to Count 3a) of the Indictment, defense counsel for the accused Ranko Mrđa, Mr. Savan Zec, submits in his closing argument that the witnesses who have charged his client lack credibility, that they subsequently harmonized their stories and that they are unreliable because they changed several times the statements they had given during the investigation and at the main trial, particularly taking into account that, while being examined about the referenced events, relatively shortly after their occurrence, the witnesses did not mention the identity of perpetrators of the alleged criminal offense but rather remembered their identity no sooner than in 2014.

40. Counsel also believes that the Trial Panel made an essential violation of the rules of procedure by not allowing that witness Esad Brakić be presented with a photo-album containing the accused Ranko Mrđa's photo from 1985, in order to establish if the witness indeed knew the Accused, which the Prosecution also omitted to do during the investigation. In addition, Counsel submits that the Trial Panel has placed the Defense teams for the accused Goran Mrđa and Ranko Mrđa in an unequal position by allowing that witness Esad Brakić be presented with the photo-album containing Goran Mrđa's

photo for identification purposes, while it did not allow the same to Ranko Mrđa's Defense, which can be regarded as a clear obstruction of Ranko Mrđa's defense.

41. Counsel indicates that the Prosecution did not provide all documents in their possession concerning the subject of charges to be reviewed by the defense, and that the Prosecution at the same time prohibited any check of the Prosecutorial file, even though other institutions provided information that other documents related to witness Esad Brakić's and witness Denis Velić's testimony exist, and that they are available to the Prosecution. Counsel argues that the statutory obligation was thereby violated, which also results in a violation of the right to a fair trial.

42. Counsel refers to the accused Ranko Mrđa's identification by witness Denis Velić, and indicates that witness Denis Velić lacks credibility and reliability because he was only age 14 at the time when the events which are the subject of charges took place. In addition, Counsel argues that the witness changed several times, in the witness examination records made before his testimony at the main trial, the description of physical appearance of the person he saw at the time when the events which are the subject of charges took place. The foregoing culminates at the main trial when during Ranko Mrđa's identification from a photo-album, the witness stated: "*I am not sure, can we proceed*", but when the Prosecutor in the case returned the photo-album, the witness stated "*I am certain 99 %*", which undoubtedly confirms that Denis Velić's testimony lacks reliability and credibility.

43. As to the substantive law application, Counsel indicates, by referring to both the national and international case law and regulations, that the CC SFRY should have been applied to the case.

e) Closing argument of the accused Mile Kokot

44. In his closing argument, Defense Counsel for the accused Mile Kokot, attorney Kenan Ademović, supported the assertions of the defense attorneys for the other accused persons presented in their respective closing arguments in relation to both the lack of general elements of the criminal offense of War Crimes against Civilians and the unlawfulness of evidence.

45. In relation to the testimony of the witnesses who charged his client, Counsel indicated that the witnesses lack credibility and reliability, and that there is no eye-witness to the alleged commission of the criminal offense. Counsel therefore proposed that the accused Mile Kokot be acquitted of the responsibility charged against him.

f) Prosecution of BiH's response to the closing arguments of the Defense teams for the Accused

46. In their response to the closing arguments presented by the Defense teams for all the four Accused in the case, the Prosecution argues that the witnesses did not confirm that the incident referred to in Count 1 of the Indictment took place at 23:00 hrs, as indicated by the Defense for the accused Goran Mrđa, but rather prior to that time, as the remaining witnesses examined in relation to this Count of the Indictment testified. The Prosecution also indicated that the Defense teams were provided with all evidence, enabled to review the case record, and that the repeated requests to review the case record constitute the abuse of rights, considering that no new evidence exists in the case record.

47. When it comes to Count 2 of the Indictment, the Prosecution argues that defense's objections concerning the unlawfulness of evidence are ill-founded, since all prescribed procedures have been complied with, as explained in detail in the Prosecutor's closing argument.

48. By referring to the assertions of the Defense for the Principal Accused concerning the Prosecution witnesses' contamination, namely that the examiner has informed them about the charges against the Accused in factual terms, the Prosecution argues that the witnesses were only informed about the legal qualification of the offense, as provided for by the law, and that in factual terms the witnesses were in no way informed about the charges against the accused Goran Mrđa.

49. When it comes to Exhibit T-28 which the Defense considers as unlawful because it only comprises official notes, the Prosecution argues that it is not true, and that, in addition to the official notes, it also comprises the on-site investigation record and the statements

of a number of persons, including Goran Mrđa and Milorad Mrđa. The Prosecution therefore argues that the Defense's assertions, that the evidence is unlawful, are invalid.

50. As to the substance of the witnesses' statements in relation to Count 3 of the Indictment, the Prosecution argues that in her closing argument Counsel for the Principal-Accused presented untrue contents of these witnesses' testimony.

g) Responses of the Defense teams for the accused Goran Mrđa, Milorad Mrđa and Mile Kokot to the Prosecution BiH's response to the Defense teams' closing arguments

51. Counsel for the accused Goran Mrđa argues, in her response to the Prosecution of BiH's response, that the Prosecutor in the case incorrectly treated the Defense; that the Prosecutor did not act in compliance with her duties prescribed by the CPC BiH, and did not allow the Defense to review the case record again, particularly considering that the investigation was ongoing in parallel with the witnesses' examination during the whole course of the proceedings, as well as that the lack of both the staff and the premises available to the Prosecution cannot justify such a failure to act.

52. Counsel also indicated that certain witness examination records made during the investigation contained words whose meaning the witness did not know at the main trial, and that the Prosecution did not summon witness Avdić, who resides in Germany, even though the other witnesses residing outside Bosnia and Herzegovina were examined at the trial.

53. Counsel for the accused Milorad Mrđa stated that the Prosecution of BiH's rebuttal is both a criticism of the Defense's closing argument and the suggestion to the Court as to how it should act in rendering a judicial decision.

54. Counsel for the accused Mile Kokot ultimately argued that the Prosecution of BiH's rebuttal confirmed that not all facts were proved concerning the presence of the witness, the injured party Tahir Cerić's son, at the crime scene, but rather that those are just presumptions on which no judgment can be based.

C. PROCEDURAL DECISIONS

Dismissal of the Motion filed by the accused Goran Mrđa's Counsel for submission of the Record of the Prosecutor's preparatory interviews with the witnesses

55. At the hearing held on 13 April 2015, after witness Halid Mehić's examination, Counsel for the accused Goran Mrđa, Ms. Tatjana Savić, moved that the Prosecutor in the case be obligated to make records on each preparatory interview with the Prosecution witnesses and to deliver them to the Defense two days before (the hearing), referring at the same time to Article 47 and Article 151 of the CPC BiH. Counsel indicated, along this line, that the referenced witness stated that he had spoken with the Prosecutor before the hearing, wherefore it is necessary that the Prosecutor make audio-recording of an interview with a witness, if there is any, and deliver it to the Defense.

56. In orally explaining the referenced motion, Counsel argued that, even though the CPC BiH does not address the referenced issue, international courts dealing with war crimes cases have a lot of practice and experience, and allow preparatory interviews, but the defense must be provided with the interview-related materials. However, the International Tribunal's position is that the foregoing is not allowed, but Counsel referred to the decision of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Limaj*, according to which preparatory interviews are allowed but interview records must be disclosed to the defense. In addition, Counsel indicated that the defense cannot be faced with changes of the witnesses' statements at the hearing, while the Prosecution was already aware of such changes (before the hearing). In commenting on the referenced proposal, the Prosecutor indicated that she does not consider that such a proposal ensues from any provision of the CPC BiH, and that it is just a consultative meeting. The Prosecutor also added that witness Halid Mehić was examined in 2014, when she met him to explain to him the course of the proceedings because he never visited either a courtroom or Sarajevo.

57. At the hearing held on 27 April 2015, the Panel assessed both the Motion filed by the Accused's Defense and the Prosecution's comment, and rendered a decision dismissing the referenced motion as ill-founded, with a short explanation that it was not a

procedural action about which the Defense should be notified. To this effect the Panel finds that, even though the issue of “witness preparation” is not regulated by the CPC BiH's provisions, the fact that the CPC BiH does not provide for certain procedural situation does not mean that it is not allowed², as also emphasized in the decision of the Appellate Panel of this Court in the case against the accused *Mustafa Delilović et al.* Obviously, such a practice also exists in the Prosecutor's Office of BiH, as well as in the ICTY, as noted in different decisions of the referenced Tribunal. Thus, in the Decision of 2 October 2009, rendered in *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, the ICTY dismissed the motion of the Defense for the accused Stanišić that the Office of the Prosecutor not be allowed to have preparatory interviews with the witnesses prior to their testimony, recalling that, pursuant to the ICTY's jurisprudence, preparation of witnesses is allowed.

58. Also, in the ICTY's decision of 4 June 2009 rendered in *Prosecutor v. Zdravko Tolimir* upon the accused Tolimir's motion to prohibit the Office of the Prosecutor from contacting any of the witnesses proposed in the motion filed by the Office of the Prosecutor, the ICTY noted that it has been established in the Tribunal's jurisprudence that neither the Office of the Prosecutor nor the Defense have ownership over the witnesses, that therefore both parties to the proceedings are entitled to have access to them, and that the Accused's assertion, that the prosecution's contact with its own witnesses after its comments submission would render the forthcoming trial unfair, is uncorroborated. The ICTY also took a similar position in its Decision of 10 December 2014 rendered in *Prosecutor v. Fatmir Limaj et al.*, as well as in *Prosecutor v. Ramuš Haradinaj et al.*, Decision of 23 May 2007, dismissing the Defense's request for delivery of the prosecution's audio-recordings of the witnesses' preparation interviews.

59. The Panel further finds that the purpose of witness preparation is to establish the facts which the witness knows and which are relevant to the particular charges under specific Counts of the concrete Indictment, even though the witness had been interviewed during the investigation but no indictment was brought at the time. Also, in compliance with the ICTY's view, the Panel finds that neither the prosecution nor the defense has any ownership over the witnesses, and that therefore both parties to the proceedings are entitled to have access to the witnesses in a professional manner. Furthermore, the Panel

² Decision of the Appellate Panel of this Court, No. S1 1 K007914 12 Krž 4 of 15 May 2012.

finds that there are clear standards of professional conduct concerning the prosecution, which are applicable during witness preparation procedure. The Panel also finds that, in the concrete case, there is no evidence proving that these professional standards were violated, which would possibly imply an audio-recording production during the prosecution witnesses' preparation pursuant to the ICTY's jurisprudence. Counsel also unjustifiably referred to Article 151(1) of the CPC BiH. The referenced Article provides that "minutes shall be taken for each step taken in the course of the criminal proceedings at the same time when such a step is being taken," because the CPC BiH certainly does not provide a witness preparation step as an act of proof that would require any minutes-taking.

Decision to exclude the public

60. At the hearings held on 8 June 2015, 29 June 2015, 6 July 2015 and 13 July 2015, during the examination of witnesses Zejfa Horozović, Aziz Horozović, Zenad Horozović, Fehret Horozović, K.Z. and Rifat Kahteran, in acting upon the Prosecutor's motion, and after hearing the parties to the proceedings and Counsel for the Accused who did not object to the public exclusion, the Court decided to exclude the public from the hearing with the aim of protecting both the victims' personal and intimate lives, and the interests of the witnesses who were to be heard about the circumstances relevant to Count 2 of the Indictment in terms of Article 235 of the CPC BiH, taking an account of the sensitivity of the critical events described in Count 2 of the Indictment. For the same reason, the public was excluded also from the hearing held on 17 August 2015, at which the Court examined expert witnesses Elmira Karahasanović and Enisa Rahmanović, regarding their analysis of the buccal mucus membrane samples taken from the accused Goran Mrđa, Milorad Mrđa and Ranko Mrđa, and their possible matching the traces found on the victim K.Z.'s underwear.

Decision concerning the Defense's proposal to have the tests used in expert evaluation submitted

61. At the hearing held on 13 July 2015, defense counsel for the accused Goran Mrđa, attorney Tatjana Savić, proposed that, in accordance with Article 101 of the CPC BiH, the defense be provided with the tests used by expert witness Senadin Fadilpašić during the analysis of witness K.Z., so the defense could adequately prepare for his examination at

the trial. Commenting on the defense's motion, the prosecutor said she would convey the defense's motion to the expert witness.

62. In his letter dated 13 October 2015, expert witness Senadin Fadilpašić stated the reasons for non-delivery of working materials.

63. Bearing in mind the foregoing state of matters, by its act dated 1 February 2016 the Court ordered the expert witness Senadin Fadilpašić to, bearing in mind the content of the accused Goran Mrđa's defense counsel's motion, and the imperative provision set forth in Article 101 of the CPC BiH, according to which the expert witness is supposed to provide to the appointing authority his finding and opinion, as well as worksheets, drawings and notes, immediately upon the receipt of the act, but not later than within 7 (seven) days of its receipt, provide to the appointing authority, which in this criminal matter is the BiH Prosecutor's Office, the entire worksheets, drawings and notes used during the analysis, including the tests used during the analysis. By the same act, the Court ordered the prosecutor to, immediately upon the receipt of the said material, pursuant to Article 47 of the CPC BiH, forward the material to the defense teams of all the accused persons in this case, and duly inform the Court.

64. Conversely, at the hearing held on 17 August 2015, acting upon the motion filed by defense counsel, who asked from the expert witnesses to provide her with electropherograms, so they could check the findings and opinions produced by the expert witnesses Karahasanović and Rahmanović, the Panel denied the motion at issue. Even though it is true that the expert witness, pursuant to Article 101 of the CPC BiH, is supposed to provide his finding and opinion, as well as worksheets, drawings and notes to his appointing authority, in the case at hand, in deciding on the issue, the Panel was mindful of the statement made by the expert witness, who as a professional said that electropherograms did not constitute working materials, and that a statistical calculation is done in order to better explain the situation to the parties to the proceeding, but that it is not an integral part of the material, adding that the electropherogram has been incorporated in the table presented in the relevant part of the finding and opinion.

Decision concerning the Prosecution's motion to have testimony of witnesses Suvada Pašić and Smail Mehić read out

65. On 10 July 2015, the Court received the Prosecution's motion to read out the statement of witness Suvada Pašić given on 16 October 2014 in the Cantonal Prosecutor's Office of the Una-Sana Canton, No. T20 0 T RZ 0006582 13 and the statement of witness Smail Mehić given in Skucani Vakuf on 21 August 2014, No. T20 0 T RZ 0006582 13. The referenced submission was immediately forwarded to the Defense teams for all the Accused.

66. The Prosecutor acting in the case argued, in the referenced motion reasoning, that witness Suvada Pašić submitted a specialist findings and opinion indicating that she could not respond to the Court's summons. In addition, the witness was contacted by a legal officer of the Witness Protection Section of the Court of BiH, and accordingly an official note was made indicating that the witness's health condition has deteriorated, and that any conversation about the topic at issue revives her memories of the trauma in question. Witness Smail Mehić was also contacted by the same (Witness Protection) Section, which noted that the witness's state of health is extremely bad, that most of the time he is bed-ridden and unable even to visit any medical doctor, let alone to appear before the Court of BiH. The Prosecution also indicated, in the referenced motion, that other actions were taken in their attempts to secure the witnesses' attendance, and that therefore the Ministry of Interior of the Una-Sana Canton (MUP USK) was ordered to check the situation in the field in relation to the referenced witnesses' state of health. Thus, an official note was made in relation to witness Smail Mehić indicating that the witness is seriously ill and bed-ridden, while medical doctor's findings were taken over in relation to witness Suvada Pašić.

67. In further course of these criminal proceedings, the Court received a written comment from the accused Goran Mrđa's Defense indicating that they had no objections to the reading of these witnesses' statements. The other Accused and their respective defense counsel also agreed to have these statements read out.

68. Therefore, having accepted the arguments provided in the Prosecutor's motion, and taking into account the consent given by the Accused and their respective defense

counsel with the given proposal, the Panel rendered a decision to read out the above referenced statements of witnesses Suvada Pašić and Smail Mehić. The Panel was mindful of the fact that, pursuant to Article 273(2) of the CPC BiH, these witnesses are witnesses whose appearance before the Court is very difficult due to important reasons.

69. The referenced witnesses' statements were read out at the hearing held on 28 September 2015; the Accused and their respective defense counsel were allowed to pose questions which they would have normally posed to the witnesses had they attended the hearing.

Decision concerning the proposal to read out witness Radija Velić's testimony

70. On 4 December 2015, the Court received the Prosecution's motion to read out the testimony of witness Radija Velić, given on 24 October 2014 on the premises of the Cantonal Prosecutor's Office of the Una-Sana Canton. The referenced Decision Reasoning stated that the witness did not attend the hearing held on 23 November 2015, that she submitted a finding and opinion of a neuropsychiatrist which presented the reasons for which she cannot respond to the Court's summons. The Witness Support Section of this Court contacted the witness and noted that the state of witness's mental health has worsened and that she asked to be relieved of the obligation to give evidence.

71. With regard to the referenced proposal, attorney Tatjana Savić commented that she has no medical background to be able to give any related comments, indicating that it is questionable if the Witness Support Section's staff were also professionally trained to make such evaluations. Counsel therefore proposed that the state of the witness's mental health be evaluated by a forensic expert witness considering that certain mental problems of the witness were mentioned, that mental problems are not acute in nature and do not appear/disappear suddenly. The foregoing raises the issue of the time of origin of the witness's problems, that is, did these problems also exist at the time when the witness was giving the statement at issue. The Defense teams for the remaining Accused also consented to the proposal given by the accused Goran Mrđa's Counsel.

72. Having taken into account both the arguments provided in the Defense's proposal and the Defense's justified comments, pursuant to Articles 21 and 22 of the CPC BiH, the

Court sent a letter of 15 December 2015 to the Health Center Sanski Most, Center for Mental Health, requesting that the medical documentation pertaining to Radija Velić be submitted to the Court in order to carry out an expert evaluation of the witness's capacity to testify before the Court during the proceedings, as well as to assess her mental abilities at the time when she was giving the statement in the Prosecutor's Office of BiH.

73. Having received the requested documentation, the Court issued an order of 22 December 2015, pursuant to Articles 96, 97 and 269 of the CPC BiH, that forensic expert, Dr. Evresa Okanović, specialist in neuropsychiatry from Velika Kladuša, carry out an expert evaluation by reviewing the medical documentation concerning witness Radija Velić's state of health (enclosed with the order), directly examine witness Radija Velić (should the expert witness conclude that the submitted medical documentation is not sufficient for making any conclusion on the subject of expert evaluation), and provide answers to the following questions: is witness Radija Velić able to give evidence at the trial in these criminal proceedings, and, if she is, how would such a testimony affect her state of health; and was the witness fit to give statement at the investigation stage (on 24 October 2014).

74. Expert witness, Dr. Evresa Okanović, was examined at the hearing held on 10 March 2016. The expert witness made the findings and opinion only on the basis of the medical documentation submitted to her by the Court, considering that she was not able to contact the witness, the witness's daughter or her neuropsychiatrist. The expert witness's finding indicated that the witness has been receiving medical treatment since 2012, and continually since 2014 with neuropsychiatrist's support, that she suffers from a chronic mental illness diagnosed as – Along this line, the expert witness stated that this disease has....., which psycho-pathologic features are as well as a number of negative symptoms characteristic for the same disease. The expert witness ultimately concluded that the witness is a person and is not able to testify at the main trial. The foregoing is supported with the medical documentation and the conclusion that this type of disease also resulted in the witness's incapacity to give a statement on 24 October 2014, at the investigation stage, which is supported by the witness's continued medical treatment and medical findings. The expert witness also stated that the referenced mental disorder is and that it will For all the foregoing, the

expert witness believes that the witness should not be exposed to any pressures since it could result in even more serious consequences for the witness.

75. Having examined the expert witness, the Panel decided to have the statement of witness Radija Velić of 24 October 2014 read out pursuant to Article 273(2) of the CPC BiH, which will be evaluated in correlation with the other evidence tendered in relation to the referenced circumstances.

Expiry of the 30-day time limit

76. Article 251(2) of the CPC BiH provides that: *“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 but with consent of the parties and the defense attorney, the Panel may decide that in such a case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted but the minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be used.”*

77. In the present criminal case, the adjournment lasted longer than 30 (thirty) days between the hearings held on the following days: 13 July 2015 and 17 August 2015; 17 March 2016 and 12 May 2016; 14 July 2016 and 1 September 2016; 15 September 2016 and 27 October 2016; and 12 January 2017 and 23 February 2017. In view of the foregoing, at the hearings held on 17 August 2015, 12 May 2016, 1 September 2016, 27 October 2016 and 23 February 2017, the Panel decided to recommence the main trial from the beginning in terms of the rule of Article 251(2) of the CPC BiH. Considering that the parties and the defense attorneys consented not to re-adduce the hitherto adduced evidence, the Panel decided that the witnesses and the hitherto examined expert witnesses would not be re-examined, but rather that their respective testimony previously given during the proceedings, that is, at the previous hearings, would be used.

Decision concerning the case record review

78. On 19 August 2015, the defense attorney for the accused Goran Mrđa, Ms. Tatjana Savić, petitioned the Prosecution of BiH to be allowed to review the Prosecution's case

record No. T20 0 KT RZ 0010461 15, containing the prosecution's decision - order to terminate the investigation conducted against Goran Mrđa concerning the events indicated therein. At the same time, the defense attorney for the accused Ranko Mrđa requested to review the Prosecution's case record No. T20 0 KT RZ 0010461 15 where an order was issued to terminate the investigation against Ranko Mrđa concerning the events indicated therein. The Prosecutor in the case did not act upon the referenced requests, namely did not grant them considering that the Prosecution's letter of 1 September 2015, which was submitted to the Court, indicated that the events at issue were not the subject of charges, that the prosecutorial decisions were made in separate cases, and that the Defense teams had the opportunity to review the Prosecution's case record with the charges against their clients.

79. Considering the substance of the referenced Defense teams' requests, as well as the imperative provision of Article 47(3) of the CPC BiH, the Panel issued, at the hearing held on 26 October 2015, a decision to order the Prosecution to submit all information in favor of the Accused, indicating that the Defense teams can dispose with all the files, and that, since the investigations were completed, those cases were not investigative cases in which the information disclosure would jeopardize the purpose of investigation.

The Defense is approved to contact the Prosecution witnesses before examination

80. On 25 November 2015, the Court received a motion filed by the defense attorney for the accused Goran Mrđa, Ms. Tatjana Savić to contact the Prosecution witnesses Mile Dobrijević and Zoran Despot prior to their main trial examination scheduled for 30 November 2015. In its decision of 27 November 2015³, the Court granted the motion filed by the accused Goran Mrđa's defense attorney, Ms. Tatjana Savić, to contact the referenced Prosecution witnesses prior to their hearing at the main trial, and that the manner in which this decision would be implemented would be defined after the referenced decision finality.

³ Decision of the Court of BiH, No. S1 1 K 018013 15 Kri of 27 November 2015.

Dismissal of the Defense's motion to change the evidence presentation order

81. At the hearing held on 7 December 2015, after the Prosecutor abandoned the examination of the planned witnesses Mile Dobrijević and Zoran Despot directly at the hearing at the stage of the Prosecution evidence presentation, the defense attorney for the accused Goran Mrđa moved that the referenced witnesses be heard as defense witnesses, namely that the order of the evidence presentation be altered.

82. The Prosecutor objected to the referenced motion for not being aware of the circumstances due to which the Defense proposed the referenced examination.

83. Having taken into account the rule of Article 261(2) of the CPC BiH, namely the order of evidence presentation at the main trial, and having accepted the Prosecution's arguments, the Panel dismissed the Defense's motion and provided the Defense with the option to examine the referenced persons in the capacity of witnesses for the Defense at the stage of the defense evidence presentation, whose justifiability will be then decided by the Court.

Dismissal of the Prosecutor's motion to jointly examine the expert witnesses

84. At the hearing held on 23 November 2015 and attended by expert witnesses Milko Marić and Željko Popović, the Prosecutor of the Prosecutor's Office of BiH seized of the case moved that the expert witnesses be examined simultaneously, considering that there was a joint expert witness, but the Defense teams for all the Accused objected to it. Defense attorney for the accused Goran Mrđa, Ms. Tatjana Savić, argued that the CPC BiH provides that the witnesses and the expert witnesses should be examined in the absence of others, and the Defense teams for the other Accused supported her submission. Having heard the referenced comments, the Panel dismissed the Prosecutor's motion and decided to have the expert witnesses examined separately considering that the CPC BiH does not provide for a joint examination of expert witnesses in the way as proposed by the Prosecutor.

Dismissal of the Defense's motion that the Prosecution witness, Esad Brakić, be presented with the Photo-album No. 2

85. At the hearing held on 14 September 2015, during the cross-examination of the Prosecution's witness Esad Brakić, Counsel for the accused Ranko Mrđa moved that the witness be presented with the Photo-album 2, No. T20 0 KTRZ 0006582 13 of 10 November 2014, since it contained the accused Ranko Mrđa's photo from 1985.

86. The Prosecutor of the Prosecution of BiH seized of the case objected to such a manner of presenting the referenced Photo-album to the witness because it was not presented even in the procedure of identifying individuals through photos, conducted during the investigation phase. The Prosecutor explained that the Prosecution acted in compliance with the CPC BiH's provisions.

87. The Panel did not allow the accused Ranko Mrđa's defense to present the witness with the Photo-album at issue because, indeed, the witness had not been presented with it during the investigation. Specifically, the Panel took into account the rule of Article 85 of the CPC BiH and the fact that the referenced Photo-album was previously presented by the accused Goran Mrđa's defense, but in an altered order of the photos, from which the witness did not identify the accused Ranko Mrđa at any moment.

Expert evaluation of the accused Goran Mrđa's health condition

88. On 25 March 2016, the Defense for the accused Goran Mrđa informed the Court of BiH that the accused Goran Mrđa was sent to the hospital for medical treatment starting from 28 March 2016, and that he could not attend the hearing. Thereafter, the Court of BiH contacted the General Hospital *Dr. Mladen Stojanović* in Prijedor, to check if the accused Goran Mrđa was indeed admitted to the General Hospital for medical treatment and why, as well as to obtain a physician's opinion about the estimated length of the treatment considering the fact that no hearing could be held in the absence of all persons accused in the referenced criminal case. On 29 March 2016, the Psychiatric Department of the General Hospital *Dr. Mladen Stojanović* in Prijedor notified the Court of BiH that the Accused was hospitalized for mental problems related to the following diagnosis: *enduring*

personality disorder following catastrophic experience - F62.0 and depressive disorder - F32, and that the expected treatment period was around three weeks.

89. In view of all the foregoing, on 21 April 2016 the Court of BiH issued an order that forensic neuropsychiatrist, Dr. Zorica Lazarević, conduct an expert evaluation on the basis of the submitted medical documentation in order to establish the general state of the accused Goran Mrđa's health, his ability to travel once a week at Prijedor – Sarajevo – Prijedor route, and his procedural capacity. Having completed the expert evaluation as ordered, the expert witness submitted her Findings and Opinion to the Court of BiH on 10 May 2016. The Findings indicated that, according to the submitted medical documentation, the Accused was medically treated for several different diagnoses, namely: *Neurosis anx., Sy anxiodepresivum, Generalized anxiety disorder in obs., Prolonged stress reaction – F43, Sy depresivum - F32, Depressive disorder - F32.2 and Enduring personality changes after catastrophic experience - F62.0*, and that the referenced disorders' symptoms allow him to attend the trial upon the Court's summons and actively partake in the criminal proceedings, namely that he is fit to stand trial. The expert witness also stood by her written Findings and Opinion at the hearing held on 19 May 2016.

Dismissal of certain evidentiary proposals by the Defense for the accused Goran Mrđa and Ranko Mrđa

90. At the hearing held on 19 May 2016, having reviewed the proposed evidence submitted by the Defense teams for all the Accused, the Panel announced its decision to dismiss certain pieces of evidence proposed by the Defense for the accused Goran Mrđa. Thus, the Panel dismissed as irrelevant the proposal to have the following witnesses examined: Obrad Ševo, Milorad Bilbija, Radomir Kukolj, Goran Mudrinić, as well as the following expert witnesses: Damir Marjanović, Petko Grubač, Bruno Franić and Zdenko Cihlarž. With regard to the witnesses proposed to testify in relation to the Accused's alibi, the Panel ordered the Defense to select four of the seven proposed witnesses to examine, since they were all proposed for examination in relation to the same fact. As to the proposed documentary evidence, the Panel dismissed as irrelevant to the present case the two pieces of documentary evidence related to the orders to terminate the investigation against the accused Goran Mrđa.

91. With regard to the evidentiary proposals of the accused Ranko Mrđa's Defense, the Panel decided to dismiss the proposal to examine witness Esad Brakić in relation to the accused Ranko Mrđa's identification from the photos presented to him at the main trial where he gave evidence in the capacity of a prosecution witness.

Granting Defense's motion to change the order of evidence presentation

92. At the hearing held on 14 July 2016, after the proposal of the accused Goran Mrđa's Defense to depart from the scheduled order of evidence presentation due to the Prosecution's objection to the reading of the testimony of witness Bego Islamčević, due to his poor health condition, as they stated, wherefore the Prosecution withdrew this witness's examination in the capacity of a Prosecution witness in the regular evidentiary proceedings, the Panel decided to change the order of evidence presentation and to reschedule the deciding on the witness's examination or the reading of his investigation statement until the expert evaluation of the medical documentation related to his health condition has been completed. Once the expert evaluation of the medical documentation was completed and the witness's health condition reviewed by expert witness Dr. Evresa Okanović, it was concluded that the witness is able to give evidence at the main trial. The witness testified at the hearing held on 27 October 2016 in the capacity of a witness for the accused Goran Mrđa's Defense.

Dismissal of certain rebuttal and supplementing evidence proposed by the Prosecution of BiH

93. Once the Prosecution of BiH has delivered its proposal of rebuttal and supplementing evidence, the Panel decided, at the hearing held on 22 December 2016, to dismiss as irrelevant the proposed examination of the following witnesses: Edhem Zahirović, Adevija Kaltak, Sadmir Kolaković and Husein Makić, while the proposed examination of witness Irfan Cerić was dismissed because the witness should have been examined in the regular course of the proceedings considering that the Prosecution of BiH was in possession of the information that was available to the witness, but provided no reason whatsoever for which this witness's examination was not proposed in the regular course of the proceedings. The Panel also dismissed a number of items of documentary

evidence as irrelevant, since it was related to the accused Goran Mrđa's statement No. 11-19/02-2 of 9 June 1993.

94. The Panel also dismissed the proposed supplementing evidence primarily concerning the examination of the same witnesses proposed in rebuttal evidence, considering that it was already dismissed by the Panel for the referenced reasons, along with the documentary evidence proposed as rebuttal evidence.

The evidence of the Defense for the accused Ranko Mrđa accepted after submission of the Amended Indictment

95. Once the Prosecution submitted the amended Indictment in the case and the Defense teams indicated that they had no new evidentiary proposals, at the hearing held on 12 January 2017, the accused Ranko Mrđa's Defense moved that Exhibit – Certificate No. 28/95-2016 of 28 December 2016 concerning the ownership of motor vehicles registered in the Republic of Slovenia be tendered in the case record, because they had just received its official translation from the original made in the Slovenian language. The Prosecutor in the case raised an objection considering their already given comment at the previous hearing, that they had no further evidentiary proposals, and that the Prosecution did not contest that the Accused owned the vehicle. Having heard the arguments presented by both parties, the Panel decided to accept the proposed documentary evidence because the Defense could not have obtained it before.

D. EVIDENTIARY PROCEEDINGS

96. During the hearing, the following witnesses were examined pursuant to the Prosecution of BiH's proposal: Halid Mehić on 13 April 2015; M.P. on 27 April 2015, Z.P. on 27 April 2015; H.P. on 27 April 2015; Esmā Pašić on 12 May 2015, Sulejman Ćehić on 12 May 2015, Hasnija Ćehić on 12 May 2015, Mina Pašić on 25 May 2015; Hasan Pašić on 25 May 2015; Zejfa Horozović on 8 June 2015; Aziz Horozović on 8 June 2015; Zenad Horozović on 29 June 2015; Fehret Horozović on 29 June 2015; witness K.Z. on 6 July 2015; Rifat Kahteran on 13 July 2015; Mehmed Brakić on 7 September 2015; Esad Brakić on 7 September 2015 and 14 September 2015; Semira Brakić on 14 September 2015, Fikret Avdić on 21 September 2015, Rufad Kuburić on 19 October 2015; Suvad Kuburić

on 19 October 2015; Denis Velić on 26 October 2015; S. V. on 2 November 2015; Besim Islamčević on 14 December 2015; Omer Drobić on 21 December 2015; Sefer Drobić on 21 December 2015; Mirsad Jakupović on 28 December 2015; Mato Grgić on 11 January 2016; Izet Kamber on 25 January 2016; Đemal Cerić on 25 January 2016; D.Š. on 1 February 2016; N. V. on 1 February 2016; K.T. on 8 February 2016; Almaz Cerić on 15 February 2016 and Radomir Vukičević on 17 March 2016. The Witness Examination Records for the statements given by witnesses Suvada Pašić, Smail Mehić and Radija Velić during the investigation phase were read out at the hearings held on 28 September 2015 and 10 March 2016, pursuant to the rule of Article 273(2) of the CPC BiH.

97. The following expert witnesses for the Prosecution of BiH were examined at the main trial: Alma Bravo-Mehmedbašić on 13 July 2015; Elmira Karahasanović on 17 August 2015; Enisa Rahmanović on 17 August 2015; Vilko Marić on 23 November 2015; Željko Popović on 23 November 2015 and Senadin Fadilpašić on 22 February 2016.

98. The following witnesses were examined as witnesses for the accused Goran Mrđa's Defense: Perica Polovina on 26 May 2016; Žarko Utješanović on 26 May 2016; Miroslav Dekić on 26 May 2016; Slobodanka Ševo on 26 May 2016; Merima Menković on 9 June 2016; Milorad Bašić on 9 June 2016; Dragutin Vukša on 9 June 2016; Radovan Topolić on 23 June 2016; Nikola Mrđa on 23 June 2016; the accused Goran Mrđa in the capacity of witness for the Defense on 14 July 2016 and Bego Islamčević on 27 October 2016.

99. The following witnesses were examined as witnesses for the accused Milorad Mrđa's Defense: Mirko Tepić on 1 September 2016 and Salko Osmanović on 1 September 2016.

100. The following witnesses were examined as witnesses for the accused Ranko Mrđa's Defense: Milosav Banjac on 15 September 2016; Gospova Bilbija on 15 September 2016; Milka Mrđa on 15 September 2016 and the accused Ranko Mrđa in the capacity of witness for the Defense on 27 October 2016.

101. The expert witnesses who testified at the main trial pursuant to the Court of BiH's previous order are as follows: Evresa Okanović on 10 March 2016 and 27 October 2016, and Zorica Lazarević on 19 May 2016.

102. The documentary evidence of the Prosecution, the Defense teams for all the four Accused and the Court was adduced and tendered in the case record, the list of which is presented in *Annex* to the present Judgment, which forms its integral part.

II SUBSTANTIVE LAW APPLICATION

103. The Panel has first addressed the application of substantive law, primarily taking into account that, according to the Indictment, the incriminating offense was committed during 1992, 1993 and 1994, when the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY), which was adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY, was in force.

104. Deciding on the application of substantive law and the crime's legal qualification, the Panel was mindful of the principle enshrined in Articles 3 and 4 of the Criminal Code of Bosnia and Herzegovina (CC BiH), and Article 7(1) of the European Convention on Human Rights (ECHR), so by applying those provisions it has found that the accused Goran Mrđa and Milorad Mrđa committed the criminal offense of War Crimes against Civilians under Article 142(1) of the CC SFRY as read with Article 22 of the same Code, and the accused Mile Kokot the criminal offense of War Crimes against Civilians under Article 142(1) of the CC SFRY, of which the Panel found them guilty.

105. Article 3 of the CC BiH provides for the principle of legality, namely that no punishment or any other criminal sanctions may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which no punishment has been prescribed by law (*nullum crimen sine lege, nulla poena sine lege*). However, Article 3 and Article 4 of the same Code shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law (Article 4a of the CC BiH).

106. Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) similarly provides for the principle of legality, and reads as follows:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations.”

107. The referenced provisions provide that, as a rule, the law that was in effect at the time of the crime commission shall primarily apply to the perpetrator of the criminal offense.

108. The referenced principle can be derogated from solely in the interest of the accused persons in a situation where the law has been amended after the criminal offense was perpetrated in the way that the amended law is more lenient to the accused. The Court shall determine in each case concretely which law is the more lenient to the perpetrator. Having taken into account the case law of the Constitutional Court of BiH regarding the application of substantive law, the Panel found it necessary to apply the CC SFRY, as the law which was in effect at the time when the criminal offense was committed, and that, in the concrete case, it is more lenient to the perpetrator, considering the sentence prescribed for the offense at issue.

109. A mere comparison of the texts of the referenced laws, in relation to the concrete case, can provide a certain response solely in case that the new law has decriminalized an act that was prescribed as a criminal offense under the old law, since otherwise the new law is obviously the more lenient law. In a situation where the criminal offense is punishable under the both laws, all the circumstances relevant to the selection of the more lenient law in the concrete case should be determined taking account of all the

punishment-related provisions. In addition, account need to be taken of the provisions concerning criminal sanctions, types and measures and their meting out or reduction, as well as the security measures, accessory punishments, measures substituting the punishment and other relevant provisions concerning the sentence pronouncement.

110. However, it does not suffice to determine which law provides for a larger possibility to render a more favorable judgment, but rather which of them ensures a more favorable outcome for the concrete perpetrator in the concrete case. This clearly ensues from the rule of Article 4(2) of the CC BiH, which stipulates that the law “*more lenient to the perpetrator*” shall apply. Accordingly, it is not excluded that the law providing for a more serious punishment ultimately be the more lenient law to the perpetrator because the application of some of its other provisions leads to a more favorable solution/outcome for the perpetrator.

111. In the concrete case, the law that was effective at the time of the crime commission, the CC SFRY, as well as the currently effective law, the CC BiH, provide for the criminal acts of which the Accused were found guilty as the criminal offense of War Crimes against Civilians. Given the foregoing, clearly there are legal requirements to conduct the criminal proceedings against the perpetrators and to punish them for the referenced criminal offenses.

112. The issue of retroactive application of the criminal code is of exceptional legal importance, and, as such, has been already analyzed and evaluated in several decisions of both the Constitutional Court and the European Court of Human Rights (ECtHR), which have direct implications for the Court of BiH's acting in the war crimes cases, considering that this is a binding national and international case law.

113. In view of the foregoing, and taking into account the positions of the Constitutional Court of BiH, which derogate from the ECtHR's case law since they do not anticipate a review of the application of the more lenient law to the perpetrator in each case individually but rather clearly stipulate that in all cases where the two Codes provide for the same criminal offense the CC SFRY shall apply to the perpetrator, the Panel applied the referenced Code to the concrete case, since this position of the Constitutional Court of BiH is also binding on the Court of BiH.

114. Since the criminal offense of War Crimes against Civilians under Article 173 of the CC BiH charged against the Accused in the concrete case, was provided for in Article 142 of the CC SFRY, pursuant to the case law of the Constitutional Court of BiH concerning the application of substantive law, the CC SFRY needs to be accordingly applied as the law effective at the time when the criminal offense was committed, as well as the law that is more lenient to the Accused, according to the Constitutional Court of BiH.

III STANDARDS OF REVIEW

115. In the course of examining and assessing the evidence tendered at the main trial, the Panel was led by certain basic principles provided for in both the CPC BiH and the ECHR, to be addressed further below.

116. Article 3(1) of the CPC BiH provides that a person shall be considered innocent of a crime until guilt has been established by a final judgment.

117. The purpose of the trial proceedings is to provide for an innocent person to be acquitted, and for a perpetrator of an offense to receive a criminal sanction in legally prescribed proceedings under the conditions provided by the Criminal Code of BiH (Article 2(1) of the CPC BiH).

118. Article 3(1) of the CPC BiH provides for the presumption of innocence, namely that a person shall be considered innocent of a crime until guilt has been established by a final verdict.

119. Procedural presumption of innocence is the so-called provisional presumption (*praesumptio iuris tantum*) which is valid until the opposite has been proved. Due to the adoption of the referenced presumption, an accused is relieved of the burden of proving his/her innocence. The burden of proving the opposite to the presumption of innocence rests with the prosecutor. The presumption of innocence does not only concern the accused's guilt but rather all other substantial elements mutually connected in the term *criminal offense* (the act of commission, unlawfulness or culpability).

120. It has been held, and also confirmed by the ECtHR's case law that, *inter alia*, the presumption of innocence has the following effects:

(i) the accused shall not prove his/her innocence, and the burden of proof rests with the adverse party, that is, the prosecutor, and

(ii) the court must pronounce a judgment of acquittal not only when it is satisfied with the accused's innocence, but also when there is a reasonable doubt about his/her innocence.

One of the direct effects of the presumption of innocence is an explicit legal provision contained in Article 3(2) of the CPC pursuant to which „A doubt with respect to the existence of facts composing characteristics of a criminal offense or on which depends an application of certain provisions of criminal legislation shall be decided by the Court with a verdict and in a manner that is the most favorable for accused.“

121. This is the principle of *in dubio pro reo*, or the principle which favors an accused. The court can consider a fact to be proved based on the evaluation of evidence when it is satisfied with its existence, which must ensue from the evidence adduced at the main trial and when in this regard the Trial Panel has no doubts whatsoever. In addition, all the facts standing *in peius* (to the prejudice) of the accused must be established with absolute certainty, that is, must be proved. If this fails, these facts shall be considered as non-existent. All the facts standing *in favorem* (in favor) of the accused shall be considered as existent even when there is merely likelihood that they exist (the facts not established with certainty). If doubts cannot be removed even after a conscientious evaluation of evidence „*individually and in correlation with other pieces of evidence*“, pursuant to the referenced Article, when in doubt, the Court shall render its decision in the manner more favorable to the accused.

122. The effect of application of the rule of *in dubio pro reo* must always be a judgment rendered „*in favor of the accused*“, which, in case of any doubt in the legally relevant facts provided for in substantive criminal law, includes not only the more lenient punishment when the guilt is proved, but also a judgment of acquittal in cases where a doubt as to

whether the accused indeed committed the criminal offense as charged could not be clarified at the main trial.

123. Along this line also stands the rule of Article 284(c) of the CPC BiH, namely that the Court shall deliver the verdict acquitting the accused of the charges „*if the act with which he is charged does not constitute a criminal offense under the law*” which means, not only in cases where prosecution evidence was not adduced at all, but rather even in cases where evidence would exist but would be insufficient for the court to draw conclusions, based on its evaluation at the main trial, that the facts presented in the indictment exist beyond a doubt.

124. Article 14 of the CPC BiH provides that the Court is bound to study and establish with equal attention facts that are exculpatory as well as inculpatory for the accused.

125. Under Article 6(1) of the ECHR, all courts are bound to “*point sufficiently clear to the bases for their decision.*” Despite recognizing the primacy of national courts in assessing relevant and acceptable facts, this provision also obliges national courts to appropriately review the parties’ submissions, arguments and evidence. In this regard, courts shall review and clarify all significant inconsistencies in the statements of the parties to the proceedings, and indicate any piece of the disputed evidence which is inadmissible, and on what basis.

126. In evaluating the testimony of the examined witnesses, the Panel made efforts to view their testimony in whole, being mindful of both the substance of the testimony itself and the witness’s conduct and behavior during the testimony. A witness's credibility does not depend solely on the extent to which he/she has knowledge about the event he/she testifies about, but also on his/her sincerity, reliability and awareness about his/her obligation to tell the truth after taking a solemn oath before the Court.

127. A witness's testimony need not only be sincere, but also reliable. The Panel took into account that the reliability of a witness's testimony depends on his/her knowledge about the facts, but also that the reliability can be to a large extent affected by the elapsed period of time, vagaries of human perception as well as the traumatic nature of the incident itself about which the witness testifies. The Panel made a comparison between

the facts about which the witness testified and the facts established through the other witnesses and the documentary evidence in order to establish if they were supported or challenged by other evidence in the present case.

128. In addition, the Panel examined the tendered documentary evidence in order to decide on both its reliability and probative value.

129. Witness Examination Records tendered in the case record pursuant to Article 273(2) of the CPC BiH were evaluated by the Panel in connection with all other tendered pieces of evidence.

130. Pursuant to Article 15 of the CPC BiH, the Court is entitled to make a free evaluation of evidence. The Panel has carefully assessed all pieces of tendered evidence, and will evaluate this evidence, in particular the pieces of evidence on which its decision was made, in the section of the Judgment containing the explained factual and legal analysis of the charges standing against the Accused.

IV FINDINGS OF THE COURT – CONVICTING PART OF THE JUDGMENT ENACTMENT CLAUSE

GENERAL ELEMENTS OF THE CRIMINAL OFFENSE

131. The accused Goran Mrđa and Milorad Mrđa are found guilty of the commission of the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1) of the CC SFRY, as read with Article 22 of the same Code, while the accused Mile Kokot is found guilty of the commission of the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1) of the CC SFRY. Article 142 of the CC SFRY 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 subject to killings, torture, inhuman treatment, biological experiments, immense suffering or violation of bodily integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application

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of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy's army or in its intelligence service or administration; forcible labor, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of a property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency, or who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty.”

132. The following general elements of the criminal offense of War Crimes against the Civilian Population ensue from the quoted legal provision:

- i. The act must be perpetrated in violation of the rules of international law and directed against the civilian population, that is, persons taking no active part in the armed conflict, or have laid down their arms, or were placed hors de combat, and who are protected by the provisions of the Geneva Convention relative to the Protection of Civilians in Times of War of 12 August 1949;*
- ii. A violation must be committed during the war, armed conflict or occupation;*
- iii. The act of the perpetrator must be connected with the war, armed conflict or occupation;*
- iv. The perpetrator must order or perpetrate the offense.*

133. Therefore, in order for the referenced criminal offense to exist, it is necessary to determine the international rules applicable during the critical period, and whether the acts of commission constituted a violation of the rules of international law, which points to the blanket character of the criminal offense.

134. Pursuant to Article 142 of the CC SFRY, it is not required (it is not a requirement for the existence of the offense itself) that the perpetrator has knowledge about or intent to

violate an international norm (a violation of blanket norms need not be included in the perpetrator's awareness), but it is rather sufficient that his conduct is objectively a violation of the rules of international law. On the other hand, when it comes to the taking of concrete, individual acts of commission, the perpetrators' subjective relation to the offense must be certainly taken into account. The Court will address the foregoing in referring to the separate acts of commission presented under individual Counts of Indictment.

135. Therefore, the rule of Article 142 of the CC SFRY is, *inter alia*, also based on the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 or the Geneva Convention IV (Convention). The Indictment charged the Accused that the acted in violation of Article 3(1)(a) and (c) of the Convention. The rules contained in Article 3 of the Convention are considered as customary law and the minimum standard from which the belligerent parties should never derogate, and they provide that:

„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:

1. 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 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;”

i. The perpetrator's act must be committed in violation of the rules of international law

136. In terms of the application of international rules at the relevant time, the Panel took into account the arguments contained in the Judgment of the ICTY's Appeals Chamber rendered in *Tadić*, wherein it noted that: „*international humanitarian law is applicable from the beginning of armed conflicts until after the cessation of hostilities...*”.

137. Article 3 of the Convention has been considered as a customary law provision binding on all parties to the conflict, non-international or international, and it was therefore effective at the time and on the site of the events charged against the Accused. The referenced article is common to all Geneva Conventions, namely it is incorporated in all the four Geneva Conventions of 12 August 1949. In addition to being applicable to all kinds of conflicts (international and non-international), this article essentially guarantees certain rights to all persons taking no active part in the hostilities, that is, guarantees to them human treatment and prohibits certain actions, as specified in subparagraphs a) through d) of Article 3 of the Convention.

138. Accordingly, in order to establish a violation of the rules of international law, it is necessary to determine against whom the commission was directed, namely whether the offense was directed against a specific category of persons protected under Article 3(1) of the Convention. In the concrete case, the Panel found that the Accused took criminal acts against civilians.

Civilians

139. In relation to all sections of the convicting part of the judgment, the Panel found beyond a doubt that the accused Goran Mrđa, Milorad Mrđa and Mile Kokot committed the criminal acts against the following civilians-injured parties: Halid Mehić, M.P., Hasan Pašić, Esmā Pašić, Jusuf Ćehić, Aziz Horozović, Zejfo Horozović, Zenad Horozović, K.Z., Mehmed Brakić, Esad Brakić, Rufad Kuburić, Suvad Kuburić, Asim Avdić, Fikret Avdić, Hasib Velić, Omer Drobić, Sefer Drobić, Muharem Jakupović and Tahir Cerić, that is, against the persons protected under the rule of common Article 3 of the Convention.

140. Pursuant to the definition under Article 3(1) of the Geneva Convention IV, protected categories of persons are “*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*“. Therefore, in terms of common Article 3 of the Conventions, a civilian is a person “*taking no active part in the hostilities.*”

141. For a better understanding of both the definition of a “*civilian*” provided in common Article 3 of the Conventions and the phrase “*no active part in the hostilities,*” the Panel also took into account the ICTY's case law, which has defined the referenced phrase.

142. Pursuant to the ICTY's case law, a person is taking active part in the hostilities when he/she partakes in war activities which are “*by their character or purpose, most likely to cause actual harm to manpower or material and technical equipment of the armed hostile forces.*”

143. The Panel established the referenced capacity of the injured parties primarily on the basis of their own statements. At the time when the Accused committed the crime, all injured parties had stayed in either their own houses or someone else's houses located in the Municipalities of Sanski Most and Bihać.

144. The Defense teams also did not challenge the referenced fact considering that, as already stated, the persons concerned were Bosniak civilians who, at the time of the incidents occurrence, were staying in private houses, were unarmed and lived in the territory controlled by the VRS, as the Panel found on the basis of the witnesses' testimonies.

145. Thus, the injured party Halid Mehić testified that, at the time of the critical event, he lived in the village of Skucani Vakuf. The witness stated that he once went to the village of Lušci Palanka to buy some victuals, when he came across the accused Goran Mrđa and that other man, and that they seized the last, small amount of money and several cigarettes he had with him. The injured parties M.P. and Hasan Pašić were, together with members of their families, staying inside M.P.'s house in the village of Skucani Vakuf; the injured parties Aziz Horozović, Zejfa Horozović, Zenad Horozović and K.Z., along with

Fehret Horozović, were staying at their family house in the village of Naprelje, Municipality of Sanski Most; the injured parties Mehmed Brakić and Esad Brakić were in their house along with members of their families in the village of Gorice, Municipality of Sanski Most; the injured parties Rufad and Suvad Kuburić, with their mother, and Asim Avdić, Fikret Avdić and other persons, were staying at Teufik Velić's house in the village of Gorice, where they had taken refuge from the village of Skucani Vakuf. When it comes to the murder of victim Hasib Velić by the accused Goran Mrđa, it has been found that, on the critical occasion, the victim was staying, along with his family members, at Rasim Velić's house, also in the village of Gorice. At the critical time, the injured party Omer Drobić was also nearby his house in the village of Pobježje. At the time when the accused Goran Mrđa beat him and treated him inhumanely, the injured party Sefer Drobić was doing compulsory work service at the Grabež site. The injured party Muharem Jakupović was, along with his family and several neighbors, at his house when the accused Goran Mrđa and Milorad Mrđa undertook the prohibited acts against him and members of his family. Ultimately, when it comes to victim Tahir Cerić, who was killed by the accused Mile Kokot, it has been found that, at the critical moment, he was staying at his house, that is, in its front-yard in the village of Fajtovci, Municipality of Sanski Most.

146. In view of the foregoing facts, the Panel has found that, in the concrete case, the persons at issue were civilians taking no active part in the hostilities, that is, they were a category of persons protected under the provisions of common Article 3 of the Convention.

ii. The violation must be committed in time of war, armed conflict or occupation

147. The second general element of the criminal offense of War Crimes against the Civilian Population which needs to be proved is that the rules of international law were violated in time of war, armed conflict or occupation.

148. The international case law has held that an armed conflict is said to exist "*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*".⁴

⁴ *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, case No. IT-96-23 and IT-96-23-1-A, Judgment of 12 June 2002.

149. In correlating the violations of international law provisions and the existence of armed conflict, it should be stressed that international humanitarian law still applies “*in the whole territory of the warring states, or in case of internal armed conflicts, the whole territory under the control of a the whole territory under the control of a general conclusion of peace or, in the case of internal armed conflicts, until a peaceful settlement is achieved.*”⁵

150. In the concrete case, the Defense contested the existence of an armed conflict in the Municipality of Sanski Most during the period to which the Indictment referred. Thus, Counsel for the accused Goran Mrđa submitted that, at the time, the Municipality of Sanski Most was under the jurisdiction of bodies of the then Serb Republic of Bosnia and Herzegovina, subsequently Republika Srpska, as well as that, according to the witnesses, there were no armed conflicts in the Sanski Most area.

151. Many testimonial and documentary evidence was tendered in relation to the referenced armed conflict between the ARBiH and VRS forces in the wider areas of Sanski Most and Bihać, which clearly showed that, during 1992, 1993 and 1994, combat operations were ongoing between the ARBiH and VRS units in the referenced territory, during which the acts charged against the Accused were committed. The evidence tendered in relation to the foregoing also includes the Decision of the Presidency of the RBiH to Proclaim the State of War in the BiH territory of 20 June 1992⁶, and the Decision of the BiH Presidency to Terminate the State of War of 22 December 1995.⁷

152. Many witnesses testified at the main trial about combat activities, including Halid Mehić, M.P., Z.P., H.P., Hasnija Ćehić, Sulejman Ćehić, Esmā Pašić and many others.

153. Witness Halid Mehić testified that, after being invited in the spring 1992 to regulate his salary and employment issues, he went to the village of Palanka, where he saw many soldiers. A soldier approached him and told him that they were going to hit Krupa, and that

⁵ *Kunarac et al.*, Appeals Chamber Judgment, paras. 57 and 64. In para. 64, the Appeals Chamber has held that: “the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”

⁶ Prosecution of BiH Exhibit T-18.

⁷ Prosecution of BiH Exhibit T-19.

he should go back home. The witness stated that soldiers wore both camouflage uniforms and the former JNA uniforms. Once the witness had returned home, a man from the village of Behremi arrived in his village to pass them the commander's order that all weapons should be collected and surrendered. In this regard, witness Mehić stated that all persons suspected of being in possession of arms were transported to Manjača. The movement of the Bosniak population was difficult, as they were running away from armed persons.⁸

154. Witness M.P. described a situation following his return from Slovenia to the hamlet of Pašići, in the village of Skucani Vakuf. There was a state of war in the village. Serb soldiers came to the village to collect weapons which the population did not have. There were hundreds of soldiers. The life was difficult at the time; they were not allowed to go anywhere. There was a van by which men were rounded up and transported to camps. The witness stated that „it was a life in fear.” They were not able to obtain supplies; they had no electricity; they dared not move around the village in the evenings because of the shooting, which was particularly coming from the village of Stanići, located up above the witness's village.⁹

155. Witness Z.P. remembers that there was no war up until 26 May 1992, when Serb soldiers surrounded the village intending to seize weapons, which no one in the village possessed at all. Having collected all weapons from the Bosniak population, they took men to camps for interrogation. Their food supplies lasted up until July 1992, when everything was gone. They would hear shooting every night since the village of Skucani Vakuf was surrounded by the settlements inhabited by the Serb population; most of the shooting came from the village of Gornji Lipnik.¹⁰

156. Witnesses H.P. and Hasnija Ćehić also confirmed that Serb soldiers visited houses in Bosniak villages and collected weapons, and that they were surviving on what they could produce on their own. Witness Hasnija Ćehić stated that individuals were called out to report via Radio Sana, whereupon they were taken to a camp.¹¹

⁸ Transcript of witness Halid Mehić's testimony of 13 April 2015.

⁹ Transcript of witness M. P.'s testimony of 27 April 2015.

¹⁰ Transcript of witness Z. P.'s testimony of 27 April 2015.

¹¹ Transcript of the testimony of witnesses H. P. and Hasnija Ćehić of 27 April 2015 and 12 May 2015.

157. As to the situation in the village of Pobrježje, which was at the time within the Municipality of Bihać, witnesses Omer and Sefer Drobčić stated that armed Serb soldiers were present in the village, and that they held check points wherefore the villagers could not go anywhere. The witnesses also stated that abandoned Bosniak houses were moved into by Serb soldiers during 1993. Thus, the witness remembered that the accused Goran Mrđa moved in Refik Kamber's house; the accused Milorad Mrđa moved in Muharem Drobčić's house and the accused Mile Kokot in the house owned by one Mahmut. In addition, witness Sefer Drobčić stated that soldiers wandered around the villages searching for alcohol, and that their IDs were checked daily at the check points controlled by members of the Serb police and military, who were armed with automatic and semi-automatic (papovka) rifles. A total of 90% of the Bosniak population left the village of Pobrježje during 1992, and Serbs moved in their abandoned houses.¹²

158. The issue of whether an armed conflict is international or non-international in character is important in terms of proving certain criminal offenses prohibited under international humanitarian law. Since the rules of common Article 3 of the Geneva Conventions encompass the essence of the fundamental norms, they are always applicable, in any circumstances, to all parties, and shall not be derogated from. Therefore, when the Accused are being charged with (the commission of) the offense under Article 142(1) of the CC SFRY on the basis of violations of common Article 3 of the Conventions, such as in the present case, it is irrelevant if the armed conflict was international or non-international in character.

159. In addition to common Article 3, certain articles of the Convention have also acquired the status of customary law and are now being applied to both international and non-international armed conflicts.¹³

160. The prosecution evidence was not aimed at proving the armed conflict character. Considering that the underlying elements of the criminal offense charged against these Accused do not imply international character of the armed conflict, the Prosecution as a body with which the burden of proof rests, did not at all aim its efforts at proving it, the

¹² Transcript of the testimony of witnesses Omer and Sefer Drobčić of 21 December 2015.

¹³ The ICTY's Study on the Rules of Customary International Law, 2005. (*ICRC Customary International Humanitarian Law Rules and Study*).

Panel was thus not under obligation to consider the armed conflict character in deciding whether the criminal offense and the criminal responsibility of the Accused existed indeed.

161. When it comes to Defense's contesting the existence of the armed conflict, the Panel recalls the fact that, in the proceedings before the ICTY, several defense teams contested (unsuccessfully) the existence of armed conflict in relation to the concrete crime charged against the Accused, claiming that the crime occurred irrespectively of the armed conflict (*Kunarac, Blaškić, Tadić...*). However, "(it) need not be proved that there was an armed conflict in each and every square inch of the general area". Crimes must be linked to the armed conflict by their nature or effects so they could be treated as war crimes. However, in order to treat an individual offense as a war crime, it need not necessarily coincide, in terms of time and space, with the effective conflict, and it can be committed beyond an active combat (*Vasiljević and Rutaganda*). The mere crime need not necessarily be of a "military" nature, and it need not necessarily form part of a policy or officially promoted practice, design, etc.

162. An armed conflict is said to exist "*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.*"

163. There is no necessary correlation between the areas where the actual fighting is taking place with the geographical reach of the laws of war. The laws of war apply in the whole territory of the warring states, or in the whole territory under the control of a party to the conflict, whether or not actual combat takes place there, and continue to apply until a general conclusion of peace, or in the case of internal armed conflicts, until a peaceful settlement is achieved. A violation of the laws and customs of war may therefore occur at a time and in a place where no fighting is actually taking place. Specifically, there can be close relation between the acts of the accused and the armed conflict even if crimes were not committed at the time of actual fighting or in the mere place where they were committed. In order to have this requirement satisfied, it suffices, for example, that the crimes are closely related to the hostilities taking place in the other parts of the territory controlled by the parties to the conflict.¹⁴

¹⁴ Judgment of the Court of BiH in the case of *Jadranko Palija*, No. X-KR-06/290 of 27 November 2007.

164. In order to determine if a specific offense is sufficiently related to the armed conflict, the Panel took into account, *inter alia*, the following factors: the fact that the perpetrators of the crime are combatants; that the victims are not combatants; that the victims belong to the opposite party; that it can be considered that the offense at issue is committed in furtherance of the ultimate goal of the military campaign; that the commission of crime transpires from the perpetrators' official duties or falls in their context; and that the victims' difficult position was caused by the hostile forces' activity.

165. Undoubtedly, the laws of war can often concern the offenses which, admittedly, were not committed on the site where operations were conducted, but which are essentially related to the conflict. The laws of war apply to two types of criminal offenses. The laws of war do not necessarily replace the laws effective in time of peace: they can attribute to them the necessary elements of protection which must be provided to victims in time of war.

166. It clearly ensues from the referenced evidence related to the time period which preceded the period and the acts encompassed by the Indictment, including the critical period itself, that there was an armed conflict in the BiH territory, concretely in the wider area of the Sanski Most and Bihać municipalities, between the armed forces of the VRS and the ARBiH, wherefore the Panel finds this requirement proved beyond a reasonable doubt. The Panel recalls again that the elements of armed conflict in relation to these two parties have been proved in numerous judgments rendered by both the ICTY and the Court of BiH.

iii. The act of the perpetrator must be linked to a war, armed conflict or occupation

167. One of the requirements under Article 142 of the CC SFRY is that there must be a link between the accused's offense and the armed conflict. Therefore, in order to prove that the referenced element exists, it is necessary to review the Accused's status during the critical period, as well the existence of correlation and dependence between the offense commission and the existence of the above reasoned armed conflict. Specifically, the Panel has examined whether "*the existence of the armed conflict has 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."¹⁵

168. This requirement is satisfied if the crime was committed in furtherance or at least under the guise of the situation arising from the armed conflict.

169. The ICTY's Trial Chamber has noted in para. 568 of the referenced Judgment the following: "... *Humanitarian law continues to apply in the whole of the territory under the control of one of the parties, whether or not actual combat continues at the place where the events in question took place. It is therefore sufficient that the crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. The requirement that the act be closely related to the armed conflict is satisfied if, as in the present case, the crimes are committed in the aftermath of the fighting, and until the cessation of combat activities in a certain region, and are committed in furtherance or take advantage of the situation created by the fighting ...*"¹⁶

170. The existence of nexus between the acts committed by the Accused and the armed conflict can be determined on the basis of several factors. The factors may include the following:

- *the fact that the perpetrator is a combatant;*
- *the fact that the victim is a non-combatant or the fact that the victim is a member of the opposing party;*
- *the fact that the act may be said to serve the ultimate goal of a military campaign;*
- *the fact that the crime is committed as a part or in the context of the perpetrator's official duties.*¹⁷

171. Accordingly, the status of the referenced Accused at the time of the crime commission is a decisive fact, namely the fact that the accused Goran Mrđa, Milorad Mrđa and Mile Kokot committed the offense as members of the VI Sana Brigade of the VRS, that is, the membership of the Accused in the referenced formation and its activities in the

¹⁵ *Kunarac et al.*, case No. IT-96-23 i IT-96-23/1-A, Judgment of 12 June 2002, para. 58.

¹⁶ *Kunarac et al.*, case No. IT-96-23 and IT-96-23/1-A, Judgment of 12 June 2002, para. 568.

¹⁷ Appellate Judgment in *Kunarac et al.*, para. 59.

Sanski Most and Bihać municipalities indeed affected their ability to commit the criminal offense, the manner in which it was committed and the goal with which it was committed.

172. The *nexus* between the accused Goran Mrđa, Milorad Mrđa and Mile Kokot and the armed conflict at the time of commission of the criminal offense of War Crimes against the Civilian Population is their membership in the VI Sana Brigade of the VRS at the critical time as proved by the documentary evidence tendered by the Prosecution in order to prove the status of the referenced Accused, namely: the unit and personal records issued by the Ministry of Labor and Protection of Veterans and Disabled Veterans of the Republika Srpska for the accused Goran and Milorad Mrđa¹⁸; Certificate of compulsory military service for the accused Goran Mrđa¹⁹; a draft card issued to the name of Goran Mrđa²⁰; and the witnesses' testimony confirming that the Accused, along with Mile Kokot, were members of one party to the armed conflict which took place in the wider areas of Sanski Most and Bihać.

173. Thus, witnesses Rufad and Suvad Kuburić testified that, in the house where they were present on the critical occasion, they saw Goran Mrđa and Milorad Mrđa in camouflage uniforms, armed with automatic rifles, while the accused Goran Mrđa also had a pistol. Witnesses Omer and Sefer Drobić stated that the accused Goran and Milorad Mrđa were also among the Serb soldiers who had settled in their village. In relation to the injured party Tahir Cerić's murder, witnesses N.V. and D.Š. stated that, on the critical day, soldiers were gathered and lined up in the village of Fajtovci, and that they were all mobilized at the time. Witness Almaz Cerić confirmed seeing Mile Kokot with a rifle on the critical day. The witness also confirmed that Ratko (Radomir Vukičević) told him that, during the line-up, the commander called out Mile Kokot and told him that he had been informed about the killings of civilians in Fajtovci.²¹

174. In testifying in the capacity of a Defense witness, the accused Goran Mrđa stated that he was mobilized in 1992, but that he was at the frontlines also during 1993 and 1994.²²

¹⁸ Prosecution of BiH, Exhibits T-29 and T-31.

¹⁹ Prosecution of BiH, Exhibit T-58.

²⁰ Prosecution of BiH, Exhibit T-57.

²¹ Transcript of witness Almaz Cerić's testimony of 15 February 2016.

²² Transcript of the hearing of the accused Goran Mrđa in the capacity of a Defense witness, 14 July 2016.

175. The Panel accordingly finds that the Accused committed all the acts in the capacity of members of the VI Sana Brigade of the VRS, which is a specific position that enabled them to perpetrate the referenced criminal offenses at the time and in the place as indicated in the Judgment enactment clause, namely inhuman treatment, torture, rape and murder, which acts are directly linked to the existence of war and armed conflict.

iv. The perpetrator must order or perpetrate the act

176. The Panel finds, on the basis of the tendered evidence, that the Accused committed the criminal offense of War Crimes against Civilians with direct intent, knowingly and willingly.

177. The last general element of the criminal offense of War Crimes against Civilians is that the perpetrator must either directly perpetrate or order other persons to perpetrate an unlawful act, in order to be held responsible as a direct perpetrator of the offense, as charged against the Accused under the referenced Indictment. Having examined all presented evidence, the Panel found that, in the concrete case, it has been proved that the Accused indeed committed the acts as follows: the accused Goran Mrđa committed the acts in Sections 1a), b) and c), 2, 3a), b), c) and d), 4 a) and b) and 5 of the convicting part of the Judgment enactment clause; the accused Milorad Mrđa committed the acts in Sections 2, 3b) and 5 of the convicting part of the Judgment enactment clause; and the accused Mile Kokot committed the act in Section 6 of the convicting part of the Judgment enactment clause, whereby this element of the criminal offense of War Crimes against Civilians was also satisfied, as committed by the accused Goran Mrđa and Milorad Mrđa as co-perpetrators along with other persons, except for the act in Sections 4a) and b) which was committed by the accused Goran Mrđa as a perpetrator, while the accused Mile Kokot committed the criminal offense of murder under Section 6 as a perpetrator.

178. The purpose of the acts committed by the Accused personally was serious deprivation of fundamental rights, such as the right to life, freedom and safety, which is in violation of the rule of Article 3(1) of the Geneva Convention IV, which is inadmissible against unarmed persons or persons who do not form part of armed forces, whereby they violated the rules of international law beyond a doubt. The acts were committed during the armed conflict of which the Accused were aware and took part in beyond a doubt.

INHUMAN TREATMENT as the criminal offense of War Crimes against the Civilian Population

179. The Panel found the accused Goran Mrđa guilty of inhuman treatment of civilians Halid Mehić, M.P., Z.P., Mina Pašić, Hasan Pašić, Suvada Pašić, Hidajeta Pašić, Esmā Pašić, Rasim Velić, Seida Velić, Omer Drobić, Sefer Drobić, and the accused Goran Mrđa and Milorad Mrđa guilty of inhuman treatment of civilians Rufad Kuburić, Suvad Kuburić, Asim Avdić, Fikret Avdić and Muharem Jakupović.

180. Prior to providing any individual explanations of the Sections of the convicting part of the Judgment concerning the inhuman treatment accorded by the Accused to the civilians, the Panel will briefly address the elements of the criminal offense of inhuman treatment as a war crime against the civilian population.

181. In the case conducted against Zijad Kurtović²³, the Trial Panel indicated that the term “inhuman treatment” focuses on the importance of ensuring of treatment with humanity. The Panel defines inhuman treatment as „*any treatment which does not involve such a conduct*“, that is, “inhuman treatment” is defined by the Court in the negative.

182. Due to such a definition, different physical acts encompassed by the term were not specified concretely. The Trial Panel in *Kurtović* referred to different legal authorities in order to find a clear definition.²⁴ Pursuant to the position taken by the ICTY and the European Court of Human Rights (ECtHR), the Court of BiH concluded that the following elements constitute inhuman treatment:

- *intentional act or omission;*
- *committed against a protected person, which:*
 - *causes serious mental or physical suffering or injury, or*
 - *constitutes a serious attack on human dignity.*

²³ The Court of BiH, Judgment in *Zijad Kurtović*, No. X-KR-06/299 of 30 April 2008, p. 31.

²⁴ *Ibid*, p. 31-35.

183. One of the definitions of inhuman treatment in the ICTY's case law has been given by the Trial Chamber in *Čelebići*, which found that *“inhuman treatment is intentional treatment which causes serious mental or physical suffering that does not reach the requisite level of severity to qualify as torture. In view of the foregoing, the Trial Chamber finds that cruel treatment is an intentional act or omission which, judged objectively, is deliberate and non-accidental, which causes serious mental and physical suffering or constitutes a serious attack on human dignity. As such, it carries an equivalent meaning and therefore the same residual function for the purposes of common Article 3 of the Statute, as inhuman treatment does in relation to grave breaches of the Geneva Conventions.”*²⁵

184. The Appeals Chamber in *Kordić and Čerkez* has added that *„inhuman treatment under Article 2 of the Statute is intentional act or omission against a protected person, which causes serious mental and physical suffering or constitutes a serious attack on human dignity“*.²⁶

185. Concrete examples from the ICTY's case law include several common findings from the above referenced case of *Čelebići*. The Trial Chamber in the case found in one segment thereof that *“the act of hitting an individual that is so seriously injured that he is unable to stand, necessarily entails, at a minimum, a serious affront to human dignity. Accordingly, on the basis of the foregoing facts, the physical mistreatment constitutes the offense of inhuman treatment”*.

186. When it comes to determining if an offense can fall under the above referenced definition, the Trial Chamber in *Krnjelac* notes that *“The assessment of the seriousness of an act or omission is, by its very nature, relative. All the factual circumstances must be taken into account, including the nature of the act or omission, the context in which it occurs, its duration and/or repetition, physical, mental or moral effects of the act on the victim and the personal circumstances of the victim, including age, sex and health. The suffering inflicted by the act upon the victim does not need to be lasting so long as it is real and serious.”*²⁷ Such a view was also presented by the Trial Chamber in the Trial

²⁵ Trial Judgment in *Čelebići*, para. 552.

²⁶ Trial Judgment in *Kordić and Čerkez*, of 26 February 2001.

²⁷ Trial Judgment in *Milorad Krnjelac*, of 15 March 2002, para. 131.

Judgment in *Kunarac*, para. 501, in the context of the criminal offense of outrages upon personal dignity.

187. In its hitherto case law, the Court of BiH has indicated certain examples of the acts constituting inhuman treatment including, *inter alia*, the questioning techniques such as: standing against the wall in a „stressful position“; subjecting a person to noise, or depriving a person from sleep or food; infliction of serious physical, mental or moral suffering, such as for e.g. beating, causing suffering by subjecting prisoners to electric-shocks; causing pain and burns, convulsions, spasms and scars; causing fear in victims and bringing victims to position to beg for mercy. The Court of BiH has stressed, however, that in assessing whether a concrete act can qualify as inhuman treatment, all factual circumstances must be taken into account, including: the nature of act or omission, the context in which the act occurred; its duration and/or repetition; physical, mental or moral effects on the victim; victim's personal circumstances, including age, sex and health.²⁸

188. In the case of *Nikola Andrun*²⁹, the Appellate Panel of the Court of BiH has, *inter alia*, also taken into account Article 2(b) of the ICTY Statute, the ICTY's case law, Article 7(k) of the Rome Statute, the Geneva Conventions and the European Convention on Human Rights (ECHR), in order to fashion the definition of the criminal offense of “inhuman treatment”. The Court concluded that the definition of inhuman treatment is “*both precise and flexible. Flexibility is required because it is impossible to anticipate all ways in which future torturers can cause pain and damage.*” The Court found that a plurality of acts constitute inhuman treatment, including: attacks on civilians, inhabited areas, individual civilians or persons placed *hors de combat*; non-selective attacks causing injuries on civilians, all of which constitute the gravest violations of human rights and freedoms, attacks on civilians during war, armed conflict or occupation, in violation of the rules of international law.³⁰

189. The Court of BiH has found that the following elements are required for proving the subjective intentional inhuman treatment:

²⁸ Trial Judgment in *Kurtović*, p. 31-34.

²⁹ Appellate Judgment in the case, p. 38.

³⁰ *Ibid*, p. 39.

- *the accused must be aware of his acts*³¹
- *the accused must want the commission of the act,*³² *and*
- *the accused's intent must be directed at degradation of human dignity of victims,*³³ *discrimination of victims, collection of information or punishment of victims.*³⁴

Section 1 a) of the convicting part of the Judgment enactment clause

190. This Count of the Indictment charged the accused Goran Mrđa with according inhuman treatment to the injured party Halid Mehić, in the way that, *along with a person he knew, armed, in the evening hours of 10 April 1993, in the village of Skucani Vakuf, Municipality of Sanski Most, on a meadow located near the village of Skucani Vakuf, from the direction of the Behremi village, he stopped Bosniak civilian Halid Mehić, pointed a pistol at him and forced him to lay down on the ground, leaned the pistol against Mehić' temple while pressing his neck with the other hand holding a forked item and thus suffocating him, as a result of which the injured party subsequently vomited blood, while simultaneously questioning him about sheep owners in the village; seized from him the amount of 25 marks that he had with him; cursed his mother and told Mehić that his per diem had to be 500 marks; thereupon, he threatened him with death, asking the other person if he was going to give him a round; then they forced the injured party to take them to the hamlet of Pašići; and along the way, Goran Mrđa held his pistol pressed against the injured party's back, all of which caused in Halid Mehić a great fear and anxiety for his life, due to which he felt serious physical and mental pain and suffering.*

191. The injured party Halid Mehić³⁵ personally gave evidence about the circumstances referred to in this Count of the Indictment. The injured party testified that, at the critical time, he found himself near the village of Behremi on the way back to his home from the village of Lušci Palanka, where he had gone to buy some groceries. He had met Jusuf Handanagić there, and went with him to visit neighbor Mile Momčilović, where they both sat down to have a brandy. The injured party stated that, while they were sitting by a hedge, two men in civilian clothing approached them from behind, introduced themselves as two Muslims fleeing from Prijedor, and asked them how to reach the place of Krupa.

³¹ *Vrdoljak*, Trial Judgment, p. 27-28 *Sakić*, Trial Judgment, p. 13.

³² *Vrdoljak*, Trial Judgment, p. 27-28, *Sakić*, Trial Judgment, p. 13.

³³ *Vrdoljak*, Trial Judgment, p. 27-28.

³⁴ *Anrdun*, Appellate Judgment, p. 40.

³⁵ Transcript of witness Halid Mehić's hearing of 13 April 2015.

The injured party stated that he had realized that something was wrong, and therefore immediately headed off towards his house. When he went down to the road, the same two men caught up with him. One of these men leaned a pistol against his temple ordering him to lie down on the ground, touching Mehić's neck with a hard, metal object due to which he (Mehić) subsequently vomited blood. This person asked Mehić about sheep owners in the village, and the injured party mentioned to him several persons, including Hasan Pašić, Ibrahim Alihodžić, Sefer Pašić, whereupon they asked him to describe these persons' physical appearance. These men thereupon asked him if he had any money with him; when the injured party responded that he had 25 marks only, that person cursed his mother, seized the money from him, told him that his per diem had to be 500 marks, and then also took from him a half of the carton of cigarettes. The person who had pointed the pistol at him was short and had a short haircut, which is why he is supposedly also called Kinez (Chinese); the other person was taller, blond, slimmer, and stood aside while the first one held the pistol pointed at the injured party. The black-haired person asked the blond one if he would give him (the injured party) a bullet, and the blond one responded that the man was OK and that he should not harm him. Thereupon, they forced the injured party, under the threat of pistol, to take them to the hamlet of Pašići. It was dusk, and the injured party saw his neighbors running to their homes. These two men also saw this and then released the injured party, who also escaped to his home.

192. The injured party learned from his son that the black-haired short person who had stopped him on the critical occasion along with the other person was, in fact, the accused Goran Mrđa, whom his son had known even from before the war, from the school, where he had also caused problems and mistreated other children. The injured party himself saw Goran Mrđa at frontlines, while working in the labor detail, and remembered that the Accused wore a camouflage uniform on such occasions.

193. When the injured party-witness Mehić was presented with the statement he gave during the investigation, wherein he indicated that the critical incident had occurred in May 1992³⁶, the witness stated that it was actually in 1993, considering that, after this incident, he went to frontlines under compulsory work service order, where he used to see Goran Mrđa, Mile Kokot and their superior officer Neđo. The witness remembers that, once, while

³⁶ Exhibit T-1 – Witness Examination Record for Halid Mehić, No. T20 0 KTRZ 0006582 13 of 24 September 2014.

-serving his compulsory service, the accused Goran Mrđa brought a knife close to him, wherefore others laughed at him.

194. In relation to the occurrence of referenced incident, the Panel found, on the basis of testimony of the injured party Halid Mehić, as well as on the witnesses' testimonies in relation to Counts 1b) and 1c), that the incident indeed took place in 1993, more specifically, on 10 April 1993, considering the development of events with the injured party Halid Mehić after the incident, as well as the fact that the injured party stated that, in 1994, he went to Travnik in a convoy, and the fact that the relations between Bosniaks and Serbs in the Municipality of Sanski Most were worsening since mid-May 1992, during which period the injured party was called to work at a mine in Bosanska Krupa. The injured party also stated that the referenced incident took place in springtime, and that the witness M.P., Z.P. and the others who gave evidence about the incident-related circumstances referred to in Count 1b) confirmed that it occurred on Saturday evening of 10 April 1993, which was a market day when certain villagers, mentioned by the injured party, had sold their sheep and were therefore attacked at their homes on that very night. The foregoing will be comprehensively explained further below.

195. As indicated above, the injured party did not know the Accused at the moment when the Accused and the other person unknown to the injured party undertook the referenced act against the injured party. However, once he had returned to his home, the witness immediately recounted to his sons and parents what he had experienced, and described the physical appearance of one of the persons who had stopped him on his way home. When the witness described the Accused to his son as a short person with black short haircut, at around age 20, his son told him that it could not be any other person but Goran, also known as Kinez, whom he had known from the school days as a problematic person who had mistreated others.

196. As a further confirmation of the injured party's statement that it was indeed Goran Mrđa, the Panel took into account the injured party's hearing testimony. The injured party explained that, after the critical occasion, he had several more encounters with the Accused. Thus, the witness remembers that he met the Accused in a store, when the Accused bought a beer to him too in order to treat him, but the injured party told him „*I will not drink your beer*“ and smashed that bottle of beer; the Accused told him that he had

sent his son to Travnik, whereupon the injured party turned around and told the Accused to ask a teacher if his son had indeed gone to Travnik, at which moment the Accused hit him with an ashtray. Dragan Vukša was also present on the referenced occasion.

197. Witness Dragutin Vukša was examined in the capacity of a witness for the accused Goran Mrđa's defense. The witness testified that, during the war, he had a small store where both his aunt and a neighbor had worked, and that he came to know the Accused a bit more during the war. In relation to the incident the injured party Halid Mehić mentioned in his testimony, witness Vukša stated that he had no information that the Accused had mistreated any Bosniak whatsoever, and that it never happened in his store that any person had hit anyone with an ashtray.

198. In relation to the foregoing, the Panel could not consider witness Dragutin Vukša's testimony as true and reliable in relation to the injured party's statement that he had once encountered the Accused, and that on this occasion the Accused hit him with an ashtray, considering that it was proved several times (to be explained further below), that the accused Goran Mrđa was notorious for mistreating the Bosniak population in the Sanski Most municipality, and also because witness Vukša testified that he had just occasionally visited his store, and thus could not be aware of everything that was going on there, particularly given his explanation that he had been mobilized and spent most of the time at frontlines.³⁷ Ultimately, the incident about which witness Vukša gave evidence is irrelevant in relation to the incident charged against the Accused under this Count of the Indictment.

199. On the other hand, it is clear that, in case that the injured party Halid Mehić did not tell the truth in relation to the Accused's attack on him with an ashtray, the injured party would not have knowingly and willingly stressed that Dragutin Vukša was also present on the referenced occasion, considering his expectation that the witness would confirm his statement. This only supports the Panel's finding that the referenced part of witness Vukša's testimony is untrue.

200. The injured party Halid Mehić's statement that the Accused and the person unknown to him stopped him in the village of Behremi is also confirmed by witness Smail Mehić's statement, which was read out at the hearing, because the witness was severely

³⁷ Transcript of witness Dragutin Vukša's testimony of 9 June 2016.

ill and therefore could not testify before the Trial Panel. Witness Smail Mehić³⁸ indicated in his statement that on an identified day, in the village of Lušci Palanka, he saw young men from the village of Lipnik drinking, including one Miro, his son Bato and „one Goran who resembles a Gypsy, and who is also known as Kinež“; and that the witness thereupon went back home to the village of Skucani Vakuf on foot. At dusk, the witness heard from his house the singing of persons passing down through the village of Behremi, and concluded by voices that those men were on their way to the village of Pašići; shortly thereafter, he heard two pistol shots and the screaming of women coming from Sefer Pašić's house. On the following day, the witness learned that his neighbor Sefer Pašić was wounded on the previous night, and that the above mentioned persons visited his house.

201. The Defense for the accused Goran Mrđa challenged the injured party Halid Mehić's credibility, indicating that the injured party was a „snitch“ who had informed looters which villagers had money, and thus corroborated with them, and had motives to give false evidence. However, an issue arises as to why the injured party would falsely incriminate the Accused considering that he was personally mistreated and ultimately injured in an encounter with the Accused and the person he knew, and that thereafter he had to live and still lives with his neighbors who had also suffered the effects of inhuman treatment accorded to them by the accused Goran Mrđa. Due to the foregoing, the Panel could not accept the Defense's objection.

202. The Defense also referred to the section of the injured party's testimony concerning the blow with an ashtray which the injured party received from the Accused in the store, with which incident the injured party connected witness Dragutin Vukša. According to the Defense's interpretation, the injured party received the blow in Dragan Vukša's store. It is important to underline that, in the referenced section, the Defense erroneously referred to the testimony of witness Nenad Vukša, who gave evidence about the incident described in Count 6 of the Indictment.³⁹ In this regard, the Panel recalls the testimony of the injured party Halid Mehić, who stated that Dragan Vukša was present, rather than the incident occurred in his store, wherefore the Defense's objection is ill-founded. The Panel addressed the Defense's objections concerning the blow given by an ashtray even though the Accused was not charged with this incident considering that this part of the injured

³⁸ Exhibit T- 6 – Witness Examination Record for Smail Mehić, No. T20 0 KTRZ 0006582 13 of 21 August 2014, p. 3.

³⁹ Closing argument of the Defense for the accused Goran Mrđa, p. 11.

party's testimony is related to the accused Goran Mrđa's identification as one of the persons who had come across the injured party on the road to the village of Behremi.

203. The Defense further objected that the identification during the investigation was unlawful since it cannot be proved, on the basis of the identification record, if the identification procedure was conducted in a lawful manner, as well as that it is obvious that, during the investigation and just before the main trial, the witnesses were instructed about what they should say and at whom they should "point" their finger. With regard to the date when the referenced charged act took place, the Panel has already explained that it occurred on 10 April 1993, namely that the incident could not have occurred a year before because at the time, in 1992, there were no war activities in the Municipality of Sanski Most, the movement of Bosniaks was not restricted, and that the witness himself stated that, in 1994, he went to Travnik in a convoy. In relation to the complaint of the investigative identification record lawfulness, the Panel refers to Article 85(3) of the CPC BiH, which prescribes that *„If necessary to ascertain whether the witness knows the person or object, first the witness shall be required to describe him/her/it or to indicate distinctive signs, and then a line-up of persons shall follow, or the object shall be shown to the witness, if possible among objects of the same type“*. A review of the person identification record through photos, No. T20 0 KTRZ 0006582 13 of 4 December 2014⁴⁰ by the injured party Halid Mehić, clearly showed that the witness first provided a verbal description of the physical appearance of the two soldiers who had stopped him and demanded that he take them to the hamlet of Pašići, as follows: *„One of them was black haired and short. He was young, at around age 20, with darkish complexion, and had a short hair-cut. The other one was blond, with slightly longer hair, somewhat taller and slimmer than the first one, even though the first one was not that chubby either.“* The injured party was thereupon presented with several photos, and he selected photo No. 3, stating that it depicts the person who had mistreated him on the critical occasion, and put his signature below the accused Goran Mrđa's photo.

204. The Panel is satisfied that the accused Goran Mrđa indeed committed the criminal acts referred to in this Count based on both the injured party Halid Mehić's testimony and the other witnesses' evidence given in relation to the circumstances addressed in Counts 1b) and 1c), which are closely linked with the incident covered by this section of the

⁴⁰ Exhibit T-1, p. 3.

Judgment enactment clause, given that the incident with the injured party Halid Mehić preceded the other events with regard to which the Panel will present its findings further below.

Section 1 b) of the convicting part of the Judgment enactment clause

205. Under this Count of the Indictment, the accused Goran Mrđa was charged with inhuman treatment of the civilians present in M.P.'s house in the night of 10 April 1993, in the way that, along with the person he knew, armed, on 10 April 1993, in the evening hours, in the village of Skucani Vakuf, Municipality of Sanski Most, after they had let the injured party Halid Mehić go home, *they entered M.P.'s house, where at that moment Bosniak civilians were gathered, namely M. P., his wife Suvada Pašić, Hasan Pašić, Mine Pašić, their son Z.P., his wife H.P., Sulejman Ćehić and his wife Hasnija and their minor children, whereupon one of them grabbed Hasan Pašić's chest in the house corridor, while the other broke a lamp hand-held by Mina Pašić, threatening them to hand him over their money; whereupon, one of them hit M.P. in his abdomen, took him out of the house, threatening him with a pistol, while the other person threatened that he would throw a hand grenade; and one of them forcibly took M.P. to Hasan Pašić's house, searched it and, having found nothing there, returned to M.P.'s house, where the two men seized money and golden jewelry from all the persons present in the house, threatening them they should not leave the house, all of which caused serious anxiety and fear in the present persons for their lives and the lives of their loved ones, as well as serious mental suffering.*

206. The Prosecution witnesses: M.P., Hasan Pašić, Mine Pašić, Z.P., H.P., Hasnija Ćehić and Sulejman Ćehić gave evidence in relation to the circumstances pertaining to this Count of the Indictment. On the other hand, the Defense tendered no piece of evidence whatsoever with regard to the referenced charges.

207. The injured party M.P.⁴¹ testified at the main trial that, on one evening, in the first half of April 1993, in addition to him, also present in his house were his wife, Sulejman Ćehić and his wife Hasnija, Hasan and Mine Pašić, Z. and H. P., and six small children, when someone in front of the house called out Hasan „Malac“, (“Malac“ was Hasan Pašić's

⁴¹ Transcript of witness Hasan Pašić's testimony of 27 April 2015.

nickname). Hasan's wife Mine went out with a lamp to see what was happening, but one of these persons kicked and crushed the lamp, whereupon they entered the house asking who is Hasan and where was the money from the sold sheep. One of them kicked the injured party in his abdomen, and they forced him to tell them the location of Hasan Pašić's house. The injured party had to take one of them to Hasan's house, who searched it all over; and having found nothing there, requested that the witness collect from the persons present in his house the amount of 200-300 marks, and told them that they would not harm them; and they seized all the money and golden items they had with them. The witness remembers that he subsequently saw the two same men in the village of Gorice, and also that after Hasib Velić's murder the police came to investigate the case, and that other people, who had attended the school along with the accused Goran Mrđa, recounted that he and his relative Milorad had been causing incidents. During the investigation, the injured party identified the Accused for the identification record from one of the photos with which he was presented.

208. The injured party subsequently saw the same two men in the village of Gorice, in Abdurahman's house. While he was in the bed, he heard a shot. His brother, wife, uncle and aunt were also in the house. The injured party went to his brother in the other house to wake him up. When he went outside, he saw two men standing behind an old house. The witness believes that they were the same two men from the village of Pašići. At that moment, they came in front of the injured party and asked him where he was heading. The injured party responded that he was going to find shelter against noise. They told him that he was lying, and accused him that he was going to call the police. Thus, one of them wanted to hit him in his head and he stated *"Let's take him under the apple tree to have his throat slit."* Then they started beating him. One of them asked for a knife to slit the injured party's throat and continued beating and kicking him for a while. They asked him from which house he went out. They grabbed him under his arms, took him into the house and told the members of the household to all go to one room and hand over to them all the money and gold they had with them. On the referenced occasion, they seized money from the injured party, a pair of ear-rings from his wife (that belonged to their child); the injured party's aunt also had some gold with her. Thereupon, they started beating the injured party's brother Faik; they told them that they would leave, but that none of them should leave the house. With regard to the physical appearance of the two persons who had attacked him on the critical occasion, the injured party remembers that they had fur caps

on their heads and camouflage uniforms; that they had dark complexion; that they were rather short and with black complexion. The injured party believes that, in the village of Pašići, they were also in camouflage uniforms, but he was not certain, even though he remembers very well that they wore fur caps in the village of Gorice. In addition to these incidents, the injured party also saw the accused Goran Mrđa near the school in the day light: he had a dark complexion; and he had an outgrowth near his ear. A police officer told him at the time that that person was Goran Mrđa, but he does not remember what the Accused wore at the time.

209. Witness M.P.'s testimony is also confirmed by witnesses Z. and Hasan Pašić. Witness Z.P.⁴² almost identically described the incident that occurred on the critical occasion. This witness added that he personally handed over to the Accused a lit-up cigarette, and that he could see him closely, due to the fire light coming from the slightly opened stove door, wherefore the room was not completely dark. The witness cannot specify the exact time when the referenced incident took place, but he believes that it was in the first half of April 1993, at around 10:00 p.m. They went to their neighbor M.P.'s place for a coffee. When they entered the house, they heard someone calling his father from outside the house. A man called him by his name, and his mother jumped up to see who that was. She held a lamp, but one of those persons immediately kicked it and broke it, and cursed their *balija*'s mother. Thereupon, the witness saw a silhouette of a young man holding a twinkling weapon in his hand, a silvery pistol. They swore at the household members asking for their money and gold, telling them that they indeed had money since they had sold several lambs on that very morning. The witness told them that he had no money, which was true. On the referenced occasion, the witness saw two men: one was telling the other all the time to throw a hand grenade at them and to *kill the Balijas*. There were two men, and both were short. One of them asked for the house's master, and M.P. stated that he was the master, whereupon they took him outside. The witness saw them beating M. outside. They took M. to search the witness's father Hasan Pašić. The witness remembers that M. was kicked in his abdomen, and did not remain standing; he bowed down and it got out of hand. The witness stayed in the house while they were beating M.; one of them stood at the house's door until the other came back. The witness did not know clearly how many men were there. M. came back along with the person who had taken him outside the house, requesting the present persons to hand over to him what they had

⁴² Transcript of witness Z. P.'s testimony of 27 April 2015.

with them, so M.'s wife surrendered all that she had with her. Once the referenced persons had seized all that the household members had with them, they went away. The person who had requested the witness to light up a cigarette for him, but the witness told him that he had no lighter, told the witness to light it up at the stove, but not to open it too wide; based on that, the witness concluded that this person did not want to have light spread around the room they were. While lighting up the cigarette for this person, the witness noticed that he was short, and wore a T-shirt and jeans trousers; they told the household members not to try to flee as they would be back. Subsequently, the witness learned from speaking with other people that it was a group from the place of Donji Lipnik, which had been *ravaging* the villages, namely that it was Goran Mrđa and his relatives. They assumed that there were other persons together with them in this group, because there were many persons in the village of Pašići who had come from other villages to sleep there overnight; however, the witness is not certain about that since, at the time, he saw only two young men: one was of a medium height, well-built and had a silvery pistol, while the other one was black, and the witness could not identify him now.

210. Witness Hasan Pašić confirmed that he had recognized Goran Mrđa on the referenced night when he grabbed the witness's chest after the witness went outside to see what was happening, and that he demanded that the witness tell him where was the money which he had obtained from the sale of lambs. The witness had known Mrđa since his childhood, including his mother and father. The witness remembers that it was on a Saturday evening in April 1993, when he had sold 10 lambs and "*collected just scarce money.*" On the referenced night, M.P. invited them for a coffee, even though it was not a real coffee but rather some barley and wheat mix. There was no electricity. Someone standing in front of the house called him by his nickname (with which not all were familiar), as follows: "*Hello, Hasan Malac!*" Thus, the witness went outside to check what was going on; a man grabbed his chest, told him not to move; this man told him that he was Hasan, that he had sold 10 lambs, and that he (Hasan) should find that money. At that moment, the witness's wife came out across the door-step, and started up a discussion with this man, whereupon he broke the lamp. These men forced them inside the house, requesting to see the house's master and asking how much money they had with them. M. took out a valet, and one man told him: "*Give me that to count it.*" Then they requested more money and gold. One of the children had golden ear-rings, so they seized them, but the girl started crying, and they returned the ear-rings to her to "*stop the little girl crying.*" When

they reached the witness's son Z., they asked him where he had completed his school, where he had worked, how much money he had; and he responded that they had some cigarettes. The other man came inside, and stood at the door; he was slightly drunk. M. was with them in the room all the time; this other man called him to take them to Hasan's house. M. took him up there, but the house was locked up, so he forced M. to crush the door. M. told the witness about that. The witness further explained that he was presented with some photo-albums to identify those persons, but that it was difficult for him to recognize them. These albums were brought to him to his house, so he identified Mile Kokot (who had nothing to do with the incident at issue) and Goran, but "*it was all a blur.*" The witness further stated that the man who grabbed his chest was short, black-haired, slightly chubby, and was around age 20. After being presented with the photo-albums at the main trial, the witness did not identify anybody, indicating that his eyesight is poor, and that his vision was better during the previous identification, because now he cannot even see Mile Kokot, whom he had previously identified.

211. The witness stated that he did recognize the person in front of the door on the referenced occasion, but that 23 years elapsed since that time, and that his vision was no longer as good as it used to be at the time. When asked if he was certain that Goran was among those persons who had visited them in 1993, the witness responded that they were certain that it was him (Goran), that he knew him better at the time and that he had sometimes seen him as a boy, but that he would recognize him even now, only if he is guaranteed that Goran is among those persons. The witness explained that the photos had been of better quality before, wherefore he had been able to identify Goran during the investigation.⁴³

212. The statements of witnesses M., Z. and Hasan Pašić are also confirmed by the testimony of witnesses Mine Pašić, Suvada Pašić, H.P., Hasnija Ćehić and Sulejman Ćehić. Witness H.P.⁴⁴, wife of witness Z.P., remembers the incident when some men made their way into their house in the first half of April 1993. Before giving the account of how the critical incident occurred, the witness explained that their men stood guard around the village every night to be able to announce what could possibly happen, and that on the critical night their men knocked the house window to inform them that they were going to

⁴³ Transcript of witness Hasan Pašić's testimony of 25 May 2015.

⁴⁴ Transcript of witness H.P.'s testimony of 27 April 2015.

have a coffee at M.'s place. The witness and her mother-in-law took a child with them, and also went to M.P.'s house, where Hasnija from (the village of) Ćehići, her husband Sulejman and their two children, M. and his wife and their two children, the witness, her mother-in-law, her husband and their child had already been present. In the meantime, they heard some "murmur", as the witness said, and somebody knocked on the door shouting „*Hasan Malac, come out and open the door!*“, due to which the witness thought that those men were his neighbors, since they used to call him that way. Hasan went to the entrance door and opened it. They heard shouting and loud noise. The others were in the room. The witness further stated that they had heard them hitting Hasan and asking him: "*Where is the money you got from the lambs sale?*" The witness explained that they had sold some lambs on the referenced day, and that the news spread around the village. When the witness's mother-in-law heard that, she jumped to the door and yelled: "*What do you want from him? You won't kill a man for 10 lambs*", the value of which is around 200 marks. They heard shouting, and someone breaking the lamp. The shouting continued and they all returned to the house. One of these men stood at the door, and they brought them back to the room. The witness stated that one of them was shouting and cursing, while the other one told him from the dark part of the room: "*Don't talk to them, move away so I can throw a hand grenade at them*"; all of them were present in this room, five children included. The witness stated that she held her child in her lap thinking that the child might start crying and that they could start shooting at her. She felt fear and started grasping for air and fainting, so they gave her some water to recover. In the meantime, they took M. outside and brought him back again. They wanted money, which the witness did not know at the time, but learned so from M.'s wife no sooner than on the following day, when she was told that they had given them their money. The witness does not know what was happening outside the house. In the meantime, her husband went to the other room intending to flee, but the man standing in the dark noticed that, and warned him that he would shoot, whereupon her husband returned to the room. After bringing M. back to the house, the men went away threatening them that they should not go anywhere, otherwise they would kill them if they fled. The men in the house peeped out to check if the entrance door was open. The witness's husband and M. stated that the entrance door was open and they heard noise being made further along the way, in the direction of Esma's house. They believed that those men headed over there, so they subsequently peeped out again. The witness's husband told them "*I am going to run away, and you do whatever you want,*" whereupon they all fled from the house. The witness testified that she did not see what

had happened with M. in the room. She was told that one person came to him asking for the house's master; that M. stood up at that moment; and that this other man hit him, but she could not see that. When asked if she could see anything in the corridor from the room she was in, the witness responded negatively, indicating that she could only hear, namely that she heard that the lamp was broken, which she concluded after the lamp light had vanished. The witness further stated that they could smell alcohol around the men who came into the house. The witness stated that, on the critical occasion, Hasnija Ćehić offered some ear-rings to these men, but one of them refused them. The witness further stated that, on the referenced night, she could not see the faces of the men who had entered the house; that the photographs of the referenced men were brought to their house for identification; that she herself was not presented with these photos because she had seen no one at that time, but that her husband and father-in-law were presented with the referenced photos.

213. Witness Suvada Pašić's statement was read out at the main trial pursuant to Article 273(2) of the CPC BiH, because the witness could not testify directly before the Trial Panel. In her statement, the witness confirmed that the referenced incident had indeed occurred on the critical night, as already stated by the other witnesses, namely that on the critical night unidentified persons made their way into their house asking for Hasan, and demanding that they surrender their money and gold; that they "repeatedly kicked" M. and forced him to take them to Hasan's house; and that she surrendered to them the money and golden items she had had with her.⁴⁵

214. Witness Mine Pašić⁴⁶ stated that, in April 1993, some persons arrived asking for the money gained from the sheep sale. Unidentified persons entered the house because it was raining. Two more women and their children were in the house, as well as their husbands; and they were all sitting in a room at M.'s house, intending to have a coffee. Suvada Pašić started pouring coffee, when the witness heard the words: "*Hasan, come out!*", so they thought that he was being called because of brandy, but they also heard the words: "*Give us the lamb money!*"; thereupon the witness jumped up with a lamp, at which moment one of them *rushed forward* and crushed the lamp with his leg. The witness thereupon stated: „*What do you want, thieves, to kill a man for 10 lambs!*“, after which one

⁴⁵ Exhibit T-7 – Witness Examination Record for Suvada Pašić, No. T20 0 KTRZ 0006582 13 of 16 October 2014.

⁴⁶ Transcript of witness Mine Pašić's testimony of 25 May 2015.

of them told the other to “*kill the poison*”; and they forced them all in a room. Once they were all crammed in the room, the witness stood by the door, so that they could kill her first if they started killing them, while the other person kept telling the first one to *kill the poison*. They brought her son from the other room and started demanding money from them. The witness remembers that Suvada Pašić surrendered the money which M. had gotten after selling a foal. The witness further stated that “*this one was smoking, and he wanted to throw away (a cigarette end), but I thought it was a grenade; I said “Ugh”, and he responds “Don’t you Ugh me here, I’ll kill you!”*” The witness remembered that they thereupon took M. out and went with him to his home and ordered him to light up two fires. When the witness's son went towards the window intending to jump out through the window, one of these men asked her who had just passed by her; she responded that it was no one, so he said that a grenade be thrown, but her son told him no to do so and that he would come back.

215. The Defense for the accused Goran Mrđa tendered an official note concerning the interview which an authorized official person made with M.P. on 11 April 1993. The official note, however, clearly showed that what the witness stated at the time is identical to what he stated at the main trial, as well as that the witness did not identify the three persons who had visited his house on the critical night. The Panel does not confront this official note with the witness's assertions presented at the main trial, considering that his testimony clearly shows that that the witness learned, no sooner than his conversation with the police and the neighbors, that it was Goran Mrđa and his relative, whom the witness did not know at the time, who had visited the village on the referenced night. In addition, the Panel recalls that such an official note cannot at all be evaluated as a relevant witness's statement because it was obviously a mere informative interview that was conducted with the witness, but witness Pašić did not sign the referenced official note.

216. The section of the injured party Halid Mehić's testimony concerning the clothing of the referenced persons, namely that they were in jeans trousers and T-shirts, was also confirmed by witnesses Z.P. and Hasan Pašić, while witness M.P. could not state with certainty what they had worn on the critical occasion.

217. The Defense for the accused Goran Mrđa contested the fact that M.P. was hit in his abdomen by these persons. However, the Panel referred to both the injured party's

testimony and the testimony of witness Z.P., who stated that "*M. was kicked in his abdomen as a result of which he bowed down and could not stand up on his feet.*" In addition, the Panel referred to the testimony of the injured party's wife, witness Suvada Pašić, who stated: "*I think that they had beaten my husband M. outside, although I could not see that, because he had bruises on his legs and all over his body.*"⁴⁷

218. The defense's complaint, that no one else saw the injured party M.P. being beaten on the critical occasion, is indisputable for the Panel because none of the household members could actually see the beating at that moment since it was happening in front of the house, while all others were in a room inside the house and could not leave it. The injured party's wife stated that the injured party had bruises all over his body. Witness Z.P. stated that he had seen M. contracting after being kicked by one of those persons in his abdomen; he could see that because, at one moment, he went to the window intending to jump out and flee, but was prevented from doing so by a threat that one of them would throw a hand grenade.

219. With regard to identification of the persons who had on the critical occasion come to M.P.'s house, witness Z.P. stated that one of them was of a medium height and well-built, while the other one was black, young, short, wore a T-shirt and jeans trousers, and had a short hair-cut. The witness remembers that the police came there after several hours for an on-sight investigation, and that no one dared say anything about what had happened since they could not believe anyone; but people were saying that these men were Goran Mrđa and his relatives from the place of Donji Lipnik. Witness M.P. testifies that people said it was Goran and Milorad Mrđa, and that he had an opportunity to see them after an incident in the village of Gorice, when they met him and wanted to slit his throat because he had called the police. In this regard, the Panel has found that these persons wanted to retaliate against M. P. because they thought that he had called the police on the night when they had made their way to his house, beat him and seized money and golden items from the then present household members. The witness also stated that he subsequently saw the accused Goran Mrđa passing by the school with a dog, that he had an outgrowth near his ear, and that police officer Mile Dedić told him on the referenced occasion that it was Goran Mrđa.

⁴⁷ Witness Examination Record for Suvada Pašić, No. T20 0 KTRZ 0006582 13 of 16 October 2014, p.3.

220. Exactly because of this “outgrowth near the ear” the Accused's defense contested the identification made by the injured party M.P.. The Defense indicated that the Accused had never had any outgrowth near his ear, and asked the Panel to directly check it out. However, this injured party's assertion is not decisive in proving that one of the persons present on the critical occasion was exactly the accused Goran Mrđa, considering that it could have been any skin change which any person can have and which could disappear, or which could be removed. Therefore, the Panel did not at all consider such an assertion as decisive for the Accused's identification.

221. In addition, the injured party referred to in Count 1a) of the Indictment, Halid Mehić, quite clearly knew which villagers had money, namely who had sold lambs at the market on the referenced day. Thus, witness Hasan Pašić stated that Halid Mehić could see them on that day passing by his house with lambs, since it was near the place where the lambs were sold, and also, that witness M.P. saw Halid Mehić at the market on the same day selling a foal.

222. That the accused Goran Mrđa was indeed one of the persons present at M.P.'s house was also confirmed by witness Hasan Pašić. This witness testified that the Accused stood at the door-step; that the persons were in civilian clothing, but was not certain about it since it was dark; that he saw one of the persons with a pistol, who told the Accused: *“Move away or throw a hand grenade at them, do not discuss anything with them,”* which is also confirmed by witness H.P., and the witness was able to see all that because the stove door was slightly open revealing the fire-light inside. The Prosecutor seized of the case asked the witness if he was certain that it was Goran Mrđa; the witness responded that he was certain that it was him; that he knew him better at the time; that he was seeing Mrđa when he was a boy; that he would recognize him if he was presented with the photos which were presented to him during the investigation, when the witness identified the Accused as one of the men at issue. On the basis of the referenced witnesses' testimony, particularly the testimony of witness Hasan Pašić, who gave a description of the physical appearance of one of the persons who had grabbed his chest and told him *“don't move”*, asking for the money gained from the sold lambs, and subsequently explained that he knew that it was the accused Goran Mrđa, whom he had known since his childhood, the Panel found that it was exactly the Accused who had mistreated the injured party Hasan Pašić.

223. Based on all the evidence tendered in relation to both the referenced circumstance and the circumstances addressed in Sections 1a) and 1c) of the convicting part of the Judgment, since all three events are correlated, but occurred one after another, the Panel found that the accused Goran Mrđa, along with the person he knew, was exactly the person who had arrived in the village of Pašići on the critical occasion with the aim of looting the Bosniak civilian population, having learned that they had a certain amount of money on them after they had sold some cattle on the referenced day, and therefore found him guilty as charged for the incident at issue.

Section 1c) of the Conviction

224. This Count of the Indictment charges the Accused Goran Mrđa that on the same night, on 10 April 1993, he was in the house of M.P. together with a person known to him whereupon *they came to the door of Fikret Pašić's house, in which Bosniak civilians Esma Pašić, her bed-ridden mother-in-law Aziza Pašić and Jusuf Ćehić were present at that moment, and in the hall the Accused and the other person beat Jusuf Ćehić for quite a while and demanded money from him and inflicted many injuries to his body, which caused him severe physical pain and suffering, and they eventually found money in his vest and confiscated it, and took a gold ring from Esma Pašić, who suffered great fear for her life and the lives of her kin during that incident, which caused her severe mental suffering.*

225. The following witnesses testified about the referenced circumstances: the injured party Esma P., witness Z.P., Mine Pašić and Sulejman Ćehić.

226. The witness, the injured party Esma Pašić⁴⁸, stated that one event from spring 1993 left a particular impression on her; it was on a Saturday, according to her recollection, because Saturday was an open-market day, but the witness could not remember the exact date, as the event had taken place a long time ago. The witness does not know where they came from, but she knows that shouts could be heard in the village; they were first in the house of her brother-in-law, M.P., whereupon they went to the house of Hasan Pašić nicknamed *Malac* [the little fellow; translator's note]. The door of her house was opened as

⁴⁸ Transcript of the examination of witness Esma Pašić of 12 May 2015.

many members of her family from Čehići were staying at her place, and she was waiting for her husband to take the children away and pick up her mother-in-law. At that moment those persons entered the house and Jusuf Čehić, an elderly man, was lying in the room and the witness woke him up as Jusuf also wanted to go, he was lighting his way with a flashlight so he could see. The witness assumes that they caught Jusuf at the house entrance because they saw the light, took the flashlight from him and started beating him and demanded money from him but Jusuf said he did not have any. The witness then found her mother's ring and brought it to those men, telling them that Jusuf was an elderly man who perhaps did not have money, but one man told her: *"Get lost"*. The witness then went back while those men continued beating Jusuf and then found his money somewhere, the witness does not know where. The witness says that she was shaking with fear and those men asked her if she knew them and she answered that she did not because they were not from there, to which they asked *where from*, and then took her into a room and asked her where she was from and she answered that she was from Čehići. They asked her where the folks were and she said that they had gone to the woods, to which they asked her why she had not gone as well, and she answered that a bed-ridden granny was there whom she could not and would not leave. She said that they continued beating Jusuf and that she heard a pistol being cocked but she did not see it, and then they told Jusuf: *"Old man, if you get up now, we will kill you"*. She remembers that one of them was standing at the doorstep at that moment and that he told the other man: *"Go out, and you, mother, we won't harm you since you've told the truth"*. The witness remained seated and says that they did not do anything to her. The witness thinks that after they left her house they went to Sefer Pašić's house, she heard a rifle and a pistol, she stayed in the house until it dawned, she says that she did not know if she could get up. After that her brother, Sulejman Čehić, who was at M. P.'s house that night, asked her who had beaten her and she said nobody, but that she was not able to get to her feet. She told her brother that they had beaten Jusuf for some 15 minutes, during which time they had questioned her. After that incident the witness left the village together with her family and went to Gorice, as did many others. Asked how come she knows that the men had previously been at M.'s and Hasan Pašić's places, the witness says that there were plenty of people in her house and that someone told her so. The witness also said that the beaten Jusuf Čehić was not alive. There was no electricity at that time, so she could not see what those men looked like, but she knows that there were two of them.

227. This witness' statement is also corroborated by the statements of witnesses M.P., Hasan Pašić, Z.P. and Mine Pašić, who saw from M's. house, where they were at the time, that two persons were leaving their house and going to the house of Fikret Pašić, Esma's husband, wherefrom they heard noise and Esma telling them that she was alone there with her bed-ridden mother-in-law, and then heard Jusuf Čehić moaning. Witness Z.P. recalls that on the following day he saw the visibly beaten Jusuf, while witnesses M.P. and Sulejman Čehić confirmed that on the following morning they found Esma and her mother-in-law in the house, and that Esma was beside herself and scared, but that she told them what had happened on the previous night.

228. The injured party's brother, witness Sulejman Čehić⁴⁹, who was in the house of M.P. on the relevant occasion, said that he entered his sister Esma Pašić's house to see her, that she was beside herself, she had a bed-ridden paralyzed mother-in-law, she did not know where her husband and children were. He knows that Jusuf Čehić had also been in his sister's house and that when he had tried to run away with a flashlight in his hand they prevented him from doing so.

229. Witness Z.P. stated that when exiting the house of M.P. he saw from the door that beating, moaning and wailing were heard from the house of his neighbor Fikret Pašić (the husband of the injured party Esma Pašić). After that he heard three shots in the house of his paternal uncle. According to him, people said that there had been a *commotion* in Fikret Pašić's house, door slamming, shots, and that everyone had managed to escape except Jusuf and the bed-ridden woman whom her daughter-in-law Esma had not wanted to leave. The witness stresses that Esma told him that nobody had harmed the bed-ridden woman, but that Jusuf had been beaten and asked about money.

230. Witness Mine Pašić, who was also in M.P.'s house on the relevant occasion, says that she set out of the room to check if the entrance door was open and that when she turned around and said that there was nobody at the door she heard Fikret Pašić's wife Esma moaning, so she returned to the room and said that they had gone to Fikret's house. At that moment her daughter-in-law jumped up and said that they should run away. The witness recalls that, in addition to Esma, an *old voice* moaning was heard as well, since Jusuf Čehić, who had not managed to escape to the woods, was also staying in Esma's

⁴⁹ Transcript of the examination of witness Sulejman Čehić of 12 May 2015.

house. The witness saw and heard everything from the distance of some 20 meters, which was the distance between their houses.

231. Based on the foregoing, the Panel regarded all three sub-sections of Section 1 of the convicting part of the Judgment as a whole. It is clear from Halid Mehić's statement that he was intercepted by two persons, one of whom was identified as Goran Mrđa, which was confirmed by witness Halid Mehić, to whom his son said that it must have been Goran Mrđa after the witness had described Mrđa and who later personally saw Mrđa on the frontline while he was in labor detail. When the accused persons left Halid Mehić behind and continued their journey toward the hamlet of Pašići, and after they had forced him to tell them who in the village had money from lamb sale, and after he had given them the name of Hasan Pašić, among others, they came in front of M.P.'s house and asked for Hasan Malac (Pašić) to get out, as they had been told earlier that he had money from the lamb sale.

232. The Panel has briefly presented in Section 1b) the witnesses' statements about these circumstances, which clearly confirms that the goal of the Accused Goran Mrđa and the person who was with him on the occasion concerned was to rob civilians who had some money and who, together with the other persons who would be referred to in the subsequent charges, made up the well-known group from the settlement of Donji Lipnik which was involved in robbery and theft at that time, taking advantage of the war and helplessness of the Bosniak civilian population in the territory of the Municipalities of Sanski Most and Bihać.

233. As already indicated, witness Hasan Pašić himself stated that on that day at the market he had seen Halid Mehić and that Mehić had seen him selling lambs, on the basis of which the Panel reached its conclusion as to how witness Halid Mehić had the information who in the village might have money, the money having been the basic reason of the arrival of the group of bandits from Donji Lipnik.

234. When it comes to the exact date of the event, witnesses M. and Z.P. confirmed that the event took place in the night of 10 April 1993, the night of the wounding of Sefer Pašić, whose house was also in the hamlet of Pašići. This also follows from the Excerpt from the

Log Book of the Sanski Most Police Station⁵⁰, whose entry for 11 April 1993 reads: *on the previous night, around 10 o'clock, Sefer Pašić, wounded by an unidentified person during the night, was transported to the emergency service.* In addition, witness M.P. said that Saturday was a market day and that lambs were sold on that day, and that the relevant event happened on the same night. All witnesses who testified about these circumstances stated that it was spring, that is, April 1993.

235. With respect to the identification of the Accused Goran Mrđa by the witnesses examined about the referenced circumstances, the Panel was mindful of the description given by witnesses Halid Mehić, M.P., Z.P. and Hasan Pašić. They described the Accused as a short person, of dark complexion and with black hair cut short, as witness Mehić stated: *"That's probably why they called him a Chinese man"* [Kinez in the vernacular, translator's note]. The Panel was also mindful of the fact that witness Hasan Pašić recognized the Accused on the occasion concerned when the Accused grabbed him by his chest at his threshold, as he had known him back when was still a boy. The Panel understands clearly that it was a common knowledge that Goran Mrđa was problematic even when he was a pupil and that he mistreated other children who attended the school in the village of Fajtovci, which was also mentioned by the other witnesses who had known him as such, including witness Hasan Pašić. Also, this can be clearly concluded from the documentary evidence tendered by the Prosecutor's Office of B-H with respect to the Accused's character and problematic past, which evidence will be discussed below in the reasoning of the Judgment.

236. Therefore, based on the adduced evidence concerning the circumstances of the whole Section 1 of the Conviction, the Panel concluded beyond reasonable doubt that on 10 April 1993, in the hamlet of Pašići, the Accused Goran Mrđa, together with a person known to him, undertook actions prohibited under the law and international humanitarian law against the Bosniak civilians, subjecting them to inhuman treatment, hence the Panel found the Accused guilty under this Count of the Indictment.

⁵⁰ Exhibit of the Prosecutor's Office of B-H No. T-4a, under number 220.

Section 3a) of the Conviction

237. Under Section 3a) of the enacting clause of the Judgment, the Accused Goran Mrđa was charged with inhuman treatment of the civilian population when he and the persons known to him, all armed, *on 2 and 3 May 1993, in the night hours, arrived in front of a house in the village of Gorice, Sanski Most Municipality, in which house the following Bosniak civilians were staying at that moment: Mehmed Brakić with his wife Fadila Brakić, son Esad Brakić and his wife Semira Brakić, and other members of the family. Goran Mrđa* and a person known to him then entered the house, while the other two men stayed in front of the house to watch that no-one would escape. As soon as Goran Mrđa entered the house, he threatened Mehmed Brakić that he would slaughter him, pressed a pistol against the right side of his head and pressed a knife against the left side, and kicked him with a boot-clad foot to his chest. They made the same threats to the household members, demanded money and other valuables and took money from Mehmed Brakić, after which Goran Mrđa kicked Esad Brakić with a boot-clad foot, whereupon they left the house and, while exiting, warned them not to leave the house and that they would return. As a result of all this Mehmed Brakić sustained bodily injuries which caused him severe physical and mental pain and suffering, while all members of the household felt strong fear for their and the lives of their kin, which caused them severe mental suffering.

238. Prosecution witnesses Mehmed Brakić, Esad Brakić and Semira Brakić, Defense witness Nikola Mrđa and the Accused Goran Mrđa in the capacity as Defense witness testified about the events referred to in this Section.

239. Witness Mehmed Brakić⁵¹ said that the unfortunate incident happened to him and his family on the night of 2-3 May 1993, two hours after midnight, when someone rang their door, whereupon the witness asked who it was and they told him not to be afraid, that it was army. The witness stressed immediately at the beginning that one of those persons was the Accused Goran Mrđa, who held a knife in one hand and a pistol in the other and who told the witness *“I’ve slaughtered so many Ustashas and tonight I will slaughter you,”* which scared the witness, whereupon Goran and Ranko Mrđa entered his house. The witness used to see Ranko Mrđa when he made field trips, and his son also used to see Ranko during his trips in Slovenia, and once he saw him after some time in the post office

⁵¹ Transcript of the examination of witness Mehmed Brakić of 7 September 2015.

next to the Sana River. The witness also knew Ranko Mrđa's father, Lazo Mrđa, nicknamed Lisica [fox in the vernacular; translator's note]. The witness stated that he had seen Goran Mrđa at Lipnik when he had made field trips to the places where sand was dug out. The witness also stated that upon entering the house the Accused Goran Mrđa demanded money, and at that moment the witness had 70 to 80 KM [currency as rendered in the vernacular text; translator's note] and he gave them the money, and he also offered them some radio and a cow, which they did not want to take. Then one of them came with a knife and said "*slaughter!*", pressed a pistol against his right side, and kicked him with a boot-clad foot to his chest, at which moment the witness lost his presence of mind, whereupon they demanded money from the witness' son, but as he did not have it, they hit the son once as well. Asked how they were dressed, the witness said that he could not observe it at the time, but he remembered that Goran Mrđa had a fur hat with ear flaps, but that he was not sure about the other person. When this other person said that it was enough, they allowed him to light a cigarette and told him he must not get out as mines were laid outside, and everyone in the house had to obey their request and say "good night" and "good-bye". After the men left, they were seen going to Fadil Velić's house, whereupon the witness' son and daughter-in-law got out through a window, with the witness and his wife following suit. Then the witness saw that the door of Avdija Vojniković's house was broken. The witness stresses that he was nervous, he was aware of the fact that they wanted to slaughter him and he suffered pain from the blows and could not lie on his left hand side, and he still has problems with his lungs and blood pressure. He adds that his wife has also had psychological problems as of then, and that she and their daughter have been under treatment.

240. Asked how many persons there were in the course of the relevant event, the witness clarified that there were two persons in the courtyard. The light was on in the kitchen and the porch at that time and the witness thinks that the outside light was also on. The witness says that at that moment he was not quite his own self, because of which he did not notice at all how these persons were dressed.

241. The Defense for the Accused Goran Mrđa showed to the witness the discrepancies in the statement given at the main trial and the statement given in Zenica⁵² in which the

⁵² Exhibit of the Defense for the first Accused O1-3 – Witness Examination Record for Mehmed Brakić, No. Kri.45/95 of 20 September 1995.

witness said that six persons had been together with Goran Mrđa that night. The witness stressed that he did not know who wrote what and that he had not said so, but that he said that on that occasion two men had entered the house and two men had stayed in the courtyard. Clarifying why in the 1994 statement he did not say that someone had hit him, the witness answered that he knew what he had said and that he was repeating it at this moment as well. Asked why he said only 20 years later that Goran Mrđa was the one who had pressed a knife and a pistol against him on that occasion, the witness stated that he had said so earlier as well.

242. The witness further clarified that he had been hit on a couch in the room that had been entered into from the kitchen where the light was on and that in the kitchen they had only asked for money. At that time his family was asleep, the daughter in one room, the daughter-in-law and son in another, and he and his wife in the kitchen. In the other room where the witness was hit were his son and daughter-in-law. At one moment they all gathered together and were ordered to enter the room where the son and daughter-in-law were, but the witness does not know who was standing where at that time. Asked about the amount of money in question and the place where he had kept it, the witness said that he had kept the money in a wallet and that there were 70-80 German marks there but he did not know in which specific banknotes, and that the man who got the money put it in his pocket.

243. As one of the persons who came to his house that night the witness also mentioned the Accused Goran Mrđa, whom he knew because Mrđa had been digging sand near Lipnik usually when he had come by, Mrđa was 17 or 18 at the time, it was some time before the war. Asked by a Panel member whether he knew whose son Goran Mrđa was, the witness said that he did not know that, but that everyone knew Goran Mrđa.

244. The witness's son, witness Esad Brakić⁵³, confirmed his father's description of the manner in which the referenced persons raided their house. On that occasion he recognized the Accused Goran Mrđa, whom he knew from before as Mrđa had dug sand on the eve of the war and the witness had gone there with a colleague who had bought the sand. He also remembered him by another event that took place when the witness fled from the village of Skucani Vakuf to the village of Gorice, on which occasion his wife was

⁵³ Transcript of the examination of witness Esad Brakić of 7 September 2015 and 14 September 2015.

with him, they were leading a cow when they came across the Accused looting the building material of one Fejzo Babača next to the road, on which occasion the Accused asked them: *“Why is the cow walking that way?”* The witness answered that it was blind and the Accused criticized his choice of synonym for blind in the vernacular and corrected him. The witness remembers that he used to see the Accused on the frontline at Grabež where the Accused once ordered him to disassemble his rifle, but as the witness did not know how to do it the Accused *“kicked him”*. According to the witness, this was the Accused’s customary behavior toward the Bosniaks who were digging trenches.

245. According to the witness, Goran Mrđa was the one who kicked the witness’ father and held a knife above his head threatening to kill him, so his father gave him the money from the corn he had sold earlier, and on that occasion the Accused had also hit the witness. He remembers that that night the light was on in the kitchen and that there was no light in the room where they were, but it was visible thanks to the light coming from the kitchen as those were adjacent premises. He says that these persons stayed in their house for some 15-20 minutes and when they started going out they ordered everyone to say *“good night”* out loud. The witness states that he did not know the other two persons who did not enter the house, that is, who were in front of the house, but he knows that they were all armed, some had pistols, knives, rifles, *there were all sorts of things*, as he said. He knows that the Accused Goran had a knife and a pistol, but he cannot remember if he had a rifle. Explaining why in his earlier statement he did not say that Goran Mrđa had had a knife, the witness says that he might not have been asked the question. Asked how he knows that his father gave 70-80 marks, the witness says that he sold corn that day and that he knows that his father gave everything he had as he saw his father giving the money out of his pocket and Goran putting the money into his pocket.

246. The witness also said that he knew that Goran Mrđa had organized all murders, that is, that he knew that Goran Mrđa had participated in the crimes in Ćehići and the murder of Hasib (Velić).

247. The averments of witnesses Mehmed and Esad Brakić regarding the identification of the Accused were also confirmed by witness Semira Brakić⁵⁴, Esad Brakić’s wife, who

⁵⁴ Transcript of the examination of witness Semira Brakić of 14 September 2015.

also gave an account of the event which happened on the referenced occasion when they came across the Accused while moving out of Skucani Vakuf.

248. With respect to the relevant event, the witness states that the Accused Goran Mrđa had a knife and adds that she did not know Goran Mrđa at that time but that she learned of his identity on the following day when they met with the others in the house, when Mehmed and Esad Brakić said that that had been Goran and *“his gang”*. To the witness’ recollection, the Accused then pressed the knife against her father-in-law, and he also had a pistol on him, and he demanded money and gold jewelry, and her father-in-law, Mehmed, immediately gave the money, but they did not have any jewelry. They then addressed the witness, who was holding her son in her arms at that moment covered with blanket, telling her: *“Screw your mother, lift the blanket.”* The witness then said that she was an ailing woman, to which one of the two men told her she should die and they *“kicked my husband in the arse.”* The witness says that they then asked them how come they did not have money yet they had good furniture in the house, and they responded that it was neither their house nor their furniture, whereupon they beat up her father-in-law, took the money and ordered them to say *“Good night”* out loud three times, stressing that they would return for her. She remembers that the men then went from there to Rufad Kuburić’s house.

249. Concerning the averment of the Prosecution witness that witness Mehmed Brakić had been a forester in that area before the war, hence he had an opportunity to see the Accused Goran Mrđa, the Defense examined witness Nikola Mrđa, the brother of the Accused, who stated that someone else had been the forester in Lipnik, that is, that never had a Muslim been a forester.⁵⁵ The Panel cannot regard such statement as truthful, given that the Defense claimed in its closing argument that the forester in the territory of Lipnik was one Dušan Raičić, since the Panel was not submitted a single piece of evidence concerning this averment, but also since witness Mehmed Brakić did not say that he had been a forester in Lipnik, only that he had been a forester and that at that time he had lived in Skucani Vakuf and that his zone of operation had included Lipnik, and that he had used to see the Accused close to Lipnik when the Accused had been digging sand.

⁵⁵ Transcript of the examination of witness Nikola Mrđa of 23 June 2016.

250. The Defense also objected to the fact that witness Mehmed Brakić did not recognize anyone when he was shown the photo-albums made by the Defense for the Accused Goran Mrđa. The witness answered that he could not see without his glasses which he did not have on him at that moment.

251. The Panel stresses that with respect to the identification and description of the Accused Goran Mrđa, it accepted the statements of witnesses Mehmed Brakić and Esad Brakić at the main trial, in which they specifically described how the person had looked like on the occasion concerned. The Panel also accepted the fact that they had known the Accused from before and that they saw him after that event as well, which witnesses Esad and Semira Brakić clearly indicated when testifying where from they knew the Accused. It is also clear that witness Semira Brakić did not know the Accused by his full name at the moment when he was in their house, but that her father-in-law and husband told her in the morning that that was Goran Mrđa. The Panel was also mindful of the statements of witnesses Rufad and Suvad Kuburić and other witnesses who testified about the circumstances in Section 3 b) which will be elaborated on below, given that that event followed immediately after the Accused and the persons known to him left the house where the Brakić family was staying.

252. Based on the foregoing, the Panel concluded that the Accused Goran Mrđa was one of the persons who raided Mehmed Brakić's house on the occasion concerned and who mistreated him and the members of his family, having in mind that the Accused Goran Mrđa was a well-known person who mistreated Bosniak civilians in the villages for the sake of material gain. It is also clear that the Defense did not have evidence to refute or contest the evidence adduced by the Prosecutor's Office of B-H, due to which the Panel is satisfied that Goran Mrđa was the person who committed the referenced criminal acts on the night of 2-3 May 1993. The Panel will explain it in detail in the paragraphs to follow, given that it was a customary pattern under which the Accused Goran Mrđa acted in the time of war, together with other persons, including the Accused Milorad Mrđa.

Section 3 b) of the Conviction

253. This Count of the Indictment concerns a continuation of the actions of the Accused Goran Mrđa and the persons known to him, that is, inhuman treatment of Bosniak civilians

in the village of Gorice, given that they set off from Mehmed Brakić's house to the house where civilians Rufad Kuburić, Suvad Kuburić and members of their families were staying, which the Panel concluded from the statements of numerous witnesses.

254. Under this Count of the Indictment, the Accused Goran Mrđa and Milorad Mrđa are charged that they, *together with a person known to them, all armed, on 2-3 May 1993, in the night hours, arrived in front of a house in the village of Gorice, Sanski Most Municipality, in which house the following Bosniak civilians were staying at that moment: Rufad Kuburić, Suvad Kuburić, their mother Enisa Kuburić, Asim Avdić, Fikret Avdić, Ešefa Bačić and Ćamil Bačić. **Goran Mrđa, Milorad Mrđa** and another person entered the house, cursed *balija's* [derogatory term for Muslims; translator's note] mothers immediately at the entrance and warned them against fleeing as there were other soldiers outside, and they forced Rufad Kuburić and Asim Avdić to lie on the floor and beat them all over their bodies but mostly kicked them with boot-clad feet, and they also trod on Rufad Kuburić's spine and head, pressed a pistol barrel against his forehead and said they would kill him, whereupon Goran Mrđa kicked him into his head with a boot-clad feet, and the force of the kick made Rufad Kuburić topple over and he hit the back of his head and lost consciousness, and consequently bled profusely and suffered strong physical pain, while Asim Avdić had a laceration on his face from the impact of the boot on the head and sustained other bodily injuries, and, consequently, suffered strong physical pain. Goran Mrđa also mistreated Fikret Avdić threatening him with knife which he pressed against his stomach and forced him to lie down and then trod on his back and spine forcing him to say that his name was Srbo, which caused Fikret severe physical and mental pain and violation of human dignity. They then left the house and warned everyone against exiting the house, all of which made the referenced persons feel strong fear for their and the lives of their nearest of kin, which caused them severe mental suffering.*

255. Witness Mehmed Brakić stated that, after they left his house, they entered the house where Rufad and Suvad Kuburić and their mother lived at the time, which was also confirmed by his daughter-in-law, witness Semira Brakić. She said that her father-in-law saw when those persons entered the house of the Kuburić family and also that the Kuburićs confirmed the following day that they had entered their house. The witness added that she heard that they had entered other houses as well, and stressed that she saw that five or six houses were broken in that evening.

256. Witness Rufad Kuburić⁵⁶ described a grievous incident that happened to him and his family in Gorice, stating that it was on 2-3 May 1993, and that they had earlier arrived in the village of Gorice, in Fadil Velić's house, but that they often went to the woods to spend the night over there because they lived in fear. According to the witness, that evening they did not get out as they were "*sort of protected*", the police were deployed there until midnight "*and after that other things happened.*" That night the witness stayed at home, together with his brother Suvad, his late mother, neighbor Ešefa and her husband Ćamil, and his cousins, his aunt's sons Asim and Fikret. He does not know whether it was around midnight or at 2 a.m. when someone banged the door shouting to them to open and it was the Military Police, whereupon Ćamil opened the door and they burst into the house. According to the witness, Ćamil used to sleep on a couch right there in the hall and the witness in the living room, his mother and Ešefa slept in one room, he could not say precisely where his brother Suvad was sleeping at that moment, but he remembers that Fikret and Asim were sleeping in the bedroom. Then those persons threw Ćamil into that room having kicked him in his buttocks, whereupon they again threw him into another room, while Fikret and Asim stayed in the room. When those persons entered the house the light was switched off, so they switched it on and at that moment the witness saw three persons, of whom he recognized two, Goran Mrđa aka Kinez and his cousin Milorad Mrđa, both of whom the witness knew from the school, whereas he did not know the third person. Describing how they looked on that occasion, the witness stated that they were armed with automatic rifles and that they wore military boots and camouflage pentathlon jackets, and Goran also had a pistol on him.

257. After the witness was presented the witness examination record made during the investigation on 8 November 2014⁵⁷, and after the witness identified the signature, he stated that it was correct that he recognized both Goran Mrđa and Milorad Mrđa, and that he gave that statement "*in a rush*", as he was supposed to return to work in Croatia where he lives. Explaining what happened next, the witness said that they had beaten him and Asim, but also that the Accused Goran Mrđa pressed a *Crvena zastava* 7.65 pistol against his forehead. The witness described that he was lying prone and that the Accused threatened he would kill him and that all three of them beat him. He said that he was

⁵⁶ Examined at the trial hearing held on 19 May 2015.

⁵⁷ Prosecution Exhibit No. T-8.

familiar with the type of the pistol, as he had served in the army and was familiar with all armament that that army had. The witness said that they had first forced him to lie on the floor but he could not tell precisely how long it lasted, half an hour to 40 minutes, as he also lost consciousness, and things last “too long” in such situation. The witness was then ordered to get up, whereupon they threw him into another room where all the others were crammed, and in which the light was not switched on at that time. The witness stated that upon entering that room in the darkness he stepped on a guitar, and when the sound echoed the Accused Goran Mrđa ordered him to get out because he was hiding something, at which moment the witness threw money behind a couch. The witness added that he was beaten and that it was an *indescribable mistreatment*, and there were provocations as well. The witness saw that they were beating Asim as well, while his other cousin, Fikret Avdić, was in the bedroom. Then Goran Mrđa switched on the light, they played the music *to the maximum volume*, but the witness was not aware of it all the time as they were beating him, and at one moment when he lifted his head, Goran hit him in a temple, due to which he banged on an armchair with his head and fainted. While he was coming to, he saw them leaving the house and forcing the members of the household to say out loud in unison “*good night*” and “*sleep well*”. Asim’s lips were bloody, he had bruises all over his face, the witness’ mother and neighbor Ešefa were in a difficult condition, and Fikret Avdić said that he had been beaten as well, which the witness could not see since Fikret was in another room. The witness then said that that night they seized from him his wrist-watch and gold ring, and that they took from Ćamil 70 marks that he had had in his pocket. When the men exited, the members of the household got out, but the witness could not do so due to the injuries he sustained.

258. Asked when he last saw Goran Mrđa, the witness stated that he had seen him one month prior to that event, in front of Fejzo Babača’s house, where neighbor Esad Brakić had been leading a cow.

259. After the Defense showed to him a part of the Witness Examination Record of 8 November 2014, in which he stated that some of the soldiers had told him to lie on the floor, the witness explained that that had actually been the Accused Goran Mrđa and confirmed that everybody had kicked him, but that he was sure that Goran Mrđa had pressed a pistol against his forehead, which had happened as soon as they had come into

the house. The witness confirmed at the main trial that all three of them had beaten him, not simultaneously, but taking turns, which he had told the police in Sanski Most as well.

260. Asked by the Defense Counsel for the Accused Ranko Mrđa if he could describe the third soldier who had been in their house on that occasion, the witness stated that the third soldier had been taller than the other two, that he had not been exactly blond but that he had had more fair hair, and that he had been in a military uniform. The witness stressed that he did not know who Ranko Mrđa was.

261. The witness confirms that he knew the Accused Goran Mrđa and Milorad Mrđa from the school in Fajtovci. He also remembers that Goran Mrđa was younger than him and that they did not attend the same class, but they did go to the same school, where he used to see him. He also saw him during the incident with Esad Brakić and his wife in Skucani Vakuf, which incident has already been referred to in the part related to the charges in Section 3a). He knows that Milorad Mrđa was Goran's cousin and that he used to see the Accused later at Grabež where he did his compulsory work service.

262. That the referenced event happened in the manner described by witness Rufad Kuburić is also corroborated by the statement of his brother Suvad Kuburić.⁵⁸ The witness stated that on that occasion they were in Fadil Velić's house, which is in the same courtyard as Mehmed Brakić's house, due to which he could see that Goran Mrđa's group went in that direction when they demanded money, threw Ćamil Bačić into the living room and beat him and also beat his brother Rufad Kuburić and cousin Fikret Avdić. When he was taken out of his room to the room where his mother was, he saw his brother Rufad being thrown in and he saw him stepping on a guitar that was on the floor, on which occasion he recognized the Accused. After the Accused left their house, he saw that Rufad and Asim were visibly injured, and Fikret said that he had been "squeezed" and threatened with knife, which the witness could not see as it was taking place in another room. He confirms that on that occasion he recognized the Accused Goran Mrđa and Milorad Mrđa, whom he had known way back from the school in Fajtovci, and he was in the same class with Goran in the fifth and sixth grade. He used to see them at the compulsory work service at Grabež. He also saw the Accused Goran Mrđa during the looting in Skucani Vakuf.

⁵⁸ Examined at the trial hearing held on 19 October 2015.

263. When the witness was testifying at the main trial the Accused Milorad Mrđa told him that he could not have known him because of the age difference, and the witness answered that he knew him because he had attended the same class with the witness' neighbor Samir. The Accused confirmed it, adding that he had shared the bench with Samir.

264. Witness Fikret Avdić⁵⁹ confirmed the statements of witnesses Rufad and Suvad Kuburić and said that that night he was in a room with Asim and Suvad when Goran Mrđa and two other persons burst in and shouted "*hands up*" and ordered them to stand up, and then ordered Asim and Suvad to go to another room. The witness was then approached by Goran Mrđa who pressed a knife against the left-hand side of his stomach and asked the other soldier: "*Shall we [do away with] him ...?*" The other soldier answered not to touch him and that *that would be enough for the night*. After that he ordered him to lie prone on a bed, pressed his foot against the small of his back and kept on pressing, asked him his name, and when the witness answered that his name was Fikret Avdić, the Accused Goran Mrđa told him that he was not Fikret but "Srbo", and when the witness repeated after him that his name was Srbo, the Accused told him "*Fikret, oh my Fikret*", slowly tapping the witness' back with his foot.

265. Describing how these persons were dressed on the relevant occasion, the witness stressed that Goran Mrđa wore a uniform jacket, but he could not remember what he wore in terms of trousers, and added that the Accused carried a hooked, curved knife, the so-called *Turkish knife*, while the other soldier wore a camouflage shirt and uniform and had a rifle slung over his shoulder.

266. The witness added that they took and searched his jacket, he is not sure who exactly did it, wherefrom they took an unopened pack of cigarettes and let him into the room. He was still lying there motionless, as he said, waiting for the moment when a bullet would *hit* him, at which moment he heard shouts, thumps and crying from the living room where the others were crammed, but he dared not turn his head. Asked how long it lasted, the witness said that it lasted for some 15 minutes up to half an hour. The witness said that he was motionless until his cousin and brother entered the room, whereupon he went

⁵⁹ Examined at the trial hearing held on 21 September 2015.

to the living room and saw that the men had left. In the living room he found Rufad, who was black-and-blue from the beating, his aunt crying, Ćamil moaning, and his brother Asim telling him that he received a blow to his chin when one of the soldiers had forced him to kneel and when he did so he received a blow with an *alpine* boot of the pair that had been taken out of their house prior to that. The witness said that what he also remembered was that they had gone outside to see what had been happening in the neighborhood, whereupon he no longer remembered anything else due to the stress and fear he suffered.

267. With respect to the date of the referenced event, the witness stated that it took place in 1993, as some 20 days after that they got out of Sanski Most in a van and into Croatia, when the witness was 17 and was not mobilized. He knows the Accused Goran Mrđa because they went to school together, but the Accused is one generation ahead of him, he attended the 8c class in the *Cvijo Kukolj* Elementary School in Fajtovci together with his neighbor. The witness remembers that the Accused was the morning shift, which was attended by all pupils who came from the surrounding villages, while the local inhabitants attended the afternoon shift, and that the Accused was always a grade ahead of him and that he does not know how many times he repeated a grade. The Panel will deal in more detail with the referenced fact in the reasoning of Count 2 of the Indictment given that it was also mentioned by the witnesses who testified about the circumstances of that Count.

268. The witness also recalls the incident when they played football and when he was looking for the Accused to pour a bucketful of water over him but could not find him. He has stressed that Goran was always problematic. When it comes to the other soldier who had entered with Goran the room where witness Avdić was, he stated that he did not know who the man was and said that at that moment fear made him feel like *"a lamb about to be slaughtered."*

269. The witness stated that he was alone in the room and that he heard everything else that was happening in the living room in the course of the conversation. He also stressed that he did not say that Suvad had been beaten up, but that he knew that his brother Asim and cousin Rufad had been beaten up. Asked why he said in the investigation that Suvad had been beaten up, he says that he assumed that all had been beaten up because of the cries. The witness stated that he remembered well that the Accused had attended school

together with him and that he had seen Goran Mrđa that evening in Gorice, and that before that evening he had not seen him ever since the elementary school.

270. The Panel was also mindful of the fact that witness Suvad Kuburić said that he had heard a shot that night and that, in the morning, when he returned to the village from the wood, he learned that Hasib Velić had been killed, and that the same persons had been at Brakićs' house which was in the same yard as theirs, and that Mehmed Brakić told him that he and his son Esad had been beaten up, but also that they were in the houses of Muharem Handanagić, Edhem Velić and some other Velićs. When the police, experts and a judge came looking for his brother to give a statement as to who had beaten him, he dared not say it, so when the judge asked him whether it was Goran Mrđa, the brother said: *"Why do you ask when you know the answer?"*

271. The Panel concluded that the statements of witnesses Fikret Avdić, Rufad Kuburić and Suvad Kuburić concerning the identification of the Accused Goran Mrđa were truthful on the basis of the documentary evidence tendered by the Prosecutor's Office of B-H. It is clear from the relevant Registers' excerpts⁶⁰ that the Accused Goran Mrđa and Rufad Kuburić went to the same school for two years, while the Accused and Fikret Avdić and Suvad Kuburić went to the school together for four years, that is, that all that time they had an opportunity to see the Accused on the premises of the school and around it.

272. Also, when it comes to the assertion of witness Fikret Avdić that the Accused was in the eighth grade when he was in the sixth, the Panel understands clearly that it cannot be accurate, but only because the Accused Goran Mrđa repeated the sixth grade as many as four times, due to which the Panel has concluded why the witness made such an assertion.

273. The Accused Goran Mrđa stated in his testimony that he had never seen Suvad Kuburić. However, in the course of cross examination of the witness at the main trial, he told the witness that his name was familiar to him and that they had probably been in the same class in the fifth and sixth grade, to which witness Suvad Kuburić answered that they had gone to school together. Having taken into account these two contradictory

⁶⁰ Prosecution Exhibits Nos. T- 66 and T-67 -- Certificate from the Registers No. III and IV, Public Institution *Fajtovci* Elementary School, for Rufad Kuburić, Fikret Avdić and Suvad Kuburić.

statements of the Accused, as well as the evidence given by witness Suvad Kuburić, the Panel concluded that the Accused Goran Mrđa did not tell the truth when he said that never in his life had he seen the witness, given that the opposite was corroborated by the aforementioned certificate from the Elementary School Records from which it is very clear that both the Accused and the witness were in the fifth and sixth grades of the *Fajtovci* Elementary School in Fajtovci in the same years.

274. It is clear from the statements of witnesses Rufad and Suvad Kuburić that the Accused Milorad Mrđa accompanied the Accused Goran Mrđa on the relevant occasion. Witness Rufad Kuburić stated that he knew Milorad Mrđa as Goran's cousin, but that he also knew him from the school since Milorad Mrđa was in the class with his neighbor Samir. The Accused also personally stated that he had shared the same bench with Samir. Given that the Defense did not adduce any evidence about this circumstance, the Panel credited the examined witnesses' statements beyond reasonable doubt.

275. When it comes to the identification of the Accused Goran Mrđa by these witnesses, the Panel also evaluated the statements of witnesses Mehmed and Esad Brakić, who were staying at that time in Fadil Velić's house, which was several meters away from the house in which the Kuburićs were staying that evening, which statements the Panel has already elaborated on in the preceding Section of the conviction.

276. Witnesses Mirko Tepić and Salko Osmanović⁶¹ were examined as witnesses for the Defense of the Accused Milorad Mrđa about the character of the Accused and his attitude toward the Bosniak population. The witnesses said that they did not hear that the Accused had ever had any problem with the Bosniaks and that they had all socialized with one another. Witness Mirko Tepić also confirmed the fact that the Accused Milorad Mrđa lived in one Bosniak house in the village of Pobrježje during the war.

277. That the witnesses – injured parties Rufad Kuburić, Fikret Avdić and Asim Avdić suffered numerous bodily injuries that evening because of the blows inflicted by the Accused follows from the statement of the injured party Rufad Kuburić, who described that he had been so beaten up that he was not able to leave the house together with the other members of his household and go sleep in the woods. The same also follows from the

⁶¹ Examined at the trial hearing held on 1 September 2016.

statement of Fikret Avdić, who stressed that the Accused Goran Mrđa squeezed his back, pressed a pistol against his temple and *wanted to give him a bullet* and that he could not recall the rest of the incident out of fear, but also that, when he came from the bedroom to the living room, he saw Rufad black-and-blue and beaten-up and that Ćamil and his brother Asim had been beaten too.

278. With respect to the other persons who were in the house together with the injured parties on that occasion, the Panel has concluded that they suffered great fear for their lives and the lives of their kin who were mistreated and beaten before their very eyes. The Panel also considers justifiable the injured parties' fear to go to the doctor's and to the police station to report the events concerned at the time when they were surrounded by enemy soldiers and exposed to different unpleasant situations and provocations, due to which it is clear that nowadays they do not and could not have any medical documentation about the injuries sustained.

279. Based on all adduced evidence, the Panel has concluded that on the occasion concerned the Accused Goran and Milorad Mrđa, together with one person known to them, were in Fadil Velić's house in which the injured parties Rufad and Suvad Kuburić and other referenced persons were staying at the time, as well as that these Accused were the ones who inhumanely treated the injured parties who had known the Accused from before, as indicated earlier. Finding the correspondence with witnesses' statements from other Sections and bearing in mind that the Accused were in at least three houses in the course of that evening, the Panel could not render any other decision but to find the Accused Goran and Milorad Mrđa guilty of the referenced acts.

Section 3d) of the Conviction

280. Under this Count the Accused Goran Mrđa is charged that, *on 2-3 May 1993, in the night hours, he and persons known to him, all armed, in the village of Gorice, Sanski Most Municipality, stopped a Bosniak civilian M.P. on the road between the houses, where they kicked him and beat him with their hands all over his body and threatened they would slaughter him, due to which he sustained injuries all over his body which caused him severe physical and mental pain and suffering, whereupon they forced him to take them to a house where there were plenty of people at that moment, mostly members of the family*

of M.P., where they demanded and took money and other valuables from the people they found in the house.

281. The injured party M.P. testified about this and the statement of witness Suvada Pašić was also read out.

282. Continuing his testimony in the part of the statement concerning the incriminations referred to in Section 1b), the injured party stated that he also saw the same two men in the village of Gorice where he was staying in one of the houses of the Velić family after he had fled Skucani Vakuf. The injured party stated that, after he had heard a shot together with his wife Suvada, he got out of the house to inform his brother who was in another house close by at that time so they could run away. Between these two houses there was another old house next to which he saw these two dark-complexioned short black-haired soldiers standing, at which moment they came out in front of him and asked him where he was going, and he said that he had heard noise and that he wanted to get out of the way, but they told him that he was lying and accused him of having called the police. The injured party said that it was not so, but one of them hit him in the head and said: *“Let’s move over there under the apple tree to slaughter him.”* Then they dragged him under the apple tree and beat him there, and then one asked the other for a knife to slaughter the injured party and the other answered that he did not have a knife. After that they dragged him to the house where members of his family were crammed, and they confiscated money and gold jewelry from them and beat up his brother Fajko. The injured party heard the following day that Hasib Velić had been killed and that the police came from whom he requested help, after which event village neighborhood watch was introduced, and one member of the commission that came to the village told him that people from the village had recognized Goran and Milorad Mrđa but that they did not tell anyone about it because Goran was a good combatant.

283. An excerpt from the *Podgrmečke novine* newspaper⁶² corroborates the injured party’s statement that he was told that Goran Mrđa was a good combatant. The Panel also inspected the excerpt reading that *“members of the Serbian Women’s Charitable Organization KSS Sveta Petka decided to hand over the banner to the best combatant in the battalion. The Battalion Command decided that it should be Goran Mrđa.”*

⁶² Prosecution Exhibit No. T- [as rendered in the original text; translator's note].

284. Witness Suvada Pašić, the injured party's wife, confirmed that during the night they heard a shot and noise and that her husband went out to warn his mother who was staying in another house. In the house where the witness, her husband and their children were staying at the time were also her husband's brother Fajko with his wife and children, aunt, paternal uncle and his wife. In a house farther down the road was M's bed-ridden mother and next to that house was the house of Hasib Velić, who was killed that night, as the Panel will explain afterward. The witness said that she saw that her husband was pushed by two unknown men from the door into the hallway in which she and the children were at that moment. She stressed that she saw that he was shaken and scared. These men immediately started asking for money and jewelry, they swore, and Fajko answered that he had neither. They responded, "*Don't tell me you don't have it, make it,*" and one of them hit Fajko twice, and as it was dark she could not see the faces of the two men who did it. After the witness' aunt gave them some money and gold jewelry, the men left the house. The witness stated that her husband told her the following morning that Hasib Velić had been killed that night, but also that he, too, had been intercepted by the two men who took him to the house and that they beat him there at the spot where they had stopped him, that one asked the other for a knife with which to slaughter him, but could not find the knife. The witness recalls that in the morning they found the knife somewhere around the houses, which made them assume that one of them had lost it and that it had perhaps saved her husband from being slaughtered.

285. Witness Esad Brakić stated that while they were returning from the other side of the village, they heard that someone said "*oh, mother*" and that a shot had been heard prior to it. The witness returned home in the morning. He heard from the villagers that Hasib Velić had been killed, that they had been in the Kuburić family's house, as it had happened in the same courtyard, and the witness knows that they had also been at Muharem Handanagić's and he later heard that they had intercepted M.P.

286. The injured party himself said that the Accused Goran Mrđa was one of these persons when he gave his evidence about the circumstances referred to in Section 1b) of the conviction. The injured party said that in the village of Gorice he was attacked by the same two men who had entered his house when he and his family had stayed in Skucani Vakuf wherefrom they fled to Gorice. Except for the referenced events, the injured party

saw the Accused only once by the school at daytime, he had dark complexion, had some outgrowth next to his ear, and police officer told the injured party that that was Goran Mrđa, he does not remember how Goran Mrđa was dressed at the time. He does not remember what they were wearing, but he thinks they were in camouflage uniforms and had fur caps on.

287. With respect to the fact that one of them asked for a knife to slaughter the injured party M.P. under an apple tree, the Panel was mindful of the fact that one knife was found in the morning in the vicinity of the house and that the knife was identified by the injured party Fikret Avdić, who said that it was a slightly curved knife, a *Turkish* knife, which fits the description of the knife the Accused Goran Mrđa had on him when they were in the Kuburićs' house.

288. Witness Esma Pašić also stated that in a conversation with other members of the family and neighbors on the following day she learned that M.P. had also been beaten up that night.

289. The Defense for the Accused Goran Mrđa tendered an Official Note on the interview with the injured party M.P. conducted by authorized official person Duško Zorić on 11 April 1993, claiming that the witnesses had been told that Goran Mrđa had been the person in question, given that the name of the Accused was not mentioned in the Official Note at all.⁶³ However, the Panel points at the fact that the witness said during cross examination that he had requested not to mention that person's name, to which the policeman had told him: *"I don't know what to tell you, that very Goran is a good fighter, he jumps into the Ustashas' trenches and all that, the best for you would be to take care, keep a low profile and that's it."* This only confirms the fact that the local police were very familiar with the name of the Accused as a problematic person but a useful one for the authorities at the time given that he was a good fighter, as indicated earlier.

290. It could be clearly concluded from the statements of the injured party and his wife alike that on that occasion he sustained grave physical injuries as both of them beat him and one of them hit him in the head, and that he feared a lot for his life, given that the Accused Goran Mrđa threatened he would slaughter him, but also that his family was

⁶³ Exhibit of the Defense for the Accused Goran Mrđa No. O1-1.

threatened on that occasion when they were asked for money and jewelry, and that his brother Fajko was told: *“Don’t tell me you don’t have it, make it!”*

291. When mutual correspondence is established of all pieces of evidence adduced about the events from the whole Section 3, it is clearly inferred that a group of several soldiers came on that occasion to the hamlet of Velići, the village of Gorice, where they first went to Teufik Velić’s house, in which at that time were the Brakićs, and there beat Mehmed and Esad Brakić, snatched the valuables from everyone present, and having threatened them not to get out, left for Fadil Velić’s house where the Kuburićs and Avdićs were staying. When they inflicted injuries on the injured parties there as well, and seized everything the present persons had on them, they went to Rasim Velić’s house, where Hasib Velić and his family were staying at the time. When Hasib Velić tried to escape, he was killed not far from the house by the Accused Goran Mrđa (which circumstances will be explained in detail in Section 3c) of the conviction, in the part related to murder as a war crime against civilians, of whom witness S.V., the injured party’s wife, said that he certainly had not been inside the house when those two persons burst into the house. Finally, before leaving the village, they came across the injured party M.P., whom they beat up in the manner described and whom one of the two soldiers wanted to slaughter, and it has already been proven that the said soldier was the Accused Goran Mrđa who asked the other soldier for a knife, but the other soldier said that he did not have one, which also confirms the fact that immediately before that, after the murder of Hasib Velić, the knife had been thrown into the grass not far from Velić’s body.

292. Based on the foregoing, the Panel found the Accused Goran Mrđa guilty under this Count of the Indictment as well.

Section 4a) of the Conviction

293. Under this Count of the Indictment the Accused Goran Mrđa is charged that he inflicted severe physical and mental injuries on the injured party Omer Drobić in 1994 in the settlement of Pobrjeđe, in the manner as follows: *In the course of 1994, after he had moved into an abandoned Bosniak house in the settlement of Pobrjeđe, in the Municipalities of Sanski Most and Bihać he psychologically and physically mistreated Bosniak civilian Omer Drobić and his family who lived in Pobrjeđe, and on an*

undetermined day in 1994 he beat Omer Drobić close to his family house, when he knocked him down on the ground and continued kicking him with military-boot-clad feet, and as a result Omer Drobić sustained numerous injuries to his body and was black-and-blue of hematomas and bruises, blood poured from his mouth and ears, one finger of his was broken, all of which caused him severe mental and physical pain and suffering, and he eventually lost consciousness.

294. The injured party Omer Drobić⁶⁴ stated that there were troops in Pobježje at that time, not too many, but that among them were those “*who were the scum of the earth,*” including Goran Mrđa. He recalls that almost the whole Bosniak population moved out and that there were perhaps 10-15 houses in which someone was still living. There were persons there from Zenica and from Lipnik who moved into those abandoned Bosniak houses in 1993. The injured party states that Milorad Mrđa moved into Refik Kamber’s house and one Goran called Kinez moved into his cousin’s house, both houses being 10 meters away from the injured party’s house, while the house in which the Accused Goran Mrđa lived was straight across and bordered the house of the injured party’s brother Muharem, who had emigrated to Germany. The injured party said that on the relevant occasion he came to the village, and his wife entered the courtyard of their house while he stayed behind her, when he saw Kinez telling him to wait for him. Thinking that the Accused wanted to discuss something with him, the witness was standing there and when the Accused approached him he told him that his father had gone to hospital and then punched him in the temple, as a result of which the injured party fell, and the Accused continued kicking him in his ribs with his feet clad in military boots and the injured party fainted. When he regained consciousness, he saw that his finger “disappeared” and he knew that Kinez had had a knife, so he entered his house courtyard where his wife asked him what had happened, so he gave her an account of it. Describing that event, the injured party stated that his finger “had disappeared” and that *Kinez* had had a knife and that there was nobody else there, he only remembers having seen Milorad at the door with a rifle. After that, the injured party went to doctor’s to have his finger bandaged and was dispatched to a hospital in Prijedor for surgery.

⁶⁴ Examined at the trial hearing held on 21 December 2015.

295. After the Defense for the Accused showed him a statement No. 02-519 of 3 August 1995⁶⁵ given to the Banja Luka Security Services Center, and pointed at the discrepancies in the evidence, that is, the fact that the injured party could not remember after Defense Counsel's question whether the Accused had punched him in the temple immediately upon arrival in the courtyard, the injured party said that he fully reiterated the statement given in the investigation from which it can be seen that the injured party said, without any dilemma, that the Accused had punched him in the right temple, due to which he fell down and lost consciousness.⁶⁶

296. The injured party said that he remained in Pobježje until February 1995, when he was exchanged to Travnik and that they could not get out until they paid all outstanding overheads (telephone, electricity) and signed that they were renouncing their house and land. Describing his memories, the injured party said that he did not feel safe, as the others were armed whereas he was not, since at the beginning he had had to surrender his pistol at a checkpoint, but if he had had weapons he would not have been afraid. He also stressed that those Serb soldiers were "*a mighty force*", that they used to break in and "*cause chaos*," and he knew that all of them made a team and that they laid mines under one house. The injured party said a consequence of this event was his current impaired health condition, he underwent a head surgery, his lungs have been "*damaged*," one finger of his was cut off and he still suffers consequences of it.

297. The injured party's averment that he went to an outpatient clinic in Sanski Most where he had his finger stitched up was also confirmed by witness Mato Grgić⁶⁷, who said in his evidence that on one occasion in 1994 he went to the doctor's because he had sustained an injury while he had been chopping wood in the course of his compulsory work service. Then one Mira took him to the Health Center in Sanski Most, where he came across Omer whose hand was injured and who was bleeding, but he did not ask him anything. After that they were transported to the hospital in Prijedor, with them were a driver and two soldiers, they had been stitched up in the hospital whereupon they were taken back home in the same vehicle. Omer then told him he should sleep over at his place, which the witness did but did not ask him anything, and that he heard that there had

⁶⁵ Defense Exhibit O1-9.

⁶⁶ The injured party Omer Drobić gave the same statement to investigation judge of the High Court in Zenica on 27 September 1995 – Defense Exhibit O1-9.

⁶⁷ Examined at the trial hearing held on 11 January 2016.

been some mistreatment. The witness knew that Omer was from Pobježje, but he did not know his last name. The only thing he knows is that on that occasion when they went to the hospital Omer had a fresh wound and his finger was bandaged.

298. The injured party clearly identified the Accused Goran Mrđa, given the fact that he knew him well since in 1993 the Accused had moved into Muharem Drobić's house, which was in immediate proximity of his house. This was also confirmed by the Accused Goran Mrđa when he testified as a witness for the Defense and said that he had moved into the house of Omer Drobić's brother.

299. The Accused Goran Mrđa also testified about the conflict with the injured party in his statement as a witness for the Defense at the main trial. He said that it was true that at that time he moved into Omer Drobić's brother's house, since Bosniaks' houses were allocated so that one "fell to his lot." He stresses that a list was made of the things found in the house. He says that it is true that he had a conflict with the injured party Omer, but it was because Omer used to take things from a garage adjacent to Omer's brother's house in which the Accused resided at the time, and he went to Omer's to return these things since Omer had not returned them, and he did not want anyone to blame him for their disappearance given that they were on the list. He says that Omer cursed his mother on that occasion, which upset the Accused and he pushed Omer Drobić who fell down. He knows that police came because of it.

300. Witness Besim Islamčević⁶⁸ also confirmed to the Panel that many Bosniaks were evicted from their houses in Pobježje and that many Serbs moved into those houses, stressing that it all happened in 1993 and 1994. He also knows that a person nicknamed Kinez moved into Muharem Drobić's house, which was some 5-7 meters away from Omer Drobić's house, and that he heard that the Drobić family had certain problems because of that proximity. The aforementioned was also confirmed by witness Izet Kamber⁶⁹, who stressed that two Serb soldiers moved into the houses in the immediate proximity of Omer Drobić's house, due to which Omer had some problems.

⁶⁸ Examined at the trial hearing held on 14 December 2015.

⁶⁹ Examined at the trial hearing held on 25 January 2016.

301. The injured party's son, witness Sefer Drobić⁷⁰, who was in Kijevo at that time, confirms that his aunt told him that Goran Mrđa had beaten up his father in front of the house, hence the witness did not dare go to his house in that period, but he knows that his father went to the doctor's because of it.

302. In the case at hand, the Panel credited the witness–injured party Omer Drobić, who gave his evidence in a clear, convincing and unambiguous manner and his evidence was corroborated by the statements of witnesses Besim Islamčević, Mato Grgić, Izet Kamber and Sefer Drobić. In addition, the Defense for the Accused did not adduce a single piece of evidence whereby it would have challenged the Prosecution evidence about this circumstance, except for the statement of the Accused in the capacity as a witness, but his evidence could not be regarded as truthful, given that Omer Drobić's statement was corroborated by statements of several other witnesses.

303. With respect to the objection of the Defense for the Accused that the case at hand concerned a conflict of personal nature and that it had nothing to do with war crimes, the Panel recalls that at the relevant time the injured party Omer Drobić was indeed in a subordinate position with respect to the Accused and other Serbs, given that he was in the region that was under Serb army's control, and that he had to do what he was told, as he did not enjoy any protection by the authorities at the time. The Panel has concluded the foregoing from the witness' statement about other Counts of the Indictment, in particular a part of the statement of the injured party M.P. of 11 April 1993⁷¹ stating that the police officer himself told him then that he had nothing else to say to him but to take care given that the person concerned was a good combatant, that is, that the Accused used his position to instill fear in and mistreat Bosniak civilians.

304. Therefore, having evaluated the adduced evidence, that is, the statements of the referenced witnesses, the Panel concluded beyond reasonable doubt that the Accused Goran Mrđa committed the referenced offense and, consequently, found him guilty under this Count of the Indictment.

⁷⁰ Examined at the trial hearing held on 21 December 2015.

⁷¹ Defense Exhibit O1-1.

Section 4 b) of the Conviction

305. This Count of the Indictment charges the Accused Goran Mrđa that *in the course of 1994, after he had moved into an abandoned Bosniak house in the settlement of Pobrjeđe, in the Municipalities of Sanski Most and Bihać he psychologically and physically mistreated Bosniak civilian Omer Drobić and his family who lived in Pobrjeđe, so on an undetermined date in the fall of 1994, on a demarcation line at Grabež, where Sefer Drobić was doing his compulsory work service, in one dugout he started beating Sefer Drobić and threw a hand grenade beneath his feet which did not explode, whereupon Sefer Drobić started running away fearing for his life, and Goran Mrđa caught up with him and started kicking and beating him all over his body, during which Sefer Drobić lost consciousness from time to time, sustained multiple injuries all over his body, and endured severe physical and mental pain and suffering.*

306. The injured party Sefer Drobić described in detail the manner in which he was beaten up and mistreated by the Accused Goran Mrđa while he was doing his compulsory work service at Grabež. The injured party stressed that he had known the Accused from before, as the Accused had moved into Muharem Drobić's house which was next to the injured party's father's house so he had met him often, which is how he knew him. They were also born in the same year, unlike Milorad Mrđa, whom he also knew but who was somewhat older than him.

307. The injured party confirms that the relevant event happened at Grabež in 1994, when the injured party was doing his compulsory work service, on which occasion one Mile Međed told him that a gentleman was looking for him and that it was Goran Mrđa nicknamed Kinez. Kinez asked him where he was heading to, and then pressed him against a stone wall and told him to stand there, pulled out a grenade fuse and said: *"Where are you off to, I'll screw your baliija [derogatory term for Bosnian Muslims; translator's note] mother?"* He hit him with his fists and kicked him and continued beating him until the injured party lost consciousness. He knows that from there he was taken and transported by a TAM [Maribor Automobile Factory] truck to the hospital in Prijedor for an urgent appendectomy and that he told Besim Islamčević that Kinez had beaten him.

308. The Prosecutor's Office of B-H tendered a statement of the injured party from the investigation⁷² given that he said at the main trial that he did not remember who had found him after he had fainted, whilst in the referenced statement he said that he had been found by Bego Islamčević, Besim Islamčević and Emso Karabeg. When asked specifically, the injured party said that he could not remember exactly who had found him, but that he was sure that he told Besim Islamčević in the dugout at Grabež that it was Kinez who had beaten him up, which witness Islamčević confirmed to the Panel, too.

309. With respect to witness Besim Islamčević's statement, during the cross examination by the Defense for the Accused the witness was shown his statement from the investigation which did not read that the witness said exactly who had beaten up the injured party Sefer Drobić. The witness commented that the statement had not been taken down accurately and confirmed that Sefer told him personally that Kinez had beaten him up.⁷³

310. In the referenced statement from the investigation, witness Islamčević added that he had known that one man from Lipnik called Kinez had sometimes been on the line at Grabež, and that he had heard bad things about him so he took care to stay away from him. He stressed that he had also heard of him from Sefer Drobić, who had known Kinez well since he had lived in the house of Sefer's paternal uncle Muharem Drobić.

311. After that, the witness was transported to the hospital in Prijedor for surgery, where, as he said, he lied to a doctor that a dugout had collapsed on him given that he was black-and-blue all over. All the time while he was in the hospital he was in fear as some Serbs threatened him while he was there, due to which he left the hospital prematurely and had problems with his wound afterward.

312. With respect to the injured party's statement that he had to have an appendectomy, the Prosecutor's Office of B-H tendered a discharge letter from *Dr. M. Stojanović* hospital in Prijedor⁷⁴, which reads that the injured party had an appendectomy on 12 October 1994.

⁷² Witness Examination Record for Sefer Drobić, No. T20 0 KTRZ 0006582 13, of 23 September 2014, Exhibit T-14.

⁷³ Witness Examination Record for Besim Islamčević, No. T20 0 KTRZ 0006582 13, of 16 October 2014, Exhibit O1-8.

⁷⁴ Prosecution Exhibit T-25.

313. The injured party's father, witness Omer Drobić, also confirmed that his son told him, after returning from the frontline, that Goran Mrđa had beaten him up at Grabež and had to take him to doctor's. At that time the witness did his compulsory work service, as did his son Sefer. While his son was at Grabež he was beaten up by one Međed, Kinez and some others; anyway he knows that his son fainted and was lying, and one colleague of the witness' recognized the witness' son, and they bundled him onto a truck and drove to the checkpoint, so the son managed to come home during the night, but could not speak, he was red and black-and-blue all over, beaten-up. Then the witness took his son to the hospital by a tractor, where he was given a referral letter to have a surgery in Prijedor. The son told the witness that he had been beaten up by Kinez and Međed, the latter being a conductor who was in the army. The witness did not have money to cover the hospital costs, they confiscated his ID card, and he paid out 100 marks to a certain person to pay for the costs of his son's transport from the hospital. The witness had to take his son to the hospital for change of dressing. In the period when his son was in hospital the witness used to see Goran and Milorad Mrđa; he remembers that every time the four of them would get together and confer in the evening, that particular night something happened, and Milorad was the ring-leader, according to the witness, as he was more experienced. The witness saw them before the nightfall, but he saw them more often at daytime. The witness said that Kinez told his wife that they could have killed her son, but that they let him live because she had been good to them. The witness says that even nowadays he feels fear of what might have happened.

314. Bego Islamčević⁷⁵ was examined as a witness for the Defense of the Accused. He said that he knew the injured party Sefer Drobić, as they had been neighbors, and that he did not see him being beaten up, but that he heard that he had been beaten up.

315. The witness also said that he heard that Goran Mrđa was a bad person and that he used to attack people. He added that he used to see him in the courtyard of the house where he lived. With respect to the attack on Sefer Drobić while he was on the line, he stresses that he did not see when Sefer had been attacked, but that he heard from both Sefer and others that he had been beaten by Mrđa Kinez.

⁷⁵ Examined at the trial hearing held on 27 October 2016.

316. The Defense pointed at the discrepancies in the respective statements given at the main trial and in the investigation, stressing that the witness said then that he did not know who had beaten Sefer Drobić.⁷⁶ Clarifying the referenced discrepancies, the witness stressed that he really had not seen who had beaten the injured party, but that he heard that Goran Mrđa had beaten him up, and that he could not explain why he had not said it at the time.

317. On the basis of such clear and convincing statement of the injured party, as well as the statements of the other examined witnesses, including even Defense witness Bego Islamčević, the Panel concluded beyond reasonable doubt that the Accused Goran Mrđa committed the offense he was charged with under this Count, and the Panel, therefore, found him guilty of this Count of the Indictment.

Section 5 of the Conviction

318. Under Count 5 of the amended Indictment, the Accused Goran and Milorad Mrđa were charged that on *an undetermined date in the winter of 1994 in Pobjeđe, they entered the house of Muharem Jakupović, in which at that time there were following Bosniak civilians: Muharem Jakupović, his wife Zumra Jakupović, Omer Drobić, his wife Vasva Drobić, his children Sefer Drobić, Nedžada Drobić and Emdžad Drobić, Sakib Jakupović and his wife Đemila Jakupović. Immediately in the hall they beat Muharem Jakupović, as a result of which he sustained injuries all over his body and endured severe mental and physical pain and suffering, whereupon they conducted a search of the house and found and seized money and one television set, all of which caused the persons who were in the house to fear for their lives and the lives of their kin, and caused them severe mental suffering.*

319. Witness Sefer Drobić⁷⁷ stated that after the event in which he was an injured party there were other problems; he came back home after the surgery, there was a fuel shortage, he could no longer escape, and he had to get back home because he was incapable of walking, due to which he went to sleep at his neighbor's. That night the witness *happened to be* at Muharem Jakupović's house. In the beginning they slept on the

⁷⁶ Witness Examination Record for Besim Islamčević, No. T20 0 KTRZ 0006582 13, of 16 October 2014.

⁷⁷ Examined at the trial hearing held on 21 December 2015.

upper floor of his house and later they moved to Muharem's room. He states that Goran and Milorad Mrđa first knocked on Sakib's door, but Sakib fled across the yard, at which moment a dog started barking so they killed the dog and Muharem locked the door. The witness states that he saw it all from the staircase inside the house, he saw them breaking in, they were disguised and Kinez was saying "*faster, faster*", they opened the door, found Muharem in the toilet, beat him up, and then they also beat him at the staircase. At that moment Sefer's father Omer placed a couch against the door and they heard them going toward the bedroom where they had taken shelter. They beat Sakib's wife Zumra, who was also in Muharem's house, and they took the jewelry that was in the house, asked for more money, and when they woke up the following morning they saw that they had taken the television set as well.

320. The witness states that on that occasion he saw Goran Mrđa and Milorad Mrđa who were talking to each other and that he recognized them by their voices, given that prior to that he had used to see them every day and talk with them, they had a specific manner of speaking, but, according to the witness, "*they could put on hundreds of disguises, I would still recognize them.*" He recalls that on that occasion Goran Mrđa was limping on one leg as some of his men had shot him in a bar. The witness adds that the two of them were always together, but that Mile Kokot was also with them. The witness claims that on that occasion he went down the stairs *to some point* and that he did not see the third person well. They wore the masks of the sort the police wore. The following day the witness saw that the dog was killed.

321. The witness could not see what was happening in the toilet since it was not visible from the staircase and since he had withdrawn to the upper floor at the moment they had burst into the house, but he stresses that he heard well everything that was happening.

322. Asked by the Defense why he was disclosing only then that the Accused Goran Mrđa had been lame in one leg, something he had not said earlier, the witness said that he had not considered it important. Asked by a Panel member whether upon arrival at Jakupović's house he saw that Goran Mrđa had a limp, the witness said that he used to see him at daytime, but that on that occasion he recognized him by his voice as he could not see him.

323. The witness' father, Omer Drobić, also confirmed that the event indeed took place, and he described the manner in which the accused persons burst into the house of Muharem Jakupović, on which occasion he recognized Goran Mrđa by his voice as he passed by the room in which they were and entered the room where the women were, where he asked them to give him money and jewelry. As he stresses, they first attacked Muharem on the ground floor of the house and he cried for help and moaned, which the witness heard while he was upstairs. He recalls that in the morning they found Muharem lying there covered in blood and black-and-blue, and everything in the house was turned upside down and the television set was missing. Muharem then told him: *"Look what Milorad and Goran have done to me, they pushed my head into the toilet bowl and beat me up."* The witness does not remember if anything else happened, he confirms that he slept at Muharem's, that they came and attacked Muharem's house, killed the dog and then entered the house. The witness did not know who had entered the house, he heard Muharem crying, he placed the couch by the door, Kinez passed by him, the witness did not see him, but heard him, and he then beat Zumra and Džemila coercing them to give him money and jewelry, they were covered in blood like Muharem, which the witness saw the following morning. The witness states that they fired a burst at his house, for which reason the police came and took photographs of the house on which bullet traces were visible.

324. He says that in the house on that occasion were Džemila Jakupović, Zumra, Muharem, with the witness was his wife Vasva, son Sefer, Endžad and the witness' daughter Nedžada. The witness heard voices and recognized Goran Mrđa's voice.

325. Asked how he could recognize Goran Mrđa's voice, the witness answered that he could because he used to see him every day, and also because he was a doorman, so recognizing voices was part of his profession.

326. Witness Mirsad Jakupović⁷⁸, son of the injured party Muharem Jakupović, gave an account of what his father had told him about the referenced event, saying that two men burst into the house, he was beaten up and they seized money. He added that, in addition to his family, Omer Drobić and his family were also present in the house, but he did not know who exactly of Omer's family, since he was not there himself. The witness also

⁷⁸ Examined at the trial hearing held on 28 December 2015.

stated that he did not know the names of the two men who had done it, but knew that at that time one of them had lived in Muharem Drobić's house and the other in Refik Kamber's house. After that his father had injuries to his head and all over his body, but did not want to go to the doctor's, so they had to wrap him in sheepskin to heal his wounds.

327. This witness also states that the traces of shooting could still be seen at the entrance door of the house, and also that in 1996, when he returned to the village, he found blood traces on the upper floor on a wall and a bloodied duvet, and that there was one bullet in the door.

328. The Defense for the Accused did not adduce a single piece of evidence about the referenced event, except voicing a complaint that such recognition of the voice by the witness cannot be credited, since the witness' statements appear unconvincing and contradictory.

329. The Panel considers such generalized averments of the Defense to be unfounded, because witnesses Sefer and Omer Drobić presented their respective information in accordance with their personal perceptions at the referenced moment, given that Omer Drobić was in the bedroom and Sefer Drobić in the middle of the staircase, whereupon he also withdrew upstairs. They clearly confirmed that on that occasion they recognized the voices of Goran and Milorad Mrđa, who were their neighbors at that time as they lived respectively in Omer's brother Muharem Drobić's house (Goran Mrđa) and Omer's neighbor Refik Kamber's house (Milorad Mrđa), and the witnesses had an opportunity to see the Accused every day, due to which they memorized their voices.

330. Also, in the morning, after all members of the household were together, the injured party Muharem Jakupović told witness Omer Drobić "*Look what Milorad and Goran have done to me, they pushed my head into the toilet bowl and beat me up,*" which only corroborates these witnesses' statements. In addition, witness Mirsad Jakupović also said that his father Muharem told him what had happened that night and that he knew that it was done by the persons who at that time lived in the respective houses of Muharem Drobić and Refik Kamber.

331. In Sections 4a) and 4b) the Panel commented on the fact that in 1993 and 1994 the Accused Goran and Milorad Mrđa lived in allocated Bosniak houses, as the Accused Goran Mrđa confirmed by saying that he lived in Muharem Drobić's house and that he knew Omer and Sefer Drobić at that time as their house was next to the one in which he lived.

332. Based on the consistent statements of witnesses, and taking into account the context of the events that have been described in more detail in the preceding sections of the conviction, the Panel concluded beyond reasonable doubt that on the occasion concerned the Accused Goran Mrđa and Milorad Mrđa were in the house of Muharem Jakupović, on whom they inflicted grave bodily injuries such as bruises and hematomas, and that they pushed his head into the toilet bowl, in order to seize money and other valuables from him and members of his family, due to which the Panel found them guilty under the referenced Count of the Indictment.

MURDER as the criminal offense of War Crimes against Civilians

333. Given that in the previous part of the reasoning of the conviction the Panel separately expounded on inhuman act as the criminal offense of War Crimes against Civilians, and subsequently on the individual charges with respect to which the Accused Goran Mrđa and Milorad Mrđa were found guilty of inhuman acts, the Panel will now refer to the elements of murder as the criminal offense of War Crimes against Civilians.

334. "Willful killing" as a grave breach of the Geneva Conventions means the same as "murder of all kinds" referred to in Common Article 3.⁷⁹ Elements of the underlying crime of willful killing are identical in the laws that stem from the treaty and customary laws and in the criminal offense of Crimes against Humanity.⁸⁰

335. The essential elements of this criminal offense are as follows:

- *the victim is dead,*
- *the death was caused by an act or omission of the accused, or of a person for whose acts or omissions the accused bears criminal responsibility; and*

⁷⁹ *Čelebići*, Trial Chamber Judgment, para. 1066.

⁸⁰ *Brđanin*, Trial Chamber Judgment, para. 380.

- *the act was done, or the omission was made, by the accused, or a person for whose acts or omissions he bears criminal responsibility, with an intention to kill, or to inflict grievous bodily harm or serious injury, in the reasonable knowledge that such act or omission was likely to cause death.*⁸¹

336. If the deprivation of liberty is incriminated as a grave breach, the ICTY Appeals Chamber decides to apply an additional element -- the requirement that the victim was a protected person when he/she was killed.⁸²

337. Before the ICTY and the ICTR it is not necessary to produce the body as a proof of death. The victim's death may be established by the adduced evidence, that is, circumstantial evidence, provided that it is the only reasonable evidence.⁸³ Before the ICTY such evidence includes: an eyewitness identified the victim as being killed; a witness gave evidence that the victim was missing or dead; the victim was named in a death certificate issued by a local court;⁸⁴ proof of incidents of mistreatment directed against the individual; patterns of mistreatment and disappearances of other individuals; the general climate of lawlessness; the place where the act was committed; the length of time which has elapsed since the person disappeared; the fact that there has been no contact by that person with others whom he would have been expected to contact, such as his family;⁸⁵ local police reports indicating the names of the victims who were killed or wounded, or hospital documents indicating admission of patients and their subsequent death.

338. According to the ICTY Appeals Chamber, to satisfy the *mens rea* for willful killing as a grave breach, it must be established that the accused "*had an intention to kill or to inflict grievous bodily harm or serious injury in the reasonable knowledge that it would likely lead to death.*"⁸⁶ The intent of the perpetrator at the time of the perpetration or omission must be the killing of the victim or, in the absence of that specific intent, the perpetrator must act or omit to act in the reasonable knowledge that death is a likely consequence. The *mens rea*

⁸¹ *Brđanin*, Trial Chamber Judgment, paras. 381-2; *Čelebići*, Trial Chamber Judgment, paras. 424, 909

⁸² *Kordić and Čerkez*, Appeals Judgment, para. 38.

⁸³ *Brđanin*, Trial Chamber Judgment, paras. 383-385; *Tadić*, Trial Chamber Judgment, para. 240; *Krnjelac*, Trial Chamber Judgment, para. 326.

⁸⁴ *Stakić*, Trial Chamber Judgment, para. 939.

⁸⁵ *Krnjelac*, Trial Chamber Judgment, para. 327.

⁸⁶ *Kordić et al.*, Appeals Chamber Judgment, para. 96; *Brđanin*, Trial Chamber Judgment, para. 386; *Stakić*, Trial Chamber Judgment, paras. 587, 747; *Limaj*, Trial Chamber Judgment, para. 241.

may be inferred either directly or circumstantially from the evidence of the case.⁸⁷ Premeditation is not required.⁸⁸

339. The act of willful killing as a Crime against Humanity is punishable under Article 173(1)(c) of the CC B-H and Article 142(1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY). The elements that must be proven are the death of the victim and the perpetrator's intent to kill the victim.⁸⁹

340. Proving the death in crimes committed during an armed conflict may be difficult, depending on the available evidence. In order to establish a victim's death, the Court of B-H has admitted and evaluated the evidence individually and cumulatively. Such evidence, for instance, includes: victim death certificate, exhumation reports, autopsy reports, DNA analysis reports, corpse reception certificates issued by cemeteries, corpse transportation certificates, burial permissions, official notes made by public security services, witness testimony or accused's confession.

341. The case law concerning *mens rea* for willful killing is limited. The Court of B-H has based its inferences on the evaluation of the accused's acts at the moment of the perpetration of the killing and other evidence adduced about the killing.⁹⁰

342. In the case of Niset Ramić⁹¹, the Panel concluded as follows: "*He [the Accused] ordered the captured civilians to line up against the wall of a house. [...] The Accused called one civilian to step out, which he did. Then, without any legally justified reason, after he had not received the requested answer, the Accused fired in the civilian's chest from a short distance. Therefore, it is beyond doubt that by this act the Accused wanted to kill the person.*"

343. The Panel will explain the reasons for pronouncing the Accused Goran Mrđa guilty of the murder of victim Hasib Velić under Count 3c) of the Indictment, and the Accused Mile Kokot, of the murder of victim Tahir Cerić under Count 6 of the Indictment.

⁸⁷ *Brđanin*, Trial Chamber Judgment, para. 387.

⁸⁸ *Ibid*, para. 386.

⁸⁹ Commentary of the CC B-H, p. 573.

⁹⁰ *Andrun*, Appellate Panel Judgment, p. 23; *Sakić*, Trial Panel Judgment, p. 17.

⁹¹ *Niset Ramić*, Trial Panel Judgment of the Court of B-H, No. X-KR-06/197, of 17 July 2007, p. 22.

Section 3c) of the Conviction

344. Under this Count of the Indictment, the Accused Goran Mrđa is charged that *on 2-3 May 1993, in the night hours, he was together with persons known to him, all armed, in the village of Gorice, Sanski Most Municipality, and after two persons known to him burst in violently through the entrance door of Rasim Velić's house and then entered the house, Goran Mrđa remained outside to watch lest someone should escape from the house in which at that moment there were Bosniak civilians Rasim Velić, his wife Hava Velić, their son Kasim Velić with his wife Radija Velić and minor children, and son Hasib Velić with his wife S.V. and minor children, whereupon the two persons known to him beat Rasim Velić all over his body in the hall, pushed him down to the floor and kicked him with boot-clad feet, due to which he sustained hematomas to his body and bled from the mouth, nose and ears, which caused him severe physical and mental pain and suffering, and they mistreated the other people in the house psychologically, demanding money and other valuables from them, whereupon one of those persons moved away the scarf from Hava Velić's head with a bayonet of a rifle, then pointed the rifle at her demanding that she take off her earrings as well, which she did, then he took off a ring from the hand of S.V., all of which instilled strong fear with the persons found in the house for their and the lives of their kin and caused them severe mental suffering, and as Hasib Velić tried to run away from the house by jumping through window, Goran Mrđa fired at him from close range from a 7.65-mm CZ pistol, serial number 103029, and the round hit Hasib Velić in the back of his head whereupon he succumbed to the wound and died on the spot.*

345. The witnesses who testified about the circumstances of this Count of the Indictment were Prosecution witness Denis Velić, son of the slain Hasib Velić, S.V. and his mother, while the statement of witness Radija Velić was read out at the hearing since she was not able to give evidence at the main trial due to grave illness.

346. Witness Denis Velić⁹² states that on the night of 2-3 May 1993 he slept at the house of his father Hasib Velić in the village of Gorice, where they were all crammed in one room, while his grandfather slept in the kitchen. When he woke up some time during the

⁹² Examined at the trial hearing held on 26 October 2015.

night, he saw in front of himself a man with a semi-automatic rifle and an open knife attached to it. The man ordered him to get up, after which his aunt told the man to leave the witness alone because he was disabled, after which that man never addressed him again. Then the man moved his grandmother's headscarf with the rifle knife and asked her to take her earrings off and while doing so he was inserting a bullet in the rifle barrel. He requested money from the witness' paternal uncle, he also took a ring, and while he was still in the room a shot was heard. After that, that man went to the kitchen where the grandfather was and asked him for money, dragged him to the door and started kicking his ribs, in which he was also joined by the other man who got out of the room where the witness' mother and sister were, whereupon they both beat up the grandfather and blood gushed forth from his nose, mouth and ears. At that moment a third person showed up at the door and said that it was enough and that they should run away. The witness claims that at the moment when he heard a shot from the outside there were two persons in the house, and that the third one came shortly before the two left. The following day the uncle found the witness' father Hasib Velić lying dead 20-30 meters away from the house, and afterward some 10 7.65-mm cartridge cases were found approximately 10 meters away from there. A knife with an ivory handle was found on the manure heap. In the morning he learned from the neighbors that the same attackers had also raided the respective houses of Fadil Velić and Teufik Velić where the Kuburić and the Brakić families had stayed at the time. The witness also said that he knew the Accused Goran Mrđa from the school in Fajtovci, that the Accused had been in a senior generation and that he had been problematic, and the witness also saw him twice in Fajtovci at the beginning of the war. The witness heard from others that the rumor was that Goran Mrđa had killed his father on the occasion concerned. The police who conducted a crime scene investigation after Hasib Velić's murder also said that the Accused Goran Mrđa had been there on the referenced occasion. The witness also remembers that two or three days after the incident the Accused was wounded to his leg and that the witness' mother came across him in Sanski Most in such a condition, when she noticed that he was limping, which was two or two-and-a-half months after his father's killing, and she heard then the Accused telling the persons in his company that he would not have killed him if the victim had not hit him. Ramiz Dervišević also saw him on that occasion and confirmed that that was Goran Mrđa.

347. Witness S.V.⁹³, mother of witness Denis Velić, confirmed that on the relevant occasion two soldiers burst into the house and explained who was in which room of the house, that is, that her father-in-law was in the kitchen that also served as an antechamber from which other premises of the house were entered. She recalls that someone knocked two-three times and then started banging the door, at which moment the witness cried for help and set off to the kitchen and then saw two soldiers hitting her father-in-law and they pushed her back to the room. One of them followed her into the room and asked for money and gold jewelry and threatened to kill her children. She took a ring off her finger and gave it to him as she did not have anything else. At the moment when the banging on the door started, she woke up her husband Hasib who went to another room and jumped through the window, and shortly afterward she heard a shot. Her husband was afterward found by his brother who shouted that he no longer had a brother, at which moment she fainted. After that neighbors said that the same persons had earlier that night raided the houses where the Kuburićs and the Brakićs had been staying, and that M.P. had been attacked. They also said that one of those persons was Goran called Kinez, whom she did not know at the time. The witness saw the same person limping some time around August in Sanski Most and she knew that Goran Mrđa had been wounded to his leg shortly after her husband's murder. She heard then, while they were passing by her, that Goran Mrđa said: *"I wouldn't have killed him if he had not hit me."* After that she met her cousin Ramiz Dervišević, who told her that the man who was limping was Goran Mrđa indeed. The witness also confirmed that she did not see Goran in the room on the relevant occasion, that is, he was not one of the two soldiers who broke into their house, as the person who was in the house on that occasion was bulkier than Goran.

348. Witness Mehmed Brakić⁹⁴ said that at the moment when they were close to the woods he heard a shot from a pistol and Hasib's voice, as he shouted: *"Oh, mother"*. The witness recognized Hasib's voice because he knew him from before.

349. That was also confirmed by witness Esad Brakić⁹⁵, who said that while they were returning from the other side of the village they heard that someone said *"Oh, mother"*, and there had been a shot prior to it. The witness returned home in the morning. He heard from his fellow villagers that Hasib Velić had been killed, that they had been in the house

⁹³ Examined at the trial hearing held on 2 November 2015.

⁹⁴ Examined at the trial hearing held on 7 September 2015.

⁹⁵ Examined at the trial hearing held on 7 September 2015 and 14 September 2015.

of the Kuburić family, as that had been in the same courtyard, and the witness knows that they had also been at Muharem Handanagić's and he later also heard that they had intercepted M.P.

350. Witness Semira Brakić⁹⁶ also confirmed these witnesses' averments, stating that when returning from the woods she heard a shot and that someone shouted "*Oh, mother*", and the people in the village later said that Hasib had been killed. When she returned home she found her father- and mother-in-law there. They immediately met with members of the Kuburić family who told them that Ćamil, who had been at Rufad's and Suvad's place had died, and that the attackers had moved from the Brakićs house to the Kuburićs house and that the beating had happened there. The witness knows that they were at Hasib Velić's house where Hasib got killed, and that they were also at M.P.'s place.

351. That the death of Hasib Velić happened in the night of 2-3 May 1993 at 02.30 hrs in the village of Gorice is confirmed by the Death Certificate to his name issued by the Municipality of Sanski Most, No. 05-13-3-1340/14, on 18 December 2014.⁹⁷

352. The Defense for the Accused Goran Mrđa commented in the closing argument on the Prosecution Exhibit No. T-28, which concerns the file of the criminal case of Sanski Most SJB [Public Security Section], No. 11-19/01-230-KX-89 of 15 July 1993. Defense Counsel argued that the exhibit was unlawful given that it was an official note of the police which, under the then Criminal Procedure Code of the Socialist Federal Republic of Yugoslavia (CPC SFRY), could not be used in court proceedings, and that there was never any adjudication for that particular criminal case. However, in this part the Panel also recalls that it did not use this particular exhibit when establishing the guilt of the Accused with respect to this Count of the Indictment, noting that the Panel had other lawful evidence on the basis of which it rendered its decision.

353. In addition to the statements of the referenced witnesses, the Panel also had at its disposal a forensic analysis report on the cartridge cases found in the proximity of the body of the killed Hasib Velić. It was established that they belonged to *Crvena Zastava* (CZ) 7.65 mm pistol, serial number 103029, which was afterward (two days later)

⁹⁶ Examined at the trial hearing held on 14 September 2015.

⁹⁷ Exhibit T-42.

confiscated from the Accused Goran Mrđa during an argument in café *Tina* in Husimovci, when the Accused was wounded by Miloš Štrbac.

354. Also, from the letter of the Sanski Most SJB, signed by SJB head Mirko Vručinić⁹⁸, dated 6 May 1993, ordering a forensic analysis of the firearm, cartridge case and bullet found at the crime scene investigation conducted on 11 April 1993 in the village of Skucani Vakuf after the attempted murder of Sefer Pašić, and on 2-3 May 1993, after the murder of Hasib Velić. With respect to the murder of Hasib Velić, the letter reads that the murder was committed next to the house owned by Rasim Velić, on a sand track which Hasib Velić had taken attempting to escape, and a pool of blood was observed at the crime scene and one cartridge case of 7.65 mm caliber found, which was submitted for forensic analysis together with the firearm, a CZ 7.65 mm pistol, serial number 103029.

355. The referenced act also reads that *“following further operational activities we have learned that potential perpetrator might be Goran Mrđa nicknamed Kinez from the village of Lipnik, Sanski Most Municipality, for whom it was established after a check that he possessed a Crvena Zastava 7.65 mm pistol, serial number 103029, which was confiscated by officers of the Sanski Most SJB.”* This Panel regards this as a confirmation of the fact that the Accused was the owner of the referenced pistol at the moment of Hasib Velić’s murder.

356. The Panel was satisfied that the police really conducted a crime scene investigation on the relevant occasion on the basis of Excerpt of CSI Logbook of the Sanski Most SJB for 1991/1992/1993/1994⁹⁹, where under entry number 76 a murder in the village of Gorice was recorded, that is, the entry read that *“in the night of 2-3 May 1993, unidentified persons ‘burst’ into the village and beaten up several persons and killed Hasib Velić.”* During the crime scene investigation a record was made, traces and blood were found, as well as a pistol with cartridge cases, which were all handed over to inspector Dobrijević.

357. Entry No. 78 in the Logbook reads that in the early morning hours on 5 May 1993 there happened a grave bodily injury in café *Tina*, in the place of Husimovci, when an argument, that is, a quarrel broke out between Goran Mrđa, Milorad Bilbija and Miloš

⁹⁸ Prosecution Exhibit T-12.

⁹⁹ Prosecution Exhibit T-20.

Štrbac, with the latter pulling a pistol and wounding Goran Mrđa nicknamed Kinez. This only corroborates the statement given by witness S.V., the victim's wife, who said that after some time she encountered the Accused together with several other persons and saw that the Accused was limping, and that she heard that he had been wounded shortly after her husband's murder.

358. A Special Report by Sanski Most SJB¹⁰⁰ reads that on 5 May 1993, in the Sanski Most SJB, authorized officers temporarily seized items, that is, a CZ M70 7.65 mm pistol, serial number 103029, and three bullets from Milorad Mrđa, who had the pistol on him on that occasion, as, immediately before that Goran Mrđa aka Kinez had been gravely wounded in the catering establishment *Tina* in Husimovci and he gave the pistol to Milorad Mrđa, from whom the pistol was temporarily seized.

359. The Record of Crime Scene Investigation conducted by the Basic Court in Sanski Most No. Kri 29/93 of 3 May 1993¹⁰¹ reads that the scene of Hasib Velić's murder is a path behind the house, and that the killed person had a blue sweat-suit on, and that there is a visible entry wound at the occipital region but that there is no exit wound. It also reads that there are visible bruises to the left knee and the frontal region, but that there are no other injuries, and that the death was instant as a result of a penetrating wound to the head.

360. In this part the Panel will take a closer look at the forensic analysis of the referenced firearms, cartridge case and bullet found next to the house where Hasib Velić was killed, which analysis was carried out by expert witnesses Vilko Marić and Željko Popović¹⁰². In the forensic analysis of the firearms, cartridge cases and bullet, No. 02/3-233-128 of 25 May 1993, a comparison was made between the cartridge case of 7.65x17 mm bullet found at the scene of Hasib Velić's murder and the cartridge cases of the 7.65x17-mm bullets fired from the CZ M70 7.65 mm, pistol, serial number 103029, and complete match was established of the general and individual characteristics on the traces left by the chamber, firing pin, and cartridge extractor and ejector. The expert witnesses confirmed the foregoing when they testified at the main trial on 23 November 2015 and said that they had conducted the forensic analysis together. The Defense pointed at the fact that the finding and opinion of the forensic analysis were not supported by

¹⁰⁰ Special Report by Sanski Most SJB, No. 11-19/02-2-230-KU-77/93, of 9 June 1993 – Exhibit T-27, p. 2.

¹⁰¹ Exhibit T-23.

¹⁰² Examined at the trial hearing held on 23 November 2015.

photographs, to which the expert witness Vilko Marić replied that during the war they did not have all necessary materials at their disposal and that there were numerous instances of forensic analysis when photographs were not taken. The expert witness also confirmed that for the accuracy of forensic analysis it is not relevant whether ammunition of the same manufacturer is used, as well as that forensic analysis may be conducted by firing one bullet alone, and that in the case at hand the general and individual match of the characteristics of the pistol and the cartridge case was established, that is, of the trace left by the pistol's firing pin.¹⁰³

361. The Defense objected to the evidence given by witness S.V. at the main trial, due to which she was shown a statement given to Banja Luka CSB [Security Services Center], No. 13- 01/02-SM-40/94 of 1 September 1994. It reads that on the relevant occasion she saw four men, one of whom was Goran Mrđa, and that when she encountered the Accused after the incident the blond Chetnik told him *"I wouldn't have killed him if he had not hit me,"* and the witness answered that it was not true, and confirmed that the truth was what she said at the main trial. Defense Counsel then referred to the statement the witness had given at the Banja Luka CSB, No. 02-241 of 5 October 1994, and the witness said what she had said in that context was not true. Finally, the Counsel also referred to the witness' statement to investigating judge of the High Court in Zenica, No. Kri. 45/95 of 1995, in which she said that civilians had been taken to the school in Fajtovci, that many Chetniks had been present there, and that she had recognized Goran Mrđa aka Kinez, to which the witness replied she could not remember it. Asked why she could not remember the physical appearance of that other soldier whom she had previously described in detail, the witness answered that that person had not been in the same room with her.¹⁰⁴

362. With respect to the referenced objection of Defense Counsel for the Accused Goran Mrđa, the Panel stressed that in the referenced statements the witness had not been given the necessary cautions and instructions beforehand, but also that in them the witness referred to the Accused Goran Mrđa as the perpetrator of her husband's murder, due to which the Panel considered the Defense objection to be unfounded and irrelevant.

¹⁰³ Prosecution Exhibit T-12.

¹⁰⁴ Defense Exhibit O1-7.

363. Based on the foregoing, the Panel concluded that on the relevant occasion the Accused Goran Mrđa did not enter Rasim Velić's house, but stayed to keep guard in front of the house, while the three other persons entered the house. At the moment when Hasib Velić jumped through the window, the only person who was outside the house at that moment was the very Accused Goran Mrđa, who killed Hasib Velić whose body was found a few meters away from the house the following morning.

364. In addition to the statements of the referenced witnesses, the Panel also checked the referenced documentary evidence which to a significant extent confirmed the witnesses' accounts of the relevant event, but also the fact that with its own evidence the Defense did not manage to call into question the evidence adduced by the Prosecution, due to which the Panel established beyond reasonable doubt that the Accused Goran Mrđa committed the murder of Hasib Velić in the night of 2-3 May 1993.

Section 6 of the Conviction

365. Under this Count the Accused Mile Kokot is charged that *on 25 July 1992, in the village of Fajtovci, Municipality of Sanski Most, he entered, armed, the courtyard of the family house of Bosniak civilian Tahir Cerić and banged the entrance door, and after Tahir Cerić got out of the house into the courtyard, Mile Kokot pointed a rifle at him, and while Tahir Cerić was walking backward through the courtyard Mile Kokot fired at him from a rifle at close range and hit him in the stomach, as a result of which Tahir Cerić sustained injuries in the lumbar section of the spine, to which injuries he succumbed the same day.*

366. Witnesses Almaz Cerić, Đemal Cerić, N.V., D.Š. and Radomir Vukičević testified about the circumstances presented in this Count.

367. Witness Almaz Cerić¹⁰⁵, victim's son, stressed that he remembered well the day of 25 July 1992, when around 16.30 hrs he, his father, mother and a female neighbor were in the house, at which moment Mile Kokot and Goran Mrđa arrived in front of the house. The witness saw them moving downward toward the house and going toward the entrance door, from the direction of the spout in the courtyard, and they were in military uniforms and armed with long barrels. One of them banged the door, so his father got out,

¹⁰⁵ Examined at the trial hearing held on 15 February 2016.

whereupon the witness heard voices and went downstairs to the dining room, where he saw through the window the Accused Mile Kokot holding a rifle pointed at his father, they were standing one meter apart, and he heard his father saying *“that was one befitting an inn.”* He then saw the Accused Kokot pushing his father with the rifle and his father going backward along the front side of the house, toward a building that was adjacent to their house, in which mainly Serbs resided. He then saw Goran Mrđa reaching the entrance and then he no longer saw him. The witness moved to another room from whose window he saw his father being hit, that is, *“making moves as if he were hit.”* Then he ran out of the house, he no longer saw the soldiers, and then the neighbor and his mother went out. They found the father lying by the corner of the house, and the witness and his mother dragged him farther away from the road. The witness says that his father looked as if he was not wounded, only one hole through the belt could be seen which was somewhat larger on the back side, and only when he embraced his father did he realize that he was wounded. The witness says that after that he ran to the home of his paternal uncle who had a car, told him that father was wounded by Mile Kokot. Since the uncle did not have fuel, the witness went off to look for fuel. When he returned in front of the house, he found D.Š., Ratko Vukičević, Nenad Vukša and other neighbors there, and saw an ambulance on the road in front of the house, into which they placed his father and D.Š. got in the vehicle together with him and the father told him then: *“Dejan, Kokot Mile just killed me.”* The witness then told Ratko Vukičević to go inform the witness’ brothers, who were in Banja Luka at that time, what had happened. The uncle went with the witness’ father in the direction of Sanski Most and D. returned some half an hour later. From Sanski Most his father was transported to the hospital in Prijedor, where he died at around 21.30 hrs the same day, and the funeral was held two days later in Banja Luka.

368. With respect to the identification of these two soldiers who came in front of Tahir Cerić’s house, witness Almaz Cerić is certain that those were Goran Mrđa and Mile Kokot, as he had seen Goran earlier around the school in Fajtovci, and he knew that Goran was problematic, while he had seen Mile Kokot several times passing with a cart on the road by their house. The witness also said that his paternal uncle ran an inn where there had been a scuffling several years prior in which the Accused Mile Kokot had also taken part and on which occasion the witness’ father, victim Tahir Cerić, had intervened.

369. The other son of the victim, witness Đemal Cerić¹⁰⁶, confirmed that his brother had told him what had happened to their father, and that Ratko Vukičević informed him that his father had been wounded, given that the witness was in Banja Luka at that time. After he was notified that his father had been wounded, the witness telephoned his acquaintance in the Health Center in Sanski Most, who confirmed it to him, but said that it was not grave and that his father had been forwarded to Prijedor. The witness then called a doctor in the hospital in Prijedor who later told him that his father had passed away. Both the witness' brother and uncle told the witness that when their father was being taken on board the ambulance he told D.Š. in their presence that he had been killed by Mile Kokot.

370. Witnesses D.Š. and N.V. confirmed in the essential part the statement of eyewitness Almaz Cerić, who described how Tahir Cerić was transported to hospital by an ambulance with which they went to the outpatient clinic in Palanka.

371. Witness D.Š.¹⁰⁷ said that he knew Tahir, who had a house on the main road next to the building in which the witness lived. He described that on that occasion he had returned from the front as a soldier and he was behind the building with his mother and some neighbors when shooting was heard, which was not surprising as there was always some shooting around. However, on that occasion he heard Tahir Cerić's cries for help, whereupon the witness rushed to Tahir's house and found him lying in the courtyard wounded to his stomach. The witness then halted an ambulance that was passing by the house into which he and one or two other men put Tahir and called N.V. to go with them. In Lušci Palanka they immediately examined the victim and found interior bleeding, and established that he had to undergo surgery, whereupon the witness and N.V. returned to Fajtovci.

372. Describing the information they received about the ordeal of Tahir Cerić, witness N.V.¹⁰⁸ said that D.Š. called him when Tahir Cerić got wounded. At that time the witness was at home, but he does not remember where he had been prior to that. D. called him, frightened, and told him that Tahir had been wounded and that he should help him, which the witness did, he ran to Tahir's house and saw Tahir lying next to it. On that occasion the witness did not see whether Tahir was wounded, but he heard him moaning that he felt

¹⁰⁶ Examined at the trial hearing held on 25 January 2016.

¹⁰⁷ Examined at the trial hearing held on 1 February 2016.

¹⁰⁸ Examined at the trial hearing held on 1 February 2016.

bad, so they halted an ambulance. The witness cannot remember who of Tahir's family was present there at the time, he thinks that his wife Zahira and their son were there, but he does not remember having seen them. He states that D. and he halted the ambulance with which they drove to the hospital in Palanka and then to Sanski Most and Banja Luka. Tahir was conscious and told him "Boro, help me"; Boro was the witness' nickname. The witness adds that Tahir was transported to hospital and that afterward someone said that Tahir had passed away. The witness stresses that he did not learn who had shot at Tahir. Explaining the differences with respect to the statement given in the investigation, the witness says that they did not know what Tahir was wounded by, it was like a little needle, he cannot remember exactly if there was blood on the clothes, and also they got scared. The witness is not sure whether he returned from the frontline that very day, whether they had been somewhere on the frontline. He recalls that their commander had warned them once against harming the civilians in villages, including Fajtovci.

373. Witness Radomir Vukičević¹⁰⁹ was the one who, upon Almaz's plea, went to inform witness Almaz Cerić's brothers that their father was wounded, and the witness remembers that he heard, whether immediately or later he is not sure, that it was Mile Kokot that killed Tahir Cerić, which the others also said afterward.

374. The documentary evidence also confirmed that and how victim Tahir Cerić got killed, namely Death Certificate for Tahir Cerić, issued by the Municipality of Sanski Most, No. 05-13-3-1341/14 of 18 December 2014¹¹⁰; Report of death of Tahir Cerić¹¹¹, reading that the victim passed away in a health institution on 25 July 1992 as a result of firearm injury, which is also confirmed by the statements of witness Almaz Cerić and all other witnesses who testified about this circumstance; Death certificate for Tahir Cerić¹¹², with the date of death included, and observation that the death was a violent one – by murder; Permission for funeral of the deceased Tahir Cerić¹¹³, which also bears the date of death.

375. That on the referenced day there was a troop review in the village of Fajtovci is confirmed by the statements of witnesses and the Prosecution documentary evidence tendered under number T-65 – A brief overview of the wartime record of the 6th Sanska

¹⁰⁹ Examined at the trial hearing held on 16 March 2016.

¹¹⁰ Exhibit T-24.

¹¹¹ Exhibit T-34.

¹¹² Exhibit T-35.

¹¹³ Exhibit T-36.

Infantry Brigade, whose page 12 reads that in the period from 23 July 1992 to 25 July 1992 an operation of mopping up the terrain in the region of Briševo was carried out, which just confirms the statement of witness Almaz Cerić, who said that that day there was a review of troops who came to Fajtovci from the frontline in Briševo.

376. Given that the Accused Goran Mrđa was charged with co-perpetration in the killing of Tahir Cerić, of which he has been acquitted, on which the Panel will comment afterward, the Defense for the Accused Goran Mrđa examined Radovan Topolić as a Defense witness.¹¹⁴ This witness stated that he remembered that they had a troop review in Fajtovci when Tahir Cerić was wounded, at which moment the troops were passing by Tahir's house that was located by the road. He also stressed that Goran Mrđa and Pajo Bilbija were with him, and that they then passed by the spout close to the school at which they drank some water, and then set off home. The witness stresses that he knew where Tahir's house was because he had passed from that direction, and that there was no fence at the entrance to the courtyard but there was only board fence on the side.

377. Defense witness Milorad Bašić¹¹⁵ also said that the troops from the frontline came aboard buses and went toward Lipnik, that is, made a stopover in Fajtovci. He said that they were being transported by buses from the front to Lipnik, except in winter when it would snow and they were left in Fajtovci. Whenever they were left in Fajtovci they had to go to Lipnik on foot, as they did not have transportation from there. He remembers that Tahir Cerić's house was next to the road and that one had to pass by it when going in the direction of Lipnik, and that it was fenced only on the side where the outbuildings were.

378. The Accused Goran Mrđa¹¹⁶ was examined as a defense witness about the circumstances of Tahir Cerić's murder. He said that he knew the victim, who lived close to the school, and that he remembered him from the school days when they played football and the ball ended up in his courtyard and he would grab it and return it to them; he says that the victim was a "nice" man. He remembers that the victim's house was close to the school and a spout. He says that on the day when that happened to Tahir Cerić, there was some kind of review, but that he was not issued with either arms or uniform, and that the review took place some time in July 1992. He said that at that time he was together with

¹¹⁴ Examined at the trial hearing held on 23 June 2016.

¹¹⁵ Examined at the trial hearing held on 9 June 2016.

¹¹⁶ Examined at the trial hearing held on 14 July 2016.

Pajo Bilbija, Radovan Topolić, Milovan Mutić and several others, and that they set off from the school toward Lipnik, had a drink of water from the spout, and that he saw plenty of people when they were passing by Tahir Cerić's house, he thinks that he stopped shortly at that moment, and that he later heard that someone had shot at Tahir, but that there was other "shooting" as well, having in mind that there was plenty of shooting at that time since men used to fire salvos when returning from the front. He states that it might be possible that he saw some means of transport next to the school at that moment. Several months later he heard that Tahir had succumbed to injuries.

379. However, when witness Almaz Cerić's statement and other Prosecution witnesses' statements are taken into account, it is clear that the courtyard of victim Tahir Cerić's house could be entered without hindrance directly from the road as there was no fence at the entry to the courtyard, as Defense witness Radovan Topolić said. Also, according to witness Almaz Cerić, the entrance to the house to which Goran Mrđa and Mile Kokot came is positioned on the lateral side of the house facing the road, on which side is also the outdoor area that was considered a courtyard, since the house was surrounded by other buildings from the other side. According to the witness, the accused persons came from the direction of the spout, not from the direction of the school, so it is obvious that they had an unhindered passage to the house entrance. For that reason witness Almaz Cerić could not see the Accused since they, having entered the courtyard, took a turn around the corner of the house and went to the entrance, due to which the witness had to go downstairs to the living room from where he saw the Accused Mile Kokot at the entrance door pointing a rifle at the witness' father.

380. The Defense for the Accused Mile Kokot did not adduce any piece of evidence on this circumstance.

381. On the basis of consistent statements of the referenced Prosecution witnesses, the documentary evidence relative to Tahir Cerić's death, and the fact that the Accused Mile Kokot had a personal motive to kill the victim, that is, it was a matter "*befitting an inn*" as witness Almaz Cerić said, the Panel concluded beyond reasonable doubt that the Accused Mile Kokot was the person who murdered the victim, due to which the Panel found him guilty of the referenced offense.

RAPE as the criminal offense of War Crimes against Civilians

382. The Accused Goran Mrđa and Milorad Mrđa were found guilty of torture and rape of victim K.Z. under Count 2 of the Indictment, hence the Panel will comment on the elements of this criminal offense before providing reasoning on individual incriminations against the Accused.

383. The traditional definition of rape implied a non-consensual sexual intercourse of a man and a woman. This rather narrow definition was not sufficient to encompass the true nature and different forms of penetrative sexual violence that appeared in the context of an armed conflict and mass human rights violations. For that reason international tribunals came up with a definition of rape that takes into account the realities of war situation, including:

- *gender neutrality;*
- *different types of penetration;*
- *effect of the environment of coercion, in particular on the issue of consent.*

384. The ICTY Statute cites rape as a crime against humanity.¹¹⁷ In its jurisprudence the ICTY acknowledged that rape was a war crime under customary international law, punishable by Article 3 of the Statute.¹¹⁸ The Trial Panels also regarded rape as a kind of torture, an attack on human dignity and inhuman treatment.¹¹⁹ In the case of *Prosecutor v. Jean-Paul Akayesu* the definition of rape for the first time omitted any reference to consent and introduced the element of coercion, therefore rape was defined as “*a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.*” After a period of changing definitions by the ICTY and the ICTR, ultimately the definition of rape from *Kunarac et al.* was adopted: “*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 perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such 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*

¹¹⁷ Article 5(g) of the ICTY Statute.

¹¹⁸ *Prosecutor v. Kunarac et al.*, Trial Judgment, 22 February 2001, paras. 194-5.

¹¹⁹ *Ibid*, paras. 140-141; See also Trial Judgment in *Čelebići*, para. 1066.

circumstances. The mens rea is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.“

385. The Court of B-H earlier established the elements of the criminal offense of rape in the cases of *Željko Lelek*, No. X-KRŽ-06/202; *Neđo Samardžić*, X-KRŽ-05/49; *Miodrag Marković*, S1 1 K 003426 11 Krž; and many other cases.

386. Although rape and sexual violence are not quoted among the grave breaches of the Geneva Conventions, they were among the charges for which Indictments were filed before the ICTY as they constituted part of several grave breaches laid down by the Statute. For example, sexual assault was referred to in one Indictment as a grave breach by way of torture, inhuman treatment¹²⁰ and offense of willfully causing great suffering.¹²¹ The ICTY Trial Chamber also found the accused guilty of sexual assault, including the crimes committed against men, which constituted grave breaches by way of inhuman treatment¹²² and willfully causing great suffering.¹²³

387. In *Pinčić*, the Court of B-H reads that, although rape is banned by customary international law, international humanitarian law and international human rights law do not offer any clear definition of rape.¹²⁴ Having analyzed different legal systems, the Court of B-H has defined rape as follows:

- *sexual penetration, regardless of how insignificant it may be, of:*
 - *vagina or anus of the victim,*
 - *by penis of the perpetrator or*
 - *by any other object used by the perpetrator;*
 - *mouth of the victim by penis of the perpetrator,*
- *with use of:*
 - *coercion,*
 - *force, or*
 - *with threat of force,*
- *against:*
 - *the victim or*
 - *a third person.*¹²⁵

¹²⁰ *Čelebići*, Indictment; *Dragan Nikolić*, First Amended Indictment, 12 February 1999.

¹²¹ *Željko Mejakić*, Amended Indictment, 2 June 1998; *Nikolić*, First Amended Indictment.

¹²² *Čelebići*, Trial Judgment, para. 1066.

¹²³ *Ibid*, paras. 1038-1040.

¹²⁴ *Zrinko Pinčić*, Trial Judgment, pp. 27-28.

¹²⁵ *Ibid*, p. 29.

388. The Court of B-H also considers that international humanitarian law prohibits not only rape, but also any serious sexual assault which does not include real penetration. All serious abuses of sexual nature carried out against bodily or moral integrity of a person by using coercion, threat or intimidation in the manner that is degrading and humiliating for the victim's dignity, are prohibited under international law. The subjective element of this criminal offense requires intent. In *Pinčić*, the Court determined that the Accused was aware of the fact that with his actions he committed a criminal offense and he willed its commission.¹²⁶

389. The Court of B-H considered that, like torture, rape is also used with the aim of:

- *degradation,*
- *humiliation,*
- *intimidation,*
- *discrimination,*
- *punishment, and*
- *control over or destruction of a person.*

390. In *Pinčić*, the Court of B-H found that the Accused acted with premeditated intent of violating personal dignity and that he committed the criminal offense with particularly insulting and humiliating actions.¹²⁷ In order to establish that the Accused committed the act of rape with discriminatory intent, the Court of B-H took the following view: "*He knew that the witness 'A' was of Serb ethnicity, with no male protection, alone with her bed-ridden mother, and he treated her accordingly. Therefore, the discriminatory intent of the Accused is clearly visible with regard to the injured party against whom he committed these atrocities.*"

391. In the cited case, the Court of B-H concluded that, based on all witnesses' testimonies about the events referred to in this Judgment, it is clear that the victim of the events concerned is a woman of Serb ethnicity and that she was exposed to attack because of her ethnicity, by use of threat and assault on her body and the bodies of other women and children who were captured in that house together with her, and was coerced

¹²⁶ *Ibid*, p. 26.

¹²⁷ *Ibid*, p. 28.

to sexual intercourse on several occasions with the attacker holding his rifle by the bed on each occasion. Based on the evidence presented, it clearly follows that the taking of the injured party, the witness “A”, into another room in the house, while the other captured women and children remained in the original room, represented a discriminatory measure that was applied to the person of Serb ethnicity who was not a member of the Croat ethnic group which had control over the captured women and children.¹²⁸

392. Other kinds of sexual assault are prosecuted as underlying criminal acts of the war crimes of torture and inhuman treatment. For the purpose of comparison, it should also be noted that in the cases of crimes against humanity the Court of B-H has been of the opinion that rape also constitutes torture, because rape necessarily implies severe pain and suffering, and that cumulative convictions based on the same conduct are permitted, providing that each of the crimes contains a distinct element which requires proof of a fact not required by other crimes (for rape – sexual penetration; for torture – the prohibited purpose).¹²⁹

TORTURE as the criminal offense of War Crimes against Civilians

393. Torture as a grave breach of the Geneva Conventions has the same characteristics as torture under common Article 3.¹³⁰ The definition of the underlying crime is the same as for torture as crimes against humanity. Torture is absolutely prohibited – nobody must be subjected to torture under any circumstances.

394. The elements of torture are as follows:

- *Inflicting upon a person, by commission or omission, a severe pain or suffering, whether physical or mental,*
- *the act or omission must be intentional, and*

¹²⁸ *Ibid*, p. 30.

¹²⁹ *Željko Lelek*, Trial Judgment of 23 May 2008, p. 42 (upheld in the relevant part); *Kunarac*, Trial Judgment, paras. 149-150; *Gojko Janković*, Trial Judgment of 16 February 2007, p. 57 (upheld in the relevant part); *Kunarac*, Appeals Judgment, para. 142.

¹³⁰ *Čelebići*, Trial Judgment; *Ante Furundžija*, Trial Judgment of 10 December 1998; *Kunarac*, Trial Judgment; *Miroslav Kvočka et al.*, Trial Judgment of 2 November 2001.

- *the motive of act or omission must be obtaining information under duress or obtaining a confession, punishing, intimidating or exerting pressure on a victim or a third person, or discriminating, for any reason, the victim or the third person.*¹³¹

395. It should be stressed that sexual violence crimes may constitute torture. The ICTY case law also confirms that discrimination is one of the prohibited purposes of torture.¹³²

Section 2 of the Conviction

396. In Section 2 of the Conviction, the Accused Goran Mrđa and Milorad Mrđa are charged that they raped the injured party K.Z. and that they intentionally inflicted severe physical and mental pain and suffering upon civilian persons by doing the following: *Together with M.J. (currently not available) and two other persons known to them, all armed, on 1 May 1993, in the late night hours, in the village of Naprelje, Municipality of Sanski Most, he forcefully entered a house owned by Aziz Horozović, in which at that moment were Bosniak civilians Aziz Horozović, Zejfa Horozović, Fehret Horozović, K.Z. and Zenad Horozović, where they psychologically and physically mistreated these civilians by threatening them, requesting and confiscating money and other valuables from them, and one of them hit Zenad Horozović to his stomach due to which he was short of breath, fainted and suffered severe physical pain; one of them lit up Zejfa Horozović's hair and did not allow her to put it out and then tore off earrings from her ears; they beat Aziz Horozović and forced him to kneel in front of the door of the room to which they had taken K.Z. and continued to kick and beat Aziz with rifles all over his body, especially by a pistol against his head and back of his head, due to which he lost consciousness and was black-and-blue, sustained lacerations to his head, and suffered severe physical pain; while Goran Mrđa took K.Z. to the room where he took off her clothes forcefully and threatening her with knife, whereupon he pushed her to her back, after which four of the five men who had entered the house urinated on her and took turns raping her, namely, Goran Mrđa, Milorad Mrđa, M.J. and another man known to them; Goran Mrđa was the first one to rape her, during which the others held her by her hands and legs, scratched and bit her, she resisted while she had the strength, cried and shouted for help, pleaded with them not to touch her and to let her go, and lost consciousness occasionally, all of which caused*

¹³¹ *Haradinaj et al.*, Appeals Judgment, para. 290; *Kunarac*, Appeals Judgment, paras. 142-148; *Milan Martić*, Appeals Judgment, 8 October 2008, para. 74.

¹³² *Čelebići*, Trial Judgment, para. 941.

strong fear with the civilians in the house for their lives and the lives of their kin, and caused them severe mental pain and suffering and violation of human dignity.

397. The injured party K.Z., Aziz Horozović, Zejfa Horozović, Fehret Horozović and Zenad Horozović testified about the circumstances of this event as Prosecution witnesses, while Perica Polovina, Žarko Utješanović, Miroslav Dekić and Slobodanka Ševo testified as witnesses for the Defense of the Accused Goran Mrđa. Documentary evidence was adduced as well.

398. Witness Zejfa Horozović¹³³ stated that four men broke into their house in the night of 1-2 May 1993, in which were her husband Aziz Horozović, daughter K.Z., and sons Fehret and Zenad Horozović. The persons who broke in were armed, two of them wore multi-colored uniforms and two wore blue police uniforms with white belts, and one of them had a stocking over his head. They demanded from them money and jewelry, searched the house, one of them hit Zenad, another one set her hair ablaze and tore off the earrings from her ears, they beat up her husband and raped her daughter. The witness recalls that on that occasion she saw another person who was standing beneath the house window and had a “short” rifle on him, while the others were armed with pistols and hand grenades. At one moment she heard her daughter’s scream whereupon she was nauseated and when she came to, her sons told her that Aziz was not there, whereupon she saw K.Z. naked and covered in blood, she wrapped her in a dress and fled the house through a window together with her sons. Her daughter later confessed to her that she had been raped, which a doctor also confirmed. Her husband Aziz was also beaten up, his head was covered in blood and lacerations, doctors had to stitch him up. The witness stated that after she had taken K.Z. to doctor’s to examine her, and after the doctor told them that they had to report the incident, they went to the police and reported it. She remembers that three days later Snježana Utješanović from the police came together with some other persons who took photographs around the house and took with them her daughter’s underwear and a kitchen knife with the wooden handle.

399. With respect to identification of the persons who were in their house on the occasion concerned, the witness stresses that she did not recognize anyone except Milorad Jovanović then, who was tasked together with some other policemen with

¹³³ Examined at the trial hearing held on 8 June 2015.

guarding them from harm in the village. She also states that she learned afterward that Goran Mrđa had been among them, that is, her son Zenad told her that that was Goran as he knew him from school, and she knew that he was young and “acting like a cool guy”, and after the incident she used to see him. After the Accused addressed her in the courtroom, the witness told him: *“I now recognize you better and better.”*

400. Witness Zenad Horozović¹³⁴, describing the misfortunate event that befell his family, stated that his father Aziz, mother Zejfa, brother, sister and witness were in the house on 2 May 1993 and that the incident happened at around 01.00 hrs. Banging on the entrance door was heard, everyone jumped in panic as the state of war was in effect and they had heard previously that “all sorts of things” had happened in the villages. They switched on the lights, stronger “pounding” of the door started, and when his father asked “Who is it?” they broke the door as it was locked. There was panic, his mother was trying to jump through the window with them and she called the neighbor who lived across the road from them, his last name was Dekić and nickname Boće, he was an ethnic Serb. They tried to escape through another window, but failed, as they were prevented by an automatic rifle leaning against the window on the outer side, so they went back inside and at that moment the door was broken. They all entered one room, she remembers five persons who entered the house, one of whom had a stocking on his head. One wore jeans, some were in multi-colored uniforms with white belts, they carried arms, pistols, automatic rifle and knives. As soon as those persons entered the house, they demanded money and gold jewelry, which his mother gave them, yet they tore off earrings from her ears and tore off his father’s wrist-watch. Then they took the witness’ father out of the room, immediately pushed his mother onto a couch, started “touching and groping” his sister whereupon the witness tried to protect her but was hit by a rifle and then he fainted. The witness describes the moment when he regained consciousness and saw that his sister was gone, but heard her screams in the other room and at the same time heard his father moaning in another room. His father soon stopped moaning, but his sister continued screaming, crying, “begging” and pleading with them to leave her alone. According to the witness, his sister’s words uttered then *“leave me alone, don’t do that to me”* are still echoing in his head. A soldier who was standing next to them approached him and his mother and offered them cigarettes, and his mother said she did not smoke, so the soldier asked her how could she not smoke. He thinks that they held them like that for about an hour, “a bit

¹³⁴ Examined at the trial hearing held on 29 June 2015.

longer". After his brother told them who else in the village had money, they left the house. The witness then approached his father, whom he thought was dead, and his sister got out of the room, *"with tussled hair, almost naked, without clothes."* The witness fled through the window with his mother, brother and sister, and at that moment he thought that his father was dead because he was covered in blood, so they left him behind in the house. When he returned to the house he heard his father calling out, so he realized that the father was still alive, but was covered in blood all over. He states that they had trouble carrying him out through the window toward the orchard, wherefrom they went to their cousin's. When he returned home, he saw that it was in a catastrophic condition, as its front door was cut in half, there was blood on the spot where his father had been pushed against the wall, and there was their kitchen knife next to the site where his father had been leaning against the wall. They saw that their father's head was covered in blood and in the room where his sister had been they saw torn-out clothes and there was blood on a couch and on a sheet.

401. Witness Zenad Horozović identifies among the persons who came to their house that day the Accused Goran Mrđa and Milorad Jovanović, the latter he knew from before, and states that there were five of them and one had a stocking on his head. The witness says that he knew the Accused Goran Mrđa from the elementary school in Fajtovci, although they were not classmates since Goran was a generation older than the witness. However, the witness knows that children from the neighboring villages went to school in the morning shift, so the witness went to school in the morning throughout his whole elementary schooling, and they knew each other as he was classmate with Goran's brother Nikola. The witness states that in case something happened to the children from Lipnik Goran would be a threat to everyone, so nobody dared even frown upon them. The witness also knows Milorad Jovanović from the school, although Jovanović was older than him. The witness used to see Milorad Jovanović in the village after this incident, as they were ordered to guard them from harm in the villages. The Bosniak population had the obligation to provide them with meals while they were keeping guard.

402. The witness states that during a dinner in their house he met Milorad Jovanović who was one of the reserve police officers, whom he only then recognized as a person who had been at his house on the relevant occasion, given that he could not remember immediately where he knew him from. The witness says that he then told his mother that

those were the men who had “burst” into their house but that mother did not allow him to react, and that his sister personally confirmed to him that Milorad Jovanović was one of the persons who had been in the house during the relevant incident.

403. Asked by Defense Counsel what these persons had on them on the relevant occasion, the witness says that the persons had jeans on, they were also in camouflage uniforms with belts, and one wore jeans and a T-shirt, while all the others wore uniforms with two belts each. The witness states that Goran Mrđa hit him with a rifle butt at the moment when Mrđa started touching his sister because the witness tried to prevent him. According to the witness, Jovanović was standing close to them at the threshold and he also hit him when he attempted to protect his sister. The third person whom the witness does not know offered cigarettes to his mother. The person who had his head covered in stocking wore a camouflage uniform and was standing at the door. The witness does not know the person in civilian clothes and did not recognize the person with a stocking.

404. With respect to the discrepancies between the statement given at the main trial and the one given in 2007, which reads that the witness said that Milorad had told him “*Come, schoolmate, sit with us,*” the witness says that they had protected them in the school because they had been Nikola’s classmates. The witness confirms that he told Milorad that everything would be proven once, which he said on the record in 2007, but he was avoiding Milorad whenever he was on duty in their village. The last time he saw Goran Mrđa prior to this event was when they went to school, that is, in early 1992 while the schools still worked.

405. Asked by the Defense whether he had seen the Accused in the course of the school year 1992, the witness said that he had in the beginning. In that respect, the Panel recalls that the Accused went to do his army service in the beginning of that year, but that it is nevertheless certain that the witness used to see him in other time periods, given the fact that those were small places where everyone knows everyone, as well as the fact that the Accused Goran Mrđa was notorious for bullying other children, which was confirmed by other witnesses as well, due to which the Panel does not consider such statement of the witness to be harmful with respect to a decisive fact.

406. Witness Zenad Horozović was certain that he had known Goran Mrđa from the school in Fajtovci, but it should be borne in mind that the witness was born in 1976 and the Accused in 1973, and that the Accused repeated the sixth grade several times, owing to which the witness could actually see him in the school in the same, morning shift, which was the shift of all pupils from remote villages. With respect to the witness' statement that he was a classmate of the Accused's brother Nikola Mrđa, the Panel was mindful of the fact that witness Zenad Horozović was one year older than the Accused's brother, but also that the witness himself stated that he had started the first grade in Slovenia, but had to re-enroll it after he returned to Bosnia and Herzegovina. Due to this the Panel considers his statement to be true in that part as well, which only confirms that the witness had more opportunities to get to know the Accused Goran Mrđa, whom he recognized in his house on the occasion concerned. Also, Defense witness Nikola Mrđa himself stated at the main trial that he had attended the elementary school in Fajtovci from the fifth to the eighth grades.

407. Asked by a Panel member to clarify the number of persons who had entered the house, the witness answered that, after the opening of the house door, at first two soldiers entered the house and then others followed suit. At one moment all five soldiers were in their house. The witness, his mother, brother and sister were in the kitchen when one of the five soldiers took away the witness' father, but that was neither Goran Mrđa nor Milorad Jovanović. Four men remained in the room, including the man with a stocking. The witness confirmed that Jovanović and Mrđa were closest to him physically at that moment; Jovanović was standing at the doorway and the unknown person with a stocking right behind him. When the witness approached to protect his sister whom Goran had started touching, he was hit by Jovanović. When he regained consciousness, the witness saw in the room his mother and brother, the soldier whom he did not know, Jovanović and Goran Mrđa. At that time the witness heard the developments in the room where his sister was, and Goran, Jovanović and a third person would get out of that room at certain intervals. The witness says that after all that they invited that fourth person to the room telling him "*you come over here, too*", but the fourth person refused to do so.

408. Witness Aziz Horozović¹³⁵ confirmed these witnesses' averments, but only up to the moment when they started beating him while he was kneeling down at the door of the room in which his daughter K.Z. was being raped. He recalls that on that occasion he saw four persons in uniforms and with arms and that the fifth one was standing underneath the window, and that they went in and out of the house, which was also confirmed by his wife, witness Zejfa Horozović. The witness also confirmed that his watch was seized, that he was beaten, due to which he fainted, that he sustained injuries to his head, kidneys, spine and leg, and that for a month or month-and-a-half afterward he used to sleep in the sitting position since he was not able to lie due to the sustained injuries. He saw his daughter being taken to another room wherefrom he heard her screams and cries for rescue. The witness stresses that it is still uncomfortable for him to discuss it with her, and that she does not talk about it anyway and mostly keeps quiet about it.

409. Witness Fehret Horozović¹³⁶ described in an identical manner the event that took place at around midnight in May 1993, stating, among other things, that four or five men burst into the house looking for money and jewelry, which his mother and father handed over, and that his sister was taken to another room, that she cried and pleaded for help, while his father was taken to the kitchen, he saw him being beaten, whereupon he heard blunt blows and his father's cries. After that he saw his father beaten-up, black-and-blue and covered in blood, and next to him was a bloodied kitchen knife with the wooden handle; his sister was swollen with torn clothes, and the bedlinen in the room where they had kept her was bloodied.

410. With respect to the identification of the persons who were in the house on that occasion, the witness stresses that he learned afterward from the conversation between his father and mother that Goran Mrđa and Milorad Jovanović were among them.

411. The injured party K.Z.¹³⁷ confirmed the averments of the witnesses who testified about this Count of the Indictment and described the event that took place in the night of 1-2 May 1993. The injured party clearly stated that that night five armed persons burst into their house and first started beating her father, and then she also saw that they set her mother's hair on fire. Some of those persons were in uniforms, some in civilian clothes,

¹³⁵ Examined at the trial hearing held on 8 June 2015.

¹³⁶ Examined at the trial hearing held on 29 June 2015.

¹³⁷ Examined at the trial hearing held on 6 July 2015.

and one had his head covered in stocking. She remembers that Goran Mrđa was the first one who started “touching” her and took her to another room, where he ripped her clothes off with a knife, pressed her against the wall and took her clothes off, laid her down on the couch and raped her together with three other men who did the same. The injured party described how they took turns raping her, they first urinated on her, and while one would rape her, the others would hold her arms and legs, bit her, dragged her by her hair, while she was screaming and crying for help. During all that, they brought her father in front of the room in which she was and they kicked him and beat him with hands and rifle butts and forced him to watch what they were doing to her.

412. She knows the identity of Goran Mrđa because her brother Zenad had told her he had recognized him that night, while she recognized Milorad Jovanović as one of the persons who raped her on that occasion, and she also knows that the only person who did not rape her was the one who had a stocking over his head. After all that, as witness Zejfa Horozović said, she visited a doctor for examination, after which official persons came to her home to conduct a crime scene investigation. She stresses that after that event she felt very bad and that she still does, and that she had physical injuries afterward, especially because of the bites on her neck and breasts. She also says that she still does not sleep well, she has nightmares, she is always tense and nervous, and she still thinks that people talk about what happened to her when she passes them by, and she has never looked her father straight in the eye after that.

413. All the foregoing witnesses agree about the decisive facts of the referenced event. When it comes to the exact date of the event, the Panel noticed minor discrepancies in that respect. Witness Zenad Horozović states that it took place on 1-2 May at around 01.00 hrs, but he does not indicate the year; witness Aziz Horozović says that the incident took place on 1 May 1992 or 1993, at around 01.00 hrs; witness Zejfa Horozović that it happened on 2 May at 01.00 hrs; witness Fehret Horozović that it took place in May 1993 at around midnight, while the injured party K.Z. states that the event happened on 1-2 May 1993.

414. In that respect, the Panel understands why the witnesses said that it was 1 May or 2 May, given that the incident took place in the hours after midnight, that is, when 2 May had already begun. When it comes to the year of the event, the Panel took into account

the Excerpt of CSI Logbook of the Sanski Most Police Station¹³⁸ in which the referenced incident was recorded under entry No. 77, due to which it is clear that it took place in the night of 1-2 May 1993. Another exhibit from which the Panel established that the event took place at the referenced date was the criminal report filed over physical mistreatment and rape of K.Z. in their house at the night of 1 May 1993 at 01.30 hrs.¹³⁹

415. When it comes to the number of persons who were in the house of Aziz Horozović and his family on that occasion, it can be concluded from the witnesses' statements that there were five of them in total, that four entered the house immediately while one remained by the window, whom witness Zejfa Horozović saw when she attempted to flee with her children through the window. It is possible that the fifth person also entered the house later, for which reason the other witnesses said that there were five men there.

416. It can be clearly concluded from these witnesses' statements that some men wore civilian and some camouflage clothes. The same can also be inferred from the statements of witnesses who testified about other circumstances and said that the Accused and the other soldiers wore diverse clothes and had different weapons, which is not unusual or unacceptable.

417. Witness Rifat Kahteran¹⁴⁰ also confirmed the statements of witnesses from the Horozović family. He said that in the night hours he was called by one Slavko, who told him that something had happened in Aziz Horozović's house and described that beds in the house were scattered around and that they saw blood, too. Then they started calling out to see if there was anybody there, but nobody answered, and only before dawn did Aziz's wife and children show up, torn and covered in blood, and Aziz was also covered in blood and with tussled hair, and the whole family appeared "frightened". The witness knows that on the following day Mile Budimir took Aziz's daughter to the doctor's and was saying that "the young girl" had been raped.

418. On the basis of the statements of the referenced witnesses, as well as other indirect witnesses, the Panel has concluded that they all agreed about the decisive facts. The injured party's mental state was the subject of a forensic analysis by expert witnesses -

¹³⁸ Exhibit T-20.

¹³⁹ Exhibit T-4d.

¹⁴⁰ Examined at the trial hearing held on 13 July 2015.

neuropsychiatrists, who established that she suffered from PTSD with a developed recurrent depressive disorder, which was also confirmed by a clinical psychologist, and it was established that her condition was caused by the trauma she suffered during and after the incident as charged.¹⁴¹

419. When giving evidence at the main trial, expert witness, Prof. Dr. Alma Bravo–Mehmedbašić, described that such psychological condition of the injured party is manifested with periodical nightmares that she suffers, with her attempts to avoid everything that reminds her of the referenced traumatic experience, her mood is *agitated*, and her depression falls within the category of moderate depressive disorder. The expert witness clearly stated that the injured party suffers from mild memory disorder, that she is capable of calling to memory the referenced traumatic event.

420. Responding to the objection raised by Defense Counsel for the Accused Goran Mrđa that the injured party forgot the event and that her memory had been better previously, the expert witness answered that with a person so traumatized it did not have to be so and that it was possible that something that was completely suppressed was called to memory again during reproduction. The expert witness added that the injured party had continuous intrusive memories of the referenced event which continually “haunts her,” and that she recalled it continuously because of the PTSD, irrespective of distance in time.

421. Expert witness Bravo–Mehmedbašić¹⁴² stressed that she and expert witness Senadin Fadilpašić, M.Sc., conducted a detailed interview with the injured party about the other events she experienced after this incident, too, but that the referenced event was obviously the most difficult trauma for her and that according to the applicable standards the impairment was established in relation to that event.

¹⁴¹ Exhibit T-16 – Order to Conduct Psychiatric–Psychological Forensic Analysis, Prosecutor's Office of B-H, No. T20 0 KTRZ 0006582 13, 5 December 2014; Joint forensic psychiatric–psychological analysis of the injured party conducted by expert witnesses, Prof Dr Alma Bravo–Mehmedbašić and Senadin Fadilpašić, M.Sc., on 15 December 2014; Supplementary Order to Conduct Psychiatric–Psychological Forensic Analysis of 5 December 2014, Prosecutor's Office of B-H, No. T20 0 KTRZ 0006582 13, 1 July 2015; Supplementary forensic psychiatric–psychological analysis of the injured party conducted by expert witness, Prof Dr Alma Bravo–Mehmedbašić, of 7 July 2015.

¹⁴² Examined at the trial hearing held on 13 July 2015.

422. Expert witness Senadin Fadilpašić¹⁴³ also confirmed the joint finding and opinion of the conducted forensic analysis of the injured party, stating that in the course of the analysis they established a causal link between the referenced traumatic experience and the diagnosed disorders, and that in his analysis he applied the valid and widely used psychological tests.

423. Physical evidence presented by the Prosecution corroborates the testimony of the referenced witnesses. That includes the submitted criminal police report No. KU-66/93 of 1 June 1993 against unidentified persons for physical mistreatment of household members and rape of K.Z. in their home in the night of 1 May 1993¹⁴⁴, attached to which was crime scene photo documentation submitted to the Basic Public Prosecutor's Office in Sanski Most, made by members of the SJB Sanski Most, as well as the underwear K.Z. had on her at the referenced time, and the kitchen knife the attackers took from her family house kitchen, which, as the witnesses already pointed out, was used for the mistreatment of victim Aziz Horozović.

424. When it comes to the rape of victim K.Z., the Panel has also considered the expert analysis performed by forensic experts of the Center for Forensic and IT Support at the Federation Police Authority, who conducted forensic analysis at the order of the Prosecutor's Office of B-H on the underwear worn by the victim K.Z. and the knife that was used on the occasion concerned to inflict injuries on the victim Aziz Horozović, by comparing biological traces found on the underwear with the samples of the buccal mucous membrane of the Accused Goran Mrđa and Milorad Mrđa; the forensic experts found the presence of biological traces belonging to the Accused Milorad Mrđa, who was included as the major contributor within the male fraction of the biological trace on the underwear, and it was also found that the Accused Goran Mrđa cannot be ruled out as one of the minor contributors.

425. Expert witness Elvira Karahasanović¹⁴⁵ said they were provided with material for expertise in a sealed envelope, contrary to the averment of Goran Mrđa's Defense that the objects had been opened. The expert witness explained that no degradation was noticed on the materials submitted, otherwise no expertise would have been conducted at all, as

¹⁴³ Examined at the trial hearing held on 22 February 2016.

¹⁴⁴ Exhibit T-4d.

¹⁴⁵ Examined at the trial hearing held on 17 August 2015.

well as that the samples provided were well-preserved. The buccal mucous membrane samples were taken from the Accused Goran Mrđa, Milorad Mrđa and Ranko Mrđa at the Order of the Court of B-H for taking buccal mucous membrane swabs, No. S1 1 K 012010 14 Krn of 17 December 2014¹⁴⁶, of which members of the State Investigation and Protection Agency (SIPA) made a report¹⁴⁷. In accordance with the order issued by the Prosecutor of B-H¹⁴⁸, they were submitted for forensic analysis along with the buccal mucous membrane swabs taken from victims K.Z. and Aziz Horozović.

426. Under the foregoing order, expert witnesses Elvira Karahasanović and Anisa Rahmanović have provided their findings and opinions¹⁴⁹, which is a conclusion already stated in Paragraph 417.

427. Expert witness Anisa Rahmanović explained the origin of a different definition of participation of the Accused Goran Mrđa, Milorad Mrđa and Ranko Mrđa in the traces found, stressing that a clean trace was found, which fully matches and originates from Milorad Mrđa, which clearly individualizes him as a contributor; that the other clean trace individualizes victim K.Z. as a contributor, while the remaining part, which does not belong to either of the two mentioned contributors, points at a minor contributor, or rather a person who did not leave his entire profile or trace but left a sufficient trace for his inclusion, or conclusion that that person was most likely Goran Mrđa. The expert witness went on to explain that, according to a statistical calculation, with a rather large probability, three persons were donors of the biological trace found on the underwear: K.Z., Milorad Mrđa and Goran Mrđa, which means it is a billion times more likely that Milorad Mrđa and Goran Mrđa are two male contributors of the trace, rather than any other two persons, as is the case with the Accused Ranko Mrđa, who cannot be included as a contributor at all.

428. Further, the Panel finds it important to note that the expert witnesses said that, in addition to the traces belonging to the Accused Goran and Milorad Mrđa, two more traces were found on the underwear: one from an unidentified person, who is not a member of the Mrđa family, and another person who is neither a relative of this first unidentified person nor is from the Mrđa family, which only goes to confirm victim K.Z.'s testimony that

¹⁴⁶ Exhibit T-4f.

¹⁴⁷ Exhibit T-4k.

¹⁴⁸ Exhibit T-4b.

¹⁴⁹ Exhibit T-4g and T-4h.

four persons raped her on the relevant occasion, except for the person who, as she put it, had a stocking over his head.

429. As for the Accused Milorad Mrđa, the Panel found lawful the actions taken by the B-H Prosecutor who ordered that his buccal mucous membrane swab be taken, although the eyewitnesses did not indicate that he was one of the persons who broke into the house on the relevant night. It is clear to the Panel that the Prosecutor Office of B-H acted in this manner because at the time Milorad Mrđa was together in the same group with the Accused Goran Mrđa, which the Panel was able to explain in the previous sections of the Conviction. Also, the Panel notes that the Prosecution took the buccal mucous membrane swab from the Accused Ranko Mrđa as well, guided by the same reasons, but the expert witnesses found that he should be excluded from all found biological traces, which is why he was eventually not charged with the incriminating actions.

430. According to this Panel, in the foregoing manner the expert witnesses were able to use the obtained indisputable biological material of the Accused – the buccal mucous membrane swab, for a subsequent analysis at the order of the Prosecutor, as it is a piece of evidence which was not obtained through any violation of the Accused's rights and which cannot be considered to be unlawful evidence in the absolute sense, contrary to the averments of the Defense for the Accused Milorad Mrđa.

431. When it comes to the analysis of the traces of blood found on the knife, expert witness Elvira Karahasanović confirmed that those traces were found on the blade only, not on the handle, which goes to confirm witness statements that victim Aziz Horozović was injured with that knife on the relevant occasion.

432. The Defense for the Accused Goran Mrđa examined witnesses Perica Polovina, Žarko Utješanović, Miroslav Dekić and Slobodanka Ševo about the referenced circumstances, and they attempted to persuade the Panel that on 1 and 2 May 1993 they were together with the Accused celebrating Labor Day in a café in Sanski Most, that is, on a bank of the Sana River where they allegedly had a barbecue. However, the Panel notes that everyone recalled to the smallest detail what was happening that day and mentioned who was present, in an almost identical way. After the questions posed by the Prosecutor and the Trial Panel members, it could be concluded clearly that the witnesses had

prepared and rehearsed the same account, and none of them could remember what they had done for other holidays in those years. Their statements will be discussed in more detail in the part of the Judgment concerning the non-acceptance of the Accused Goran Mrđa's alibi for the events that took place in the period of 1-3 May 1993.

433. The Panel emphasizes that they considered the actions of the accused persons to be torture, given that it can be clearly concluded from the victim's statement that, in addition to raping her on the relevant occasion, they also abused her by dragging her by her legs and arms while one would rape her. In her words, Goran "*put his sexual organ into my organ*" and raped her while the others held her arms, bit her, pulled her by the hair, held her arms and legs and thus raped her "*one by one*". In the course of it the witness screamed, pleaded for help, but nobody could help her, only Goran told her "*shut up, you balinka [derogatory term for Bosnian Muslim woman; translator's note]*", and eventually said "*it's gonna be easier for balinka now*", at which moment the victim felt "something lukewarm on her."

434. Therefore, bringing into connection all adduced evidence by the Prosecution as well as by the Defense, both testimonial and physical, the Panel finds that the Accused Goran Mrđa and Milorad Mrđa committed the forbidden actions in the manner as described above, which is why the Panel found them guilty under this Count of the Indictment.

Rejecting the accused Goran Mrđa's alibi

435. Defense for the accused presented evidence with regard to particular counts of the Indictment relating to the incidents that occurred in the period between 1 May and 3 May 1993, examining witnesses Perica Polovina, Žarko Utješanović, Miroslav Dekić and Slobodanka Ševo who attempted to provide an alibi for the accused during those days.

436. Witness Perica Polovina¹⁵⁰ testified that he has known Goran Mrđa for many years; they lived in neighboring villages, they went to rallies and dancing-parties together and they often saw each other in town. When asked if he could recall his whereabouts on 1 May 1993, the witness answered that he remembered them sitting, drinking and barbecuing on a beach called Kožara by the Sana River in Sanski Most, one kilometer

¹⁵⁰ Examined at the trial hearing on 26 May 2016.

from the square. He remembered that many people were present on that occasion, including Đoko Utješanović, a certain Žara, Goran Mrđa, Pero Ćurguz, Miroslav Dekić, Slobodan Stupar, Božo Milenković. He stated that they returned from the frontline the night before and met at the *Pilot* café on Ključka Street in Sanski Most and agreed to meet on the following day for some barbecue. He indicated that the night before, on 1 May, many were present when they were making arrangements at the café, including Goran Mrđa; he remembered him because the met and agreed that he too should celebrate the holiday with them. Žarko Utješanović was the café owner. He stated that they were in the café that night of 2 May until dawn. On the following day, on 2 May 1993, he stated that they went to the *Akvarijus* café and had coffee there; he knows that the accused came with a girl whom he knew by sight and they were there until the closing time. He remembered that Slobodanka Vukojević was the waitress; they waited for her to lock up the café and then moved to the *Pilot* café. He also remembered Radovan Marčetić being with them; he knows that he had “something” with Slobodanka. All the cafés were closed by 10 or 11 o'clock in the evening, but the owner of *Pilot* was a bit more influential so the authorities tend to look the other way when his bar was in question. He remembered that Goran and the girl, plus Radovan, Slobodanka and the witness himself, went to the café. He stated that Žarko (the café owner), Čedo and Pero Ćurguz, Đoko Milunović, Božo Milinković Zec were already in the café – there were many people there. As the witness was living near the café, when he left, Goran and the girl joined him, because at that time Goran was living at his aunt's place across the Sana and from there they went somewhere else. The witness stated that the girl told him that Goran was subsequently injured in a café.

437. Witness Žarko Utješanović¹⁵¹ stated that he has known the accused from before the war by his nickname Kinez. He remembered the accused and his friend Pero Polovina showing up in his *Pilot* café. The witness indicated that he was a member of the 6th Sana Brigade, and that when he was off duty he spent his time in Sanski Most. He knew the accused by his nickname and learned his real name some time later. When asked if he remembered where he spent his May-Day holidays in 1993, the witness answered that it was his only First of May during the war in Sanski Most. On that subject, he stated that there were many guests in the café the day before First of May; Kinez and Pero showed up in the afternoon, with many others being present: he remembered Đoko Milunović, Čedo Ćurguz, Radovan Marčeta and Miroslav Dekić. They were drinking, singing, they

¹⁵¹ Examined at the trial hearing on 26 May 2016.

agreed to roast a pig on the following day and celebrate First of May on the *Kožara* beach. They agreed to meet at around 10 or 11 o'clock in the morning. He indicated that everyone came to the beach that day except Diko Mile who went away with some girl. He also remembered the accused showing up; they were together the whole day. They were there until it was night-time. As there were some drinks and meat left, they took them and went to the café; more people gathered there. On the following day, the witness came to the café at around 2 o'clock; others came later to see if there was any meat left from the previous day; Goran Mrđa was among them. He was positive that they left the café prior to 4 o'clock in the morning. Later on, at the frontline, the witness heard that the accused was injured one or two days after First of May, but was not aware of the circumstances surrounding that incident.

438. Witness Miroslav Dekić¹⁵² stated that he knew Goran Mrđa nicknamed Kinez, and that he met him through Pero Polovina; Polovina called Dekić to come to the Sana bank to celebrate First of May and told him that they would be roasting a pig. He indicated that he showed up at the *Pilot* café at around nine o'clock, they had a drink and then went to the *Kožara* beach; Polovina brought a pig there. He remembered Žare, owner of *Pilot* café, being there on that occasion. That is also where he met the accused; as he put it "we shook hands." They were there celebrating until 4 or 5 o'clock in the morning. He did not see Goran Mrđa thereafter, but he did hear that he was injured.

439. Witness Slobodanka Ševo¹⁵³ too stated that she has known Goran Mrđa from before the war because he was living in Lipnik near Slatina; she often saw him but they were not friends. She was living in Sanski Most in 1992 and 1993 and was working at the *Akvarijus* café located in the center of town. She remembered the accused visiting the café with Pero Polovina and Radovan Marčeta. She stated that she was working the second shift on 2 May 1993 and that Goran and his girlfriend, Pero and Radovan Marčeta came to the café. She locked up and went with them to the *Pilot* café where they had snacks and drinks; they were there until the early hours of the morning. She left *Pilot* and went to her house with Radovan, he escorted her; Pero, Goran and his girlfriend went in another direction.

¹⁵² Examined at the trial hearing on 26 May 2016.

¹⁵³ Examined at the trial hearing on 26 May 2016.

440. With regard to the testimonies of the referenced witnesses given at the trial, the Panel has observed a fair number of illogicalities and untruths due to which it could not give credence to those testimonies. Specifically, witness Perica Polovina gave a detailed account of what he did, where he was and who was he with during the first days of the month of May 1993, adding that he remembered First of May because the accused Goran Mrđa was injured thereafter. If the accused and the witness had been on close terms, it would have been logical and expected for this witness to provide at least some detail regarding the injuring incident. However, the witness, when asked by the Prosecutor if he visited the accused in hospital while the latter was recovering from injury, the witness stated that he did not, adding that he did not inquire as to what happened to the accused because he was deployed to the frontline. The witness said that he later heard that the accused was injured in a café, explaining that they were not good friends.

441. Furthermore, witnesses Žarko Utješanović and Miroslav Dekić claimed that the accused Goran Mrđa was with them in the café the whole time on that 1 May 1993. In saying so, witness Utješanović stated that he did not know the accused much except his nickname Kinez and he saw him occasionally in the company of Perica Polovina. On that subject, the Panel recalls that witness Polovina himself stated that he and Goran Mrđa were not good friends; a question arises: how could witness Utješanović see them together if they did not spend time together? Furthermore, the accused Goran Mrđa, when giving evidence as a Defense witness, testified with regard to this circumstance that they “happened to be” at the *Pilot* café, whereas witness Perica Polovina claimed that they met at the café to agree on “roasting something” the following day and celebrating the holiday by the Sana River.

442. Answering a question put by a Panel member, witness Žarko Utješanović was unable to recall his whereabouts on his children's birthdays; even when he remembered some of the dates, he was unable to explain in more detail what he was doing, who was he with and where.

443. Witness Slobodanka Ševo could not recall all the persons who were in the café in which she worked on 1 May 1993, but she remembered all the details from 2 May and 2/3 May 1993, which but corroborates this Panel's finding that these witnesses memorized the

scenario of an incident that never occurred trying to convince the Panel to the contrary for the reasons known to them.

444. This is further conformed by the fact that witness Miroslav Dekić was unable to recall his whereabouts on the first Christmas following his return from Slovenia, considering that he stated that he remembered that First of May well because that was his first First of May that he celebrated after he returned from Slovenia. This witness also stated that he remembered that particular First of May because they roasted a pig, explaining that he roasted a pig “a million” times in his life, and because Perica Polovina invited him to that party. Regarding the testimony of this witness, the Panel observes that he too recalled all the details regarding the presence of the accused Goran Mrđa although that was the first time that he saw him; namely, the witness himself stated that they allegedly met at that party. The witness also stated that waitress Slobodanka worked in both cafés, whereas she stated that she was working at the *Akvarijus* café during those years.

445. The contradictions regarding the whereabouts of Miroslav Dekić on that First of May further support the argument that the testimonies of the witnesses are staged. Specifically, witness Žarko Utješanović stated that they were all on the beach that day except Dekić who went somewhere with his girlfriend, whereas witness Miroslav Dekić stated that he too was with them on the beach that day.

446. Based on the aforementioned, including the fact that the testimony of those witnesses are in contravention of the testimony of Prosecution witnesses examined about the circumstances of the events that occurred from 1 May to 3 May 1993, especially the evidence obtained based on the completed DNA analysis when it comes to Count 2 of the Indictment, it is clear that the Panel could not have credited them, which is why it did not admit the accused’s alibi for the relevant dates.

E. AMENDMENTS TO THE FACTS OF THE INDICTMENT

447. The Panel made amendments to the facts in relation to sections of the convicting part of the judgment, making sure that the offense remains the same, i.e. the same incident with all the essential elements of a criminal offense, thus preserving the objective

correspondence between the indictment and the judgment. Specifically, the Panel made an intervention with regard to other circumstances that contributed to a specification of circumstances surrounding the commission of the criminal offense, without violating the integrity of elements of the offense in question.

448. To wit, the Panel replaced the wording *"and was then"* in Section 1a) of the convicting part of the judgment with the wording *"whereupon he was"*, holding that the amendment is more appropriate than the original construction of the sentence.

449. In Section 2 of the convicting part of the judgment, the Panel changed the positions of some of the words in the sentence *"and continued hitting him all over his body with rifles as well as kicking him"*, and the new sentence reads: *"and continued kicking and hitting him with rifles all over his body."*

450. With regard to Sections 3a), b) and c) of the convicting part of the judgment, in the introduction preceding the factual account the Panel indicated who of the accused was found guilty of the charges, with the introduction to Count 3 of the Indictment reading: *"Goran Mrđa, Milorad Mrđa and Ranko Mrđa, together with a person known to them, armed, on the night of 2/3 May 1993, in the village of Gorice, municipality of Sanski Most,..."*, also bearing in mind the fact that the Panel acquitted Ranko Mrđa of all the charges in the Indictment.

451. Furthermore, in view of the fact that the accused Ranko Mrđa has been acquitted of the charge, the Panel replaced the wording *"whereupon Goran Mrđa and Ranko Mrđa entered the house"* in Section 3a) with the wording *"whereupon Goran Mrđa and a person known to him entered the house."*

452. In relation Section 3b), the Panel replaced the wording *"in the process of"* with *"in which process"*, as well as pronoun *"he"* (referring to the injured party Fikret Avdić) with the name: *"Fikret"*, holding that this was more appropriate and clear.

453. The Panel made several amendments in Section 3c), bearing in mind that it acquitted the accused Ranko Mrđa of this charge as well. The wording *"Ranko Mrđa and a person known to him entered by force..."* is replaced by *"After two persons known to him*

entered by force...”; the wording “and Ranko Mrđa and a person known to him...” is replaced with “and two persons known to him..” and, finally, the wording “and Ranko Mrđa used a bayonet...” is replaced with “and one of those persons used a bayonet...”, all reflecting the presented evidence and the Panel's decision regarding the accused Ranko Mrđa.

454. With regard to Section 4a) of the convicting part of the judgment, the Panel omitted the wording *“and when he came to, Omer Drobić saw Milorad Mrđa standing holding a rifle pointed at him”* relating to the accused Milorad Mrđa in view of the fact that he was acquitted of this charge, also bearing in mind that the injured party Omer Drobić did not say so himself in his testimony at the trial.

455. Finally, in Section 6 of the convicting part of the judgment, the Panel omitted the name of the accused Goran Mrđa considering that it acquitted the accused of the said charge, replacing the original wording *“Mile Kokot and Goran Mrđa, armed, on 25 July 1992...”* with *“The accused Mile Kokot, armed, on 25 July 1992...”*.

456. In addition, as can be seen, the Panel changed every reference to a personal name by first mentioning the first name followed by the last name, replacing the previous practice of first mentioning the last name followed by the first name. In doing so, the Panel was guided by the rules of orthography as well as the provision of Article 227(1)(b) of the CPC BiH stipulating the contents of the indictment; among other things, the indictment contains *“the first and last name of the suspect, ...”*, which the Panel applied to the present case by analogy.

457. In this segment the Panel took cognizance of the view of the Panel of the Appellate Division of the Court of BiH¹⁵⁴ that in such cases the first-instance court is not obliged to render an acquittal; instead, it suffices to adduce in the reasoning an explanation as to why some of the acts and consequences have been omitted from the enacting clause of the judgment. However, if an indictment contains multiple counts charging an accused with perpetrating other acts not having the same factual basis, in that case it would be appropriate to deliver a judgment acquitting the accused of all or some of the charges.

¹⁵⁴ Judgment of the Court of BiH S1 1 K 013165 13 Krž dated 1 July 2013, pp 11-12.

F. CRIMINAL RESPONSIBILITY

458. The Panel found the accused Goran Mrđa and Milorad Mrđa guilty of committing the criminal offense of War Crimes against the Civilian Population under Article 142(1) in conjunction with Article 22 of the CC SFRY, while the accused Mile Kokot was found guilty of committing the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the CC SFRY; the CC SFRY was adopted on the basis of the Law on Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of SFRY. The Panel has found that elements of this criminal offense have been satisfied by primarily relying on the fact that the Prosecutor's Office of BiH proved that the accused, by carrying out acts of perpetration, acted in violation of the prohibitions of common article of the Geneva Conventions, i.e. he acted in violation of the prohibition of rape, inhuman treatment, torture and deprivation of life, as reasoned above.

459. In Sections 1a), b) and c); 3a), b) and d); 4a) and b) and Section 5 of the convicting part of the judgment, the Panel found the accused Goran Mrđa guilty of inhuman treatment of Bosniac civilians, finding that the listed elements of inhuman treatment as part of war crimes against the civilian population have been satisfied in light of the accused's treatment of persons protected by common Article 3 of the Geneva Conventions. Furthermore, it has been found on the basis of testimonies of injured parties that they sustained serious bodily and mental suffering considering that the accused personally beat the injured parties, as referred to in particular sections of the convicting part of the judgment relating to the accused. The Panel did not examine medical documents relating to the injured party, but the injured party did say that the incident has had consequences on his mental and physical health.

460. The Panel has no doubt that the accused had a dominating position and power over the injured parties during the state of war, and that the accused, enjoying a privileged status in comparison to the subordinate victims in a state of hopelessness and constant fear for their lives, could and did undertake prohibited acts that resulted in a violation of physical and mental dignity of the injured parties, and also brought about their bodily injuries.

461. *Mens rea* (subjective element) for inhuman acts under this article is satisfied when the perpetrator, at the moment of commission or omission, had intention to cause serious bodily or mental suffering or to carry out a serious attack on a victim's dignity or if he was aware that his action or omission was likely to bring about a serious bodily or mental suffering or a serious attack on human dignity, and behaved with intention of doing it. The suffering inflicted by the act does not need to be lasting so long as it is real and serious¹⁵⁵.

462. Furthermore, the Panel has established that the accused Goran Mrđa perpetrated the act under Sections 1a), b) and c), 2, 3a), b), c) and d) and 5 of the convicting part in complicity with other persons, namely the accused Milorad Mrđa (Sections 3b) and 5). In that connection, the Panel recalls the provision of Article 22 of the CC SFRY, reading as follows: "*If several persons jointly commit a criminal act by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act*". Complicity under this article implies several persons, a decisive contribution and common intent.

463. Pursuant to the case law, in the event of multiple participators, it suffices to prove that they acted jointly and that they are responsible as direct perpetrators in the rape and inhuman treatment of victims. In light of all the circumstances under which the said acts were perpetrated, it was possible to rely on the offered evidence to arrive at the conclusion that the accused Goran Mrđa too participated in the essential elements of the criminal offense and that he is responsible for the consequences for the victims.

464. In relation to sections 4a) and b) of the convicting part of the judgment, the Panel has found that the accused was a direct perpetrator in the inhuman treatment of injured parties Omer Drobić and Sefer Drobić. Taking into account all the circumstances under which the accused perpetrated those acts, the Panel finds that there is no doubt that the accused was aware that those persons were civilians; there is no doubt that he was aware that a prohibited consequence would ensue from such acts and he desired that consequence.

465. The Panel found the accused Milorad Mrđa guilty of the same offense as well, committed by the acts under Sections 3b) and 5 of the convicting part of the judgment; the

¹⁵⁵ See ICTY Trial Chamber judgment in *Krnjelac*, para 131.

accused committed the acts as a co-perpetrator jointly with the accused Goran Mrđa, as reasoned above.

466. The Panel has found beyond reasonable doubt that the accused Goran Mrđa and Milorad Mrđa, jointly with persons known to them, raped the injured party K.Z. The Panel reasoned its decision in detail in Section 2 of the convicting part of the judgment, finding that the injured party K.Z. suffered lasting consequences for her physical and mental health, dignity and bodily integrity as a result of the prohibited acts by the accused, additionally substantiated by a report made by experts in neuropsychiatry.

467. In addition, the accused were found guilty of the crime of torture as the criminal offense of war crime under the same section, considering that they raped the injured party by abusing her sadistically. As already pointed out in the assessment of evidence on that circumstance, it has been established that the accused, jointly with two persons known to them, pulled the injured party by her arms and legs during which time one was *always* raping her. According to the injured party, the accused Goran Mrđa *"put his sexual organ into my organ"* and raped her, while the others were holding her arms, biting her, pulling her hair, holding her arms and legs and raping her *"one after another."* The witness was screaming, crying for help, but no one could help her. The accused Goran Mrđa told her: *"shut up you balija woman,"* followed by *"it's gonna be easier for balija woman now,"* at which moment the victim said she felt "something lukewarm on her." The victim added the men had before that urinated all over her, in the presence of her father, whom they had brought to the doorstep to watch them abuse her sadistically.

468. Finally, the Panel found the accused Goran Mrđa and Mile Kokot guilty of the crime of murder as a war crime against the civilian population, as already explained in detail in Sections 3c) and 6 of the convicting part of the judgment, committed by the accused as direct perpetrators.

469. In light of all the circumstances under which the accused perpetrated the referenced acts, the Panel finds that there is no doubt that the accused were aware that those persons were civilians; the accused were also aware that the perpetration of the said acts would result in a prohibited consequence and they desired that consequence.

470. Consequently, based on the foregoing, the Panel holds that it has been proved that the aforementioned acts of the accused Goran Mrđa, Milorad Mrđa and Mile Kokot satisfied all the elements of the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the CC SFRY, with the acts of Goran Mrđa and Milorad Mrđa under particular counts additionally taken in conjunction with Article 22 thereof (as co-perpetrators), and the Panel found them guilty and sentenced them for the cited offense.

IV SENTENCING

471. The purpose of punishment is stipulated in Article 33 of the CC SFRY and reflected in: *(1) preventing the offender from committing criminal acts, (2) rehabilitative influence on others not to commit criminal acts, and (3) strengthening the moral fiber of the society and influence on the development of citizens' social responsibility and discipline.*

472. Having found that it has been proved beyond doubt that the accused committed the criminal offense of which they have been found guilty by this judgment, the Panel, when meting out the sentence, took into account all the circumstances bearing on the magnitude of punishment, in particular: the degree of guilt, the motives for perpetrating the offense, the degree of danger or injury to the protected object, the circumstances in which the offense was perpetrated, the past conduct of the perpetrators, their personal situation and his conduct after the perpetration of the offense, as well as other sentencing considerations. In view of the established facts and the ensuing consequences, the Panel sentenced the accused Goran Mrđa to 14 (fourteen) years' imprisonment, the accused Milorad Mrđa to 8 (eight) years' imprisonment and the accused Mile Kokot to 10 (ten) years' imprisonment, holding that the imposed sentences are proportional to the gravity of the offense and the ensuing consequence and that, in terms of Article 33 of the CC SFRY, the imposed sentences meet the general purpose of pronouncement of sentences as well as the purpose of punishment.

473. With regard to the decision on the sentence, the Panel, when meting out the sentences, took into account all the extenuating and aggravating circumstances as well as the purpose of punishment. In terms of the extenuating circumstances in relation to all the accused, they all have families, they are married and have several children. Moreover, the

accused Goran Mrđa and Milorad Mrđa were young at the time of commission of the offense, while the accused Mile Kokot had no prior convictions.

474. On the other hand, as far as the aggravating circumstances are concerned, the Panel took into account that the accused Goran Mrđa and Milorad Mrđa had prior convictions (excluding the expunged convictions). Further, the unscrupulousness and number of acts of the accused (Goran Mrđa in particular) as well as the number of victims, i.e. injured parties that were treated inhumanely by the accused. In addition, all the accused availed themselves of the position of superiority towards the injured parties whose fate depended on the will of the accused at the relevant time period.

475. Consequently, the Panel relied on all the presented evidence to find beyond doubt that the accused acted with intent and their acts satisfied essential elements of the offense of which they have been found guilty, committed in the manner described in the convicting part of the judgment. The Panel finds that the imposed sentences are proportional to the gravity of the offense and the ensuing consequences, and they will meet the purpose of punishment.

476. Based on the foregoing, the Panel finds that in the case in question the imposed prison sentences – respectively, 14 (fourteen) years, 8 (eight) years and 10 (ten) years – will meet the purpose of punishment prescribed by Article 33 of the CC SFRY.

V DECISION ON PRETRIAL CUSTODY

477. Pursuant to Article 50(1) of the CC SFRY, the time that the accused Goran Mrđa and Milorad Mrđa spent in pretrial custody – Goran Mrđa from 24 December 2014 to 16 September 2015, and Milorad Mrđa from 24 December 2014 to 22 January 2015 – shall be credited towards the imposed sentences of imprisonment.

VI DECISION ON COSTS OF THE PROCEEDINGS

478. Pursuant to Article 188(4) of the CPC BiH, the Panel relieved the accused Goran Mrđa, Milorad Mrđa and Mile Kokot of the obligation to reimburse costs of the proceedings and ordered that the costs shall be paid from budget appropriations.

479. In this regard, the Panel was mindful of the fact that all three accused are indigent, and that any other decision on this issue would jeopardize the subsistence of the accused and their families.

480. On the other hand, pursuant to Article 189(1) of the CPC BiH, the Panel relieved the accused Ranko Mrđa of the obligation to reimburse costs of the proceedings on the grounds that he has been acquitted of all the charges, to be reasoned in the acquitting part of the judgment.

VII DECISION ON THE CLAIM UNDER PROPERTY LAW

481. Pursuant to Article 198(2) of the CPC BiH, in conjunction with Articles 200 and 202 of the Law of Obligations, the Panel has granted in part the petition to pursue claim under property law filed by injured party K.Z., and ordered the accused Goran Mrđa and Milorad Mrđa to pay to the injured party jointly and severally the amount of BAM 20,000.00 for consequential damage within 30 (thirty) days after the judgment becomes final or face enforced collection; the injured party was instructed to take civil action to pursue the remainder of her petition. The other injured parties are instructed to take civil action considering that the Panel did not have sufficient data to rule on their petitions during this criminal trial, and also because it would considerably prolong the trial.

482. During this trial the injured party K.Z., as an authorized person, filed a petition to pursue her claim under property law relying on Prosecution's evidence that serves as the basis for the admissibility of that claim, thereby meeting the positive statutory requirement to rule on the petition. Furthermore, the Panel finds that it is justified to hear the petition as it would not considerably prolong the trial.

483. In view of the fact that the accused have been found guilty that they, by the acts described in detail in Section 2 of the convicting part of the judgment, committed the criminal offense charged under the confirmed indictment of the Prosecutor's Office of BiH, the requirements have been met, along with some other requirements, to rule on the

petition by the injured party K.Z., which is also in line with the established case law before this Court.¹⁵⁶

484. In the first place, the Panel notes that, pursuant to Article 195(3) of the CPC BiH, the person authorized to submit the petition must state their claim specifically and must submit evidence. According to Paragraph 4 of that Article, if the authorized person has not filed the petition to pursue their claim under property law in criminal proceedings before the indictment is confirmed, they shall be informed that they may file that petition by the end of the main trial or sentencing hearing.

485. The aforementioned provisions suggest that the person authorized to submit the petition to pursue their claim under property law has a duty to specify their claim, which the authorized person did in the case in question, while the Court is obligated to inform that person during the trial about the right to file a petition. Besides, referring a party to take civil action to pursue their claim under property law, as required by Article 198(2) of the CPC BiH, occurs only if the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, which was not the case here.

486. In the case in question, when the injured party was giving evidence as a witness at the trial she stated that she wanted to file a claim under property law, but she could not specify the amount at that point. The Prosecutor's Office of BiH presented evidence in that regard by ordering expert Prof. Alma Bravo-Mehmedbašić to compose a report.¹⁵⁷

487. Based on that report, on 24 November 2016 attorney Nedžla Šehić, acting on behalf of the injured party, filed a petition for compensation of consequential (non-material) damage committed by the criminal offense.

488. In that connection, the petition reads that the injured party K.Z. sustained high-intensity mental suffering that lasted seven days, medium-intensity mental suffering that lasted one year, lesser-intensity mental suffering that occasionally increases to medium and high intensity (permanently) due to existing consequences linked to the sexual torture

¹⁵⁶ Cases of the Court of BiH: S1 1 K 017213 14 Kri of 29 June 2015, S1 1 K 012024 14 Kri of 24 June 2015 and S1 1 K 020032 15 Kri of 9 December 2016.

¹⁵⁷ Exhibit T-60 – Claim under property law by injured party K.Z., attorney Nedžla S. Šehić, with enclosure: Forensic-psychiatric-psychological report by a team of experts on the examination of the injured party dated 15 December 2016, Supplement to the Forensic-psychiatric-psychological report dated 7 July 2015.

incident; further, next there is high-intensity fear for the duration of the torture of two hours and high-to-medium intensity secondary fear that lasted one year. As a result, life activity of the injured party has been permanently diminished by 25%.

489. Based on the aforesaid, it is stated in the petition that the injured party filed it on the basis of a Report on the forensic medical examination of the injured party, referring to compensation for consequential damage caused to the injured party and ensuing from the criminal offense with which the accused are charged and directed towards the accused in the present case, reading as follows: *"the accused Goran Mrđa and Milorad Mrđa are ordered to jointly and severally pay to the accused BAM 41,000.00 within 30 days after the judgment becomes final as compensation for consequential damage for the sustained fear and mental suffering due to violated freedom and rights, dignity and morality and also due to diminishment of life activity."*

490. The defense teams contested the amount and admissibility of the petition, submitting that the petition can be settled in a separate, civil procedure.

491. In contrast to the Defense arguments, the Panel, when ruling on the admissibility of the petition, primarily relied on the report by experts Prof. Alma Bravo-Mehmedbašić and Senadin Fadilpašić, MA. The experts, on the basis of medical documents, an interview, a review of relevant case files on the premises of the Prosecutor's Office of BiH and other professional methods, presented their findings and opinion regarding the state of mental health of the injured party, whether her mental health was a consequence of the experienced trauma caused by sexual ill-treatment during the war, the intensity of the mental suffering and fear sustained, and diminishment of life activity.

492. Expert Alma Bravo-Mehmedbašić pointed out in the referenced report that in 1993 the injured party K.Z.¹⁵⁸, as a result of a wartime sexual torture, developed symptoms of a chronic post-traumatic stress disorder (PTSD) that is still vividly present; the symptoms of the disorder are described in detail in the report. It is alleged that the injured party also developed a comorbid recurrent depressive disorder; the symptoms were of medium intensity during the examination on 11 December 2014. However, a review of the medical documents has indicated that the injured party also had depressive episodes with

¹⁵⁸ Exhibited T-60 – Forensic-psychiatric-psychological report by a team of experts.

psychotic symptoms. For all those reasons, the expert pointed out that the mental state of the injured party K.Z. has permanently diminished her life activity by 25%.

493. Furthermore, it is noted in the Supplemental Report that the injured party experienced high-intensity primary fear during the torture that lasted for about two hours, followed by high-to-medium intensity secondary fear for a period of one year, until she was evacuated from the occupied territory to the free territory. Finally, it is alleged that the injured party, as a result of development of an acute PTSD that grew into a chronic PTSD and a comorbid depressive disorder, suffered acute mental pain for seven days, followed by medium-intensity mental pain for one year and then constant lesser-intensity mental pain due to existing psychological consequences linked to the sexual torture incident. The pain occasionally increases to medium and high intensity, depending on the recurrence of symptoms of the PTSD, affecting all spheres of personality: cognitive, emotional and behavioral.

494. When appearing before the Trial Panel, experts Alma Bravo-Mehmedbašić and Senadin Fadilpašić maintained their previous reports, additionally clarifying the allegations made therein.

495. The Panel, on the basis of the submitted and reasoned report by the experts as well as their testimony at the trial, accepted the report as truthful, reliable and based on the rules of profession and science, bearing in mind that they are experienced experts and their opinions and findings are based on presented medical documents pertaining to the injured party as well as the results of an examination and interview with the injured party. The Panel has concluded that the injured party, as a result of the criminal offense, showed symptoms of a permanent change in personality following the appalling experiences caused by a combined torture, and that she is suffering from a chronic PTSD and a recurrent depression caused by the experienced trauma.

496. Attorney Nedžla Šehić, the injured party's proxy, appeared at the trial hearing held on 24 November 2016 and tendered her power of attorney. The attorney reasoned the previously filed written petition of the injured party pursuing her claim under property law, submitting that awarding compensation for consequential damage in the referenced amount was necessary in the interest of justice and fairness.

497. Although the Panel did not examine the medical documents relating to the health condition of the injured party K.Z., it did take into account that those documents (relating to the consequences of the rape that she suffered and continues to suffer to this day) were delivered to the experts and they reviewed them in accordance with the rules of their profession and science. The Panel had no dilemma whatsoever when ruling on the legitimacy of the claim under property law, also bearing in mind the fact that a majority of rape victims never come forward for examination.¹⁵⁹

498. Therefore, in light of the petition dated 24 November 2016 and the fact that the Panel found that the injured party sustained considerable damage as a result of the criminal offense committed by the accused (reflected in the suffered mental pain and fear as well as a permanent diminishment of life activity by 25%), with the data collected during this trial providing a reliable basis for this Panel to rule on this issue, the Panel granted in part the petition by the injured party K.Z. and awarded the aggregate amounts referred to in the enacting clause of the judgment, finding that the awarded amount constituted a just compensation for the injured party.

499. With regard to the amount of the claim under property law, the Panel took into consideration the number of perpetrators of the rape of injured party K.Z. (she was raped by four persons, including the accused Goran and Milorad Mrđa) and has accordingly ruled on the amount, considering that it did not have proof of individual contribution of each of the perpetrators.

500. The Panel points out that while deciding about the injured party's petition, it took into account the provisions of the Law of Obligations (as a *lex specialis* law in this context) referring to the significance of the damaged object and the purpose of compensation, also ensuring that the compensation does not favor the tendencies which would not be compatible with its nature and social purpose.

501. Notwithstanding the forms of consequential damage referred to in the specified petition, the Panel notes that when making its decision it considered only those forms of

¹⁵⁹ This view is also expressed in the first-instance judgment of the Court of BiH No. S1 1 K 019771 16 Kri of 6 October 2016, par. 284

consequential damage that are prescribed by the provisions of Articles 200 and 202 of the Law of Obligations, taking into account the mode of perpetration of the criminal and the consequences for the injured party resulting from the offense.

502. Furthermore, the Panel, in the decision-making process, took into account that cash (pecuniary) compensation can be awarded when a violation of a right of a person (violation of honor, reputation or freedom, disfiguration, diminishment of life activity etc.) caused bodily pain and mental suffering as well as fear, and the court takes a view that the intensity of the pain and fear in a particular case justifies the compensation, and awards a just cash compensation to the injured party. The characteristic of cash compensation is that it may be awarded only in case the bodily pain, mental suffering and fear are causally linked to the violation of a right of a person, implying a cumulated satisfaction.¹⁶⁰

503. In this respect, the Panel held that, pursuant to Article 202 of the Law of Obligations, an injured party who was the object of another criminal offense against the dignity of person and morality is entitled to cash compensation due to mental pain.

504. In the case in question, in the view of this Panel and in accordance with the case law, the act of rape as part of the criminal offense of War Crimes against the Civilian Population constitutes a crime against the dignity of person and morality. In criminal offenses against the dignity of person and morality, the right to cash compensation is granted by the criminal judgment¹⁶¹, with the civil court (this Court having the same authority in criminal proceedings) determining the existence of consequential damage, i.e. suffered mental pain and fear as a result of the criminal offense in question as well as the amount of compensation.

505. As noted above, such views have been taken in the case law, which, in the relevant part, provide that *“a person who was forced to a sexual intercourse is entitled to compensation for consequential damage for suffered mental pain and fear”*¹⁶², which was the case here.

¹⁶⁰ Vilim Gorenc, *Zakon o obveznim odnosima s komentarom* (Law of Obligations with annotations), 1998, page 287.

¹⁶¹ *Ibid*, page 293.

¹⁶² Vs, Gž-264/78 of 1 January 1979 and VS, Gž-674/78 of 17 January 1977. PSP-15/33, the view stated in the Law of Obligations with annotations, 1998, page 294.

506. Consequently, the Panel finds that the injured party is fundamentally entitled to compensation for consequential damage due to mental pain resulting from a violation of a freedom or right of person under Article 202 of the Law of Obligations; the compensation is awarded in a single amount, and the only form of compensation that can be awarded in cumulation is compensation for mental pain due to a diminished life activity.

507. With regard to compensation for damage due to suffered mental pain resulting from a violation of a freedom or right of a person (which, according to the views above, includes suffered fear in cumulation), the Panel has found that the acts of the accused Goran Mrđa and Milorad Mrđa referred to in the enacting clause above led the injured party into a state of submission, which resulted in her mental pain.

508. While determining the amount of cash compensation for consequential damage, the Panel also took into account the Orientation Criteria and amounts of just cash compensation for consequential damage (the Criteria) that were considered and accepted by the Civil Division of the Supreme Court of the Federation of BiH at its session held on 27 January 2016.

509. When applying the referenced Criteria, the Panel took into account that they apply to all civil procedures for compensation for consequential damage (as is the nature of adhesion proceedings upon a petition to pursue a claim under property law). The Criteria (*inter alia*) specify: amounts of compensation for suffered bodily pain - per day, just cash compensation for suffered fear, and amounts of compensation for diminished life activity. In particular, in this context the Panel was mindful of the case law of the Supreme Court of FBiH: *"the orientation criteria of the Supreme Court of FBiH are not a mathematical formula that is used automatically to determine and calculate a just cash compensation, for a decision on the amount of consequential damage is a trial in which the legal standard of fairness/equity is applied in determining financial compensation."*

510. Therefore, the Panel determined that the amount of BAM 13,000.00 was a just compensation for this type of damage (suffered mental pain due to a violated freedom or right of a person), encompassing the compensation for suffered fear, taking into consideration the reports by experts Alma Bravo-Mehmedbašić and Senadin Fadilpašić and the testimony of the injured party. Consequently, the Panel, as described above,

granted in part the petition filed by the injured party K.Z., finding that the referenced amount constituted a just compensation.

511. Furthermore, when determining the amount of just compensation, the Panel took into account that, according to the experts (the report and their testimony), the lasting consequences of the criminal offense, among other things, have permanently diminished the injured party's life activity by 25%. As a result, the Panel awarded compensation for this form of damage (mental pain due to a diminished life activity) in the amount of BAM 7,000.00, not accepting the amount referred to in the petition of the injured party K.Z.

512. As the injured party K.Z. did not seek payment of default interest, the Panel applied the relevant statutory provision and decided as stated in the enacting clause of the judgment, i.e. it did not award payment of default interest.

513. Finally, the Panel finds that the principle of social justice is established by awarding compensation to the victims of the criminal offense, as done in the case in question. From the sociological point of view, the principle of awarding compensation to victims needs to be as important as the principle of punishment, as a form of social reaction to a criminal activity. Namely, the purpose of a trial must not be limited to repression towards the perpetrator of the criminal offense, but must seek to restore the state that was disrupted by the criminal offense.¹⁶³

COURT'S FINDINGS – ACQUITTING PART OF THE ENACTING CLAUSE OF THE JUDGMENT

514. In the text below the Panel will adduce reasons for acquitting the accused Goran Mrđa, Milorad Mrđa and Ranko Mrđa of charges under some of the counts of the Indictment.

515. Specifically, the Panel did not find sufficient evidence to find the accused Ranko Mrđa and Milorad Mrđa guilty of three counts of the Indictment. As for Count 6 of the Indictment, the Panel acquitted the accused Goran Mrđa of the charge on the grounds of

¹⁶³ In line with the view expressed in the judgment of this Court K-76/08 of 11 September 2009.

lack of intent and specific acts on his part, to be discussed in more detail in the reasons adduced for each particular section.

Section 3a) of the acquitting part of the enacting clause of the judgment

516. As noted and explained above, Section 3 a) of the enacting clause of the judgment charged the accused Goran Mrđa and Ranko Mrđa with inhuman treatment of the civilians who were in the house of Mehmed Brakić in the night of 2/3 May 1993.

517. Among others, Prosecution witnesses Mehmed Brakić, Esad Brakić and Semira Brakić were examined with regard to this section. In the convicting part of the judgment the Panel reasoned the evidence on which it relied to find the accused Goran Mrđa guilty, whereas Ranko Mrđa was acquitted of the charge of acting as a co-perpetrator.

518. Specifically, in this part the Panel took into account the fact that witnesses Mehmed and Esad Brakić testified at the trial that in addition to Goran Mrđa they also recognized Ranko Mrđa that night in the house. Allegedly, witness Esad Brakić knew him from before, when commuting to Slovenia where he worked.

519. Witness Mehmed Brakić also stated that his son Esad Brakić told him on the morning after the incident that he recognized the assailants and that one of them was Ranko Mrđa, stating that Goran and Ranko Mrđa entered the house on that occasion. The witness used to see Ranko when he worked abroad. The witness stated that his son too saw Ranko when traveling to Slovenia. The witness also knew Ranko's father whose nickname was 'Lisica' /fox/.

520. However, the Panel took into account witness statements given during the war. In his statement before the Higher Court of Zenica dated 20 September 1995¹⁶⁴, witness Mehmed Brakić clearly indicated that on that night *“bandit Goran Mrđa was with six other criminals from his group. I knew all of them by sight, I know that they were from the village of Lipnik, but they were all young men and I cannot recall their names at this point.”* When this is correlated with the witness's allegation that his son told him first thing in the morning (3 May 1993) that he recognized Ranko Mrđa, it is clear that the witness, had that been

¹⁶⁴ Exhibit O-III-1 – Record of Interview of Witness Mehmed Brakić, Kri. 45/95 of 20 September 1995.

true, would have said the same thing before the Court in Zenica two years later. The Panel is not convinced with the witness's explanation that the time was not right to say everything back then, as there was a war going on, nor was it logical to mention the full name of the accused Goran Mrđa but not dare mention the name of the accused Ranko Mrđa. Furthermore, the allegation that on that occasion he saw the accused Goran Mrđa and six other “criminals” who were “all young men” raises doubts as to whether the accused Ranko Mrđa was there, considering that he is ten years older than the accused Goran Mrđa.

521. Moreover, when one considers the witness's trial testimony – that Goran and Ranko Mrđa entered his house on that occasion and that the witness knew Ranko's father by the latter's nickname, it is clear that a conviction cannot rely on such a witness statement.

522. Witness Mehmed Brakić did not identify the accused Ranko Mrđa on a photograph from a photo album that was shown to him.

523. Witness Esad Brakić alleged in his statement dated 24 October 2014¹⁶⁵ that he knew the accused Ranko Mrđa because he worked with him in Slovenia before the war. However, the same witness testified at the trial that he knew the accused because they commuted to Slovenia by bus. In view of the fact that the accused worked in Kranj and the witness in Jesenice, it is clear that witness Esad Brakić's contention is not correct.

524. What is also relevant to the Panel is that the witness did not identify the accused Ranko Mrđa on the photographs that were shown to him during the investigation, preceded by the following description of that person *“the one who was with Goran Mrđa had fair hair, was a bit thin, a bit shorter than me, at that time he did not turn 30. He had short hair. I have never seen that man again.”*

525. Defense witnesses were examined with regard to the accused commuting to Slovenia where he worked. Witness Milosav Banjac¹⁶⁶ testified that the accused was his room-mate while they were working in Slovenia. He stated that he knew that the accused

¹⁶⁵ Record of Interview of Witness Esad Brakić, T20 0 KTRZ 0006582 13 of 24 October 2014.

¹⁶⁶ Examined at the trial hearing on 15 September 2016.

had his own car since 1984 and that he went with him home on several occasions, but he was not aware that the accused ever commuted by bus.

526. Witness Gospova Bilbija¹⁶⁷, the accused's sister, testified that her brother started working in Slovenia in 1980. Initially, he travelled to Novska by bus and then boarded a train, but he never again travelled that way after he bought his first car. She stated that the accused got married in 1990. He left Slovenia in 1991 and came to Lipnik; his first son Aleksandar was born that same year. She remembered that Ranko was mobilized in September 1991, whereupon he was deployed to the frontline wherever necessary. The witness stated that the accused has another son, Rade, who was born on 15 May 1993, and that his wife was on complete rest because of a risky pregnancy and there was always someone at her side. The witness visited his wife every day because the accused was deployed to the frontline on 10 May 1993. The witness was not aware whether the accused would leave the house during the night. When asked about the relations between the family of Milorad Mrđa and their family, the witness pointed out that their parents were at odds and that they never settled their dispute.

527. Witness Milka Mrđa, the accused's wife, corroborated the allegations of this witness.¹⁶⁸

528. The accused Ranko Mrđa testified as a defense witness.¹⁶⁹ He pointed out that he completed the elementary school in 1980, whereupon he went to Slovenia (he did not turn 17). He found a job at the Pulp and Paper Mill. In 1983 he started working for the Sava Company in Kranj. He stated that at that time period he was living in the Savski dom with two room-mates: Milosav Banjac and a guy from Macedonia whose name he could not recall; he remained there until 1991. Regarding his trips to Slovenia, the accused stated that initially he and his father travelled by train on several occasions; later on, as many neighbors from the village were working in Slovenia, they went with them by car. He bought his first car in 1984, and he drove in it to Slovenia. He stated that he never again travelled by bus to Slovenia, but also that he never travelled alone in the car: sometime his father would go with him and sometimes others who were working with him. He stated that

¹⁶⁷ Examined at the trial hearing on 15 September 2016.

¹⁶⁸ Examined at the trial hearing on 15 September.2016.

¹⁶⁹ Examined at the trial hearing on 27 October 2016.

he has never seen Esad Brakić before and that he did not know anyone from the village of Naprelje, adding that it was not true that he ever travelled with Esad to Slovenia.

529. The statements of the witnesses are additionally corroborated by a piece of documentary evidence tendered by counsel for the accused – letter from *A-1 Remont Company Kranj* no. 28/95-2016 dated 28 December 2016¹⁷⁰ - stating that the accused Ranko Mrđa had three cars during his stay in Slovenia.

530. According to the Record of Identification of Persons on Photographs, no. 05-04/03-5-944/14 dated 5 December 2014¹⁷¹, concerning the photo albums shown to witness Esad Brakić during the investigation, it can be concluded that the witness was not shown two photo albums, one of which contained a photograph of the accused Ranko Mrđa from 1985, on which the witness was not able to comment. This but confirms the Panel's doubt in the witness's contention that he knew Ranko Mrđa or recognized him on the night in question. During the cross examination of the witness by counsel for the accused Ranko Mrđa, counsel was not allowed to show photo album no. 2 containing the photograph in question on the grounds that that album had not been shown to the witness before by the Prosecutor's Office of BiH.

531. Taking into account that witnesses Mehmed Brakić and Esad Brakić clearly introduced the full name of the accused Ranko Mrđa in their respective statement no sooner than in 2014, i.e. that witness Mehmed Brakić never mentioned this person before but said at trial that his son personally told him first thing on the following morning that he recognized Goran and Ranko Mrđa the night before, a question arises: why didn't witness Mehmed Brakić mention the name of Ranko Mrđa in his prior statements if his son told him that he had recognized Ranko Mrđa but, instead, mentioned the accused Goran Mrđa and his “criminals”?

532. The Panel also observes that the accused Ranko Mrđa does not appear in any other event of which the accused Goran Mrđa has been found guilty by this Panel. The accused perpetrated most of the acts jointly with others from his group that, as repeatedly

¹⁷⁰ Exhibit O3-9.

¹⁷¹ Integral part of Defense exhibit O-III-1.

noted, was known as the group from Donji Lipnik; at that time the group plundered and ill-treated Bosniac civilians in the villages, and one of their motives was to acquire gain.

533. At this point, the Panel will give a brief outline of the standard of proof that must be satisfied in order to find a person guilty of a crime. Namely, for a proof to be considered a proof beyond a reasonable doubt, it must satisfy the highest standard of proof to be achieved in any procedure, i.e. it must be convincing to the extent that any person can rely on it and act upon it without hesitation. The Trial Chamber in *Zejnir Delalić et al.* took a clear stance on that issue: *"It need not reach certainty but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond a shadow of doubt... if the evidence is so strong against a man as to leave only a remote possibility in his favor, which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt – but nothing short of that will suffice."*¹⁷²

534. Consequently, the Panel could not rely on the presented evidence to find beyond reasonable doubt that the accused Ranko Mrđa participated in the inhuman treatment of civilians. Consequently, the Panel acquitted the accused of the charge in line with the principle of *in dubio pro reo*.

Section 3c) of the acquitting part of the enacting clause of the judgment

535. Under this count of the Indictment, the accused Goran Mrđa and Ranko Mrđa are charged with the inhuman treatment of Bosniac civilians, with the accused Goran Mrđa being additionally charged with the murder of Hasib Velić. In view of the fact that the Panel found the accused Goran Mrđa guilty of the said count, in this section it will address only the acts relating to the accused Ranko Mrđa and explain its decision.

536. The acts with which the accused Ranko Mrđa is charged include entering the house of Rasim Velić by force and a beating of Rasim Velić jointly with a person known to the accused, and using a rifle bayonet to move a scarf on the head of Hava Velić and snatching the earrings and a ring from Hava Velić.

¹⁷² *Delalić et al (Čelebići)*, Trial Judgment dated 16 November 1998.

537. Witness Denis Velić, son of victim Hasib Velić, testified with regard to the aforementioned circumstances. The witness, having described the incident, stated that the person – Ranko Mrđa according to the Prosecutor's Office of BiH – had *"a wavy hair, tucked behind his ears, a long face, a long pointed nose as straight as a cube on the top, 20 to 30 years old, thin"*. Before that, the witness stated that the light in the room was not turned on; the light in the kitchen behind that soldier was turned on.

538. According to the Record of Interview of Witness Denis Velić, composed by the Sanski Most PU /Police Department/ on 13 December 2007¹⁷³, the witness stated: *"I woke up at one point and saw a young man, highly emaciated; he was, in my estimate, fairly tall, around 190 cm. As for the clothes, he was wearing a military green windbreaker and a fur cap; his face was unveiled. I was able to observe that he was a very young man, about 20 years old, and what particularly caught my eye was the detail that that assailant had floppy ears."*

539. Afterward, the witness stated on the Record of Identification of Persons on Photographs dated 24 December 2014¹⁷⁴ that the person who entered the room he was in that night was wearing an olive-drab jacket, a pair of jeans, he was 180 to 190 cm tall, slender, he was wearing a fur cap, had a long face, under the fur cap on the front side he saw some brown wavy hair, a pointed nose, and he thought that the person was 20-25 years old.

540. After the witness was shown a photo album that, among other things, included a photograph of Ranko Mrđa, the witness said that he was not sure that that was him. After the Prosecutor repeated her question, the witness stated that he was "99% sure". On that note, the Panel was mindful of the fact that that album was not shown to the witness during the investigation, but only following his description of the person who was with him that night in his room.

541. A comparison between the description of the physical appearance of the person in question as given by witness Denis Velić and the appearance of the accused Ranko Mrđa

¹⁷³ Exhibit O3-3 – Record of Interview of Witness Denis Velić, Sanski Most PU, Crime Police Sector, no. 05-1/04-5-2045/07 dated 13 December 2007.

¹⁷⁴ Exhibit O3-3 – Sanski Most PU, Crime Police Sector, no. 05-04/03-5-2325/14 dated 24 December 2014, Record of Identification of Persons on Photographs.

in 1993 clearly shows that they do not match. Namely, it is a fact that the accused was 30 years old at the time, that he was not as young as the other soldiers in Goran Mrđa's group.

542. The Panel also recalls that with regard to this circumstance no other witness mentioned the presence of the accused Ranko Mrđa, with the exception of the witness who was a boy at the time. Furthermore, in view of the Panel's assessment of the respective testimony of witnesses Mehmed Brakić, Semira Brakić and Esad Brakić as being insufficient in terms of identification of the accused Ranko Mrđa and that the referenced incidents occurred in succession, the Panel could not find beyond reasonable doubt that the accused Ranko Mrđa was present on the occasion in question and that he committed the criminal offense charged.

543. Based on the foregoing, taking into account the allegations of other witnesses regarding the incidents in the night of 2/3 May 1993, the Panel could not find beyond reasonable doubt that Ranko Mrđa was the person who committed the offense and it accordingly acquitted him of the charge by applying the principle of *in dubio pro reo*.

Section 4a) of the acquitting part of the enacting clause of the judgment

544. Under this count of the Indictment, the accused Goran Mrđa and Milorad Mrđa were charged with causing serious bodily and mental suffering on the injured party Omer Drobić in the neighborhood of Pobriježje in 1994. Having adduced reasons in the convicting part of the judgment for finding the accused Goran Mrđa guilty, the Panel will now turn to the acts charging the accused Milorad Mrđa.

545. The Panel has held that it has not been proved that the accused Milorad Mrđa committed the offense in co-perpetration with the accused Goran Mrđa, on the grounds that the injured party Omer Drobić himself stated that Goran Mrđa beat him and rendered him unconscious; when he regained consciousness he saw Milorad Mrđa standing at the door with a rifle.

546. The Prosecutor's Office of BiH did not adduce other evidence to support the charge against the accused Milorad Mrđa under this count of the Indictment. Even if that had been

the case, the Panel would have again relied primarily on what the injured party himself stated in that respect.

547. In that connection, the Panel recalls that acts of co-perpetrators must be specified, with a requirement that the accused Milorad Mrđa contributed to a prohibited consequence suffered by the injured party, which has not been proved in the case in question. Besides, the injured party himself did not say that the accused did anything, other than seeing him standing there with a rifle.

548. For those reasons, as there is no causal link between the acts of the accused Milorad Mrđa and the consequences suffered by the injured party Omer Drobić, the Panel acquitted the accused of the charge under the said count of the Indictment.

Section 6 of the acquitting part of the enacting clause of the judgment

549. Under Count 6 of the Indictment, the accused Goran Mrđa was charged that he, together with Mile Kokot, murdered civilian Tahir Cerić in the following manner: they entered the frontyard of Tahir Cerić's house and banged on the entrance door. After Tahir Cerić got out of the house and into the frontyard, Mile Kokot pointed a rifle at him. As Tahir Cerić was walking back, Mile Kokot fired a shot at him at point blank range and hit him in the stomach.

550. Therefore, the actions of the accused Goran Mrđa do not satisfy the elements of the criminal offense with which he is charged under this count of the Indictment because he, even according to the facts in this count of the Indictment, did not undertake a single action for the purpose of murdering the victim. Furthermore, the Panel recalls that in this case the mere presence of the accused Goran Mrđa is not sufficient, and also there is no proof confirming that he had any intention to murder the victim. As a result, the Panel acquitted the accused Goran Mrđa of the charge of murdering Tahir Cerić.

551. As the Panel rendered an acquittal in this part, pursuant to Article 189(1) of the CPC BiH, the accused Goran Mrđa, Milorad Mrđa and Ranko Mrđa are relieved of the duty to reimburse costs of the proceedings and the costs shall be paid from the budget appropriations. Pursuant to Article 198(3) of the CPC BiH, the injured parties are instructed to take civil action to pursue their claims under property law.

Rejecting the qualification relating to the crime of plunder of civilian property as a War Crime against the Civilian Population

552. According to the confirmed Indictment (as amended during the trial), the accused Goran Mrđa, Milorad Mrđa and Ranko Mrđa were charged with the plunder of property belonging to the civilian population.

553. The term “plunder” includes all forms of unlawful appropriation of property in armed conflict, which individual criminal responsibility attaches under international criminal law. The elements of this crime are:

- *all forms of appropriation of private or public property or money,*
- *the appropriation was committed with intent; and*
- *the act was unlawful.*¹⁷⁵

554. There is a causal link between the monetary value of the appropriated property and the gravity of the consequences for the victim, including the gravity of the offense. However, the assessment of when a piece of property reaches the threshold level of a certain value can only be made on a case-by-case basis and only in conjunction with the general circumstances of the crime.¹⁷⁶

555. A serious violation could be assumed in circumstances where appropriations take place *vis-à-vis* a large number of people, even though there are no grave consequences for each individual. In this case it would be the overall effect on the civilian population and the multitude of offenses committed that would make the violation serious.¹⁷⁷

556. The Trial Panel in *Čelebići* noted that in order for a plunder to be a serious violation of international humanitarian law, two elements must be fulfilled. First, the alleged offense must be the one which constitutes a breach of a rule protecting important values. Secondly, it must also be one which involves grave consequences for the victim. As previously found by the Trial Chamber, the prohibition against unjustified appropriation of private or public property constitutes a rule protecting important values. However, with regard to the charge of plunder of property as a crime – pertaining to the fact that the

¹⁷⁵ *Gotovina* Trial Judgment, par. 1777; *Kordić* Appeals Judgment, par. 77-84.

¹⁷⁶ *Kordić* Appeals Judgment, par. 82.

¹⁷⁷ *Ibid*, par. 83

accused participated in plunder of money, watches and other valuable property that belonged to the detainees in the Čelebići prison-camp – the Chamber was of the opinion that the offenses cannot be considered to constitute serious violations of international humanitarian law.¹⁷⁸

557. In the case in question, the Panel holds that these acts, in light of the manner in which they are described in the Indictment, cannot constitute acts of perpetration of the criminal offense of War Crimes against the Civilian Population. A war crime requires destruction or confiscation of property on a large scale. It is the view of the Panel that none of the referenced situations involved appropriation of large-scale property by the accused. For this reason, the Panel did not find them guilty of the said crime.

558. The Panel also observes that the Indictment itself is vague in this part, considering that the factual account reads that the accused “appropriated money and valuables” with no specification of those valuables. In fact, only in relation to injured party Halid Mehić is there a reference that 25 marks were taken from him, but no specific amounts of money are mentioned in relation to the others. According to witness accounts, in most cases several dozens of marks and a negligible quantity of jewelry were taken. As a result, the Panel found that this did not amount to a grave breach of international humanitarian law or involve confiscation of property of sufficient value to meet the standard of serious consequences for the victims.

RECORD-TAKER

Legal adviser - assistant

Amela Spahić

PRESIDING JUDGE

Mediha Pašić

LEGAL REMEDY: An appeal from this judgment may be filed with the Appellate Division of this Court, within 15 (fifteen) days after service of the written copy of the judgment.

The injured parties may appeal the judgment only with respect to the Court's decision on costs of the criminal proceedings and petitions to pursue claims under property law.

* The appeal is to be filed with this Court in a sufficient number of copies.

¹⁷⁸ Čelebići, Trial Judgment, par. 1153-1154

ANNEX (LIST OF DOCUMENTARY EVIDENCE)

a) Prosecution exhibits

T-1	Record of Interview of Witness Halid Mehić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 24 September 2014, with attachments: photo album no. 4, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014, Record of Identification of Persons on Photographs, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 4 December 2014; and photo album no. 4, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014
T-2	Record of Interview of Witness M. P., Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 24 September 2014, with attachments: Record of Identification of Persons on Photographs, MUP USK, 05-04/03-5-985/14 of 16 December 2014, photo album no. 1-9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; photo album no. 1-8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; and photo album no. 9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 2 December 2014
T-3	Record of Interview of Witness Z. P., Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 15 October 2014, with attachments: Record of Identification of Persons on Photographs, MUP USK, 05-04/03-5-983/14 of 16 December 2014; photo album no. 1-9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; photo album no. 1-8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; and photo album no. 9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 2 December 2014
T-4	<p>T – 4 –a –Certified photocopy of an extract from the logbook, Sanski Most SJB;</p> <p>T – 4–b –Letter from the Prosecutor's Office of BiH addressed to the FMUP /Federation of BiH Ministry of Interior/, FBiH Police Administration, Center for Forensic and Computer Support no. T20 0 KTRZ 0006582 13 of 16 December 2014 with an Order of the Prosecutor's Office of BiH for a DNA analysis no. T20 0 KTRZ 0006582 13 of 16 December 2014;</p> <p>T -4-c - Letter from the Prosecutor's Office of BiH addressed to the FMUP, FBiH</p>

Police Administration, Center for Forensic and Computer Support no. T20 0 KTRZ 0006582 13 of 8 October 2014 with an Order of the Prosecutor's Office of BiH for a DNA analysis no. T20 0 KTRZ 0006582 13 of 8 October 2014;

T – 4 –d –Letter from the Prosecutor's Office of the USK Bihac addressed to the Prosecutor's Office of BiH no. T01 0 KTRZ 0003613 98 of 24 December 2013, with attachments: Criminal Report against Unidentified Persons no. 11-19/02-2-230-KU-66/93 of 1 June 1993, Official Note of 4 May 1993 on the interview with Aziz Horozović, Official Note of 4 May 1993 on the interview with Slavko Ćurguz, official note of 4 May 1993 on the interview with H.Z, Official Note of 3 May 1993 on the interview with Zejfo Horozović, Official Note of 4 May 1993 on the interview with Mirko Dekić; doctor's report for H.Z., Sanski Most Health Center, crime scene photographs for the case: rape no. 11-19/02-3-sl. of 4 May 1993, the underwear of H.Z. as well as the knife found on the crime scene in a closed envelope;

T -4 –e – Letter from the Sanski Most Health Center no. 01-1-1385/14 of 6 November 2014 addressed to the Prosecutor's Office of BiH;

T – 4 –f –Order of the Court of BiH to collect a buccal swab sample no. S1 1 K 012010 14 Krn of 17 December 2014;

T – 4 – g- Letter from the FBiH Ministry of Interior-FBiH Police Administration Sarajevo no. 10-15/3-04-5-6239/14 of 26 December 2014, with DNA findings composed by the FBiH Ministry of Interior Sarajevo no. 10-15/3-04-5-6239/14 of 26 December 2014 and an expert's opinion;

T – 4–h - Letter from the FBiH Ministry of Interior- FBiH Police Administration Sarajevo no. 10-15/3-04-5-5007/14 of 31 October 2014, with DNA findings composed by the FBiH Police Administration, Center for Forensic and Computer Support Sarajevo no. 10-15/3-04-5-5007/14 of 31 October 2014 and an expert's opinion;

T – 4 – i – Report by the *Treća* PU Sanski Most /Third Police Department/ on

	<p>collecting a buccal swab sample from Z.K. no 05-04/08-1-1-1306/14 Dž.B. of 4 December 2014;</p> <p>T – 4 – j – Report by the Treća PU Sanski Most on collecting a buccal swab sample from Aziz Horozović no. 05-04/08-1-1-1305/14 Dž.B. of 4 December 2014;</p> <p>T – 4 – k – Letter from the Court of BiH S1 1 K 018013 14 Kro of 7 January 2015, delivering a Report of the State Investigation and Protection Agency no. I-16-06-04-2-6980-15/14 of 25 December 2014 on the execution of Order of the Court of BiH of 17 December 2014, with attachments: reports on collecting buccal swab samples from suspects Goran Mrđa, Milorad Mrđa and Ranko Mrđa of 23 December 2014</p>
T-5	<p>Record of Identification of Persons on Photographs, Esad Brakić, MUP USK, no. 05-04/03-5-944/14 of 5 December 2014; attachments: photo albums 1, 3, 5, 6, 7 i 8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; and photo album no. 9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 2 December 2014</p>
T-6	<p>Record of Interview of Witness Smail Mehić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 21 August 2014; Letter from the USK Police Administration-Crime Police Sector, no. 05-04/03-5-04-3-662/14 of 2 June 2015, with attachments: official notes of inspector Mahmut Alagić no. 05-04/03-5-684/15AM of 29 May 2015 and official note composed by the Witness Support Section of the Court of BiH S1 1 K 018013 15 of 19 May 2015</p>
T-7	<p>Record of Interview of Witness Suvada Pašić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 16 October 2014; Report by a specialist in family medicine of the Sanski Most Health Center of 16 April 2015, certified photocopy of a report by a neuropsychiatrist of the Sanski Most Health Center of 17 April 2015, certified photocopy of a report by a specialist in internal medicine of the Sanski Most General Hospital of 15 May 2015, certified photocopy of a report by a specialist in physical medicine and rehabilitation of the Sanski Most Health Center of 20 May 2014, and official note composed by the Witness Support Section of the Court of BiH S1 1 K 018013 15 of 14 April 2015</p>

T-8	Record of Interview of Witness Rufad Kuburić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 8 November 2014
T-9	Record of Interview of Witness Suvada Kuburić, Ministry of Security of BiH, SIPA, 16-06/1-04-2-571/14 of 7 November 2014
T-10	Photo album no. 1-9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014, photo album no. 1-8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014 and photo album no. 9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 2 December 2014
T-11	Record of Interview of Witness V. S., Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 24 October 2014 and Record of Identification of Persons on Photographs (witness S.V.), MUP USK, no. 05-04/03-5-2324/14 of 24 December 2014, with attachment: photo albums 1, 2, 3, 4, 5, 6, 7, 8 and 9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014
T-12	Letter from the MUP RS-Crime Police Administration, Unit for Forensic Criminal Investigation Center, no. 02/8-1-233-128.1/93 of 17 December 2014, with attachments: Request for delivery of documents no. 05-1/04-5-04-3-1070/07 of 25 December 2007, Analysis of firearms, cartridge cases and bullets no. 02/3-233-128 of 25 May 1993, and Letter from the Sanski Most SJB no. 11-19/02-3-234-10/93 of 6 May 1993 (certified photocopies)
T-13	Record of Interview of Witness Omer Drobić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 23 September 2014
T-14	Record of Interview of Witness Sefer Drobić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 23 September 2014
T-15	<ul style="list-style-type: none"> - Photo album -1, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; - Photo album -2, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; - Photo album -3, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; - Photo album -4, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; - Photo album -5, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014; - Photo album -6, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10

	<p>November 2014;</p> <ul style="list-style-type: none"> - Photo album -7, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 <p>November 2014;</p> <ul style="list-style-type: none"> - Photo album -8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 <p>November 2014</p>
T-16	<ul style="list-style-type: none"> - Order for a psychiatric-psychological examination, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 5 December 2014 - Forensic-psychiatric-psychological examination of the injured party by experts Alma Bravo – Mehmedbašić, PhD, and Senadin Fadilpašić, MA, of 15 December 2014 - Addendum to Order for a psychiatric-psychological examination of 5 December 2014, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 1 July 2015 - Addendum to the forensic-psychiatric-psychological examination of the injured party by expert Alma Bravo – Mehmedbašić, PhD, of 7 July 2015
T-17	Record of Interview of Witness Radija Velić composed on the premises of the USK Prosecutor's Office on 24 October 2014, T20 0 KTRZ 0006582 13
T-18	Decision of the Presidency of the Republic of Bosnia and Herzegovina Proclaiming a State of War (<i>Official Gazette of RBiH</i> , 7/92)
T-19	Decision of the Presidency of the Republic of Bosnia and Herzegovina Abolishing the State of War (<i>Official Gazette of RBiH</i> , 50/95)
T-20	Certified photocopy of an extract from a crime scene investigations log of the police –Sanski Most SJB, for the years 1991/92/93/94
T-21	Summary of the social structure and number of household members and children of military conscripts of the II Lušci Palanka Battalion of 28 June 1994
T-22	Letter from the Banja Luka Veterans Affairs Department no. 06-832-105/2014 of 15 December 2014
T-23	Crime Scene Investigation Report no. Kri: 29/93 of 3 May 1993
T-24	Death Certificate for Tahir Cerić no. 05-13-3-1341/14 of 18 December 2014
T-25	Letter from the <i>dr. Mladen Stojanović</i> Public Health Institution Prijedor addressed to the Prosecutor's Office of BiH no. 3524/14 of 27 November 2014: certified photocopy of a discharge summary for Sefer Drobić, certified photocopy of a report of the Sanski Most Health Center for Sefer Drobić
T-26	Letter from the <i>dr. Mladen Stojanović</i> Public Health Institution Prijedor addressed

	to the Prosecutor's Office of BiH no. 3732/14 of 16 December 2014
T-27	Criminal case against unidentified persons (injured party Hasib Velić), Banja Luka Security Services Center, Sanski Most SJB, no. K.U. 11-19/02-2-230-KU-77/93 of 8 June 1993 containing: Criminal Report against unidentified persons no. 11-19/02-2-230-KU-77/93 of 8 June 1993, Official Note composed on 3 May 1993 in connection with an interview with Seid Velić, Official Note composed on 3 May 1993 in connection with an interview with Rasim Velić, Official Note composed on 3 May 1993 in connection with an interview with Kasim Velić, Official Note composed on 3 May 1993 in connection with an interview with Radija Velić, Special Report to the Public Prosecutor's Office of Sanski Most no. 11-19/02-2-230-KU-77/93 of 9 June 1993 against Goran Mrđa, Statement by Goran Mrđa no. 11-19/02-2- of 9 June 1993, Statement by Milorad Mrđa no. 11-19/02-2- of 9 June 1993, letter: Examination of firearms, cartridge cases and bullets no. 02/3-233-126 of 25 May 1993, Letter from the Basic Public Prosecutor's Office of Sanski Most no. KTN 27/93. of 14 October 1993
T-28	28 – Criminal case against Miloš Štrbac <i>et al.</i> from Suhače (injured parties Goran Mrđa <i>et al.</i>) from Sanski Most, Banja Luka Security Services Center, Sanski Most SJB, no. K.U. 11-19/01-230-KX-89 of 15 July 1993 containing: Criminal Report against Miloš Štrbac and Dragan Miladinović of 15 July 1993, Crime Scene Investigation Report no. Kri-31/93 of 5 May 1993, Statement by Miloš Štrbac no. 11-19/01 of 5 May 1993, Statement by Dragan Miladinović of 5 May 1993, Official Note on circumstances surrounding the injury of Goran Mrđa aka Kinez of 5 May 1993, Official Note composed on 5 May 1993 with regard to an incident that occurred on 4/5 May 1993, Official Note composed by police officer Dragan Rodić on 5 May 1993, Official Note composed on 6 May 1993 in connection with an interview with Obrad Lukić, Official Note composed on 6 May 1993 in connection with an interview with Todor Štrbac; Official Note composed on 6 May 1993 in connection with an interview with Predrag lić <i>/as in the original/</i> , Official Note composed on 7 May 1993 in connection with an interview with Milan Bilbija, Official Note composed on 7 May 1993 in connection with an interview with Duško Novaković, Statement by Milorad Mrđa no. 11-19/02-d of 12 May 1993, Proof of service no. Kri. 31/93 of 23 June 1993, Letter from the Public Prosecutor's Office of Sanski Most of 25 June 1993 addressed to the Public Security Station

T-29	Letter from the Veterans Department of Prijedor no. 03-30/2014 of 15 December 2014, with a certified photocopy of VOB 2 and VOB 3 forms for Milorad Mrđa
T-30	Letter from the Veterans Department of Prijedor no. 03-31/14 of 15 December 2014
T-31	Letter from the Veterans Department of Prijedor no. 03-29/2014 of 15 December 2014, with a certified photocopy of VOB 2 and VOB 3 forms for Goran Mrđa
T-32	Order of the Court of BiH on the search of search premises and temporary confiscation of items S1 1 K 012010 14 Krn 2 of 22 December 2014
T-33	Letter from the Court of BiH S1 1 K 012010 14 Krn of 26 December 2014, delivering to this Prosecutor's Office documentation and temporarily confiscated items under orders of the Court of BiH: Records on the search of dwellings, other premises and movable items composed by SIPA /State Investigation and Protection Agency/ no. 16-06/1-04-2-44/14 of 23 December 2014, Receipt on temporary confiscation of items composed by SIPA no. 16-06/1-04-2-63/14 of 23 December 2014 and photographic documentation
T-34	Certified photocopy of Report of Death of Tahir Cerić;
T-35	Certified photocopy of Certificate of Death of Tahir Cerić;
T-36	Certified photocopy of a burial permit for Tahir Cerić;
T-37	Decision of the Basic Court of Prijedor for Goran Mrđa no. 77 0 Pr 031041 11 Pr of 14 December 2011
T-38	Decision of the Basic Court of Prijedor for Goran Mrđa no. 77 0 Pr 061072 14 Pr of 7 November 2014
T-39	An article from <i>Podgrmečke novine</i> od 6 April 1994
T-40	Minutes of handover of original documentation on Tahir (Almaz) Cerić composed by the MUP USK /Una-Sana Canton Ministry of Interior/, Police Administration, Crime Police Sector, no. 05-04/03-5-909/14 AM of 3 December 2014; Record of informing relatives about DNA analysis results of 18 April 2007, Record of Identification of Dead Body of 18 April 2007; Autopsy Report of 14 July 2007; Request for collection to bury the mortal remains of Tahir (Almaz) Cerić of 28 August 2007; Record of handover for the purpose of burial of mortal remains of 18 April 2007
T-41	Letter from the MUP USK, Treća PU /Police Department/, Sanski Most PS /Police Station/ no. 05-04/08-1-4504/14/BB of 18 December 2014 addressed to the Prosecutor's Office of BiH

T-42	Death Certificate for Hasib Velić no. 05-13-3-1340/14 of 18 December 2014
T-43	Letter from the Office of War Crimes Prosecutor of the Republic of Serbia addressed to the Prosecutor's Office of BiH no. MP-br.26/14 of 3 July 2014; with an attachment
T-44	Letter from the RS Ministry of Labor and Veterans addressed to the Prosecutor's Office of BiH no. 16-03/3.2-1-835-1411/14 of 16 December 2014, with a certified photocopy of VOB-8 form for Mile Kokot
T-45	Letter from the RS Ministry of Labor and Veterans addressed to the Prosecutor's Office of BiH no. 16-03/3.2-1-835-1405/14 of 16 December 2014, with two certified photocopies of VOB-8 form for Milorad Mrđa
T-46	Letter from the RS Ministry of Labor and Veterans addressed to the Prosecutor's Office of BiH no. 16-03/3.2-1-835-1410/14 of 16 December 2014, with two certified photocopies of VOB-8 form for Goran Mrđa
T-47	Letter from the RS Ministry of Labor and Veterans addressed to the Prosecutor's Office of BiH no. 16-03/3.2-1-835-1406/14 of 16 December 2014, with a certified photocopy of VOB-8 form for Ranko Mrđa
T-48	Judgment of the Basic Court of Sanski Most K-104/92 of 3 March 1993
T-49	Record of Questioning of Suspect Ranko Mrđa composed on the premises of the Prosecutor's Office of BiH on 23 December 2014, T20 0 KTRZ 0006582 13
T-50	Record of Questioning of Suspect Goran Mrđa composed on the premises of the Prosecutor's Office of BiH on 23 December 2014, T20 0 KTRZ 0006582 13
T-51	Record of Questioning of Suspect Mile Kokot composed on the premises of the Prosecutor's Office of BiH on 23 December 2014, T20 0 KTRZ 0006582 13
T-52	Record of Questioning of Suspect Milorad Mrđa composed on the premises of the Prosecutor's Office of BiH on 23 December 2014, T20 0 KTRZ 0006582 13
T-53	Record of opening and inspection of temporarily confiscated items and documentation composed by the Prosecutor's Office of BiH on 29 December 2014, number T20 0 KTRZ 0006582 13
T-54	Wartime photograph of suspect Goran Mrđa with a flag and a rifle; written on the back of the photograph is: 4024-36 (confiscated from the house of suspect Goran Mrđa during the search)
T-55	ID card issued to Milan Zorić (confiscated from the house of suspect Goran Mrđa during the search)
T-56	RS refugee card issued to Goran Mrđa (confiscated from the house of suspect

	Goran Mrđa during the search)
T-57	- Military card issued to Goran Mrđa (confiscated from the house of suspect Goran Mrđa during the search)
T-58	Certificate of completion of military service issued to Goran Mrđa by the Ministry of Defense Banja Luka, Srpski Sanski Most Section (confiscated from the house of suspect Goran Mrđa during the search)
T-59	Clues 3, 18 cartridges and one pistol magazine (confiscated from the house of suspect Goran Mrđa during the search)
T-60	Claim under property law by injured party Z.K., attorney Nedžla S. Šehić; Report on forensic-psychiatric-psychological examination of the injured party by a team of experts of 15 December 2016, Addendum to the forensic-psychiatric-psychological examination of the injured party of 7 July 2015, Request for acknowledgment and disbursement of necessary expenses of the injured party for being represented by attorney Nedžla S. Šehić and Invoice 4-11/2016 issued by attorney Nedžla Šehić on 24 November 2016, Decision of the District Court of Banjaluka no. 11 0 K 017578 16 K of 3 November 2016, and Decision of the Indirect Taxation Authority, Tax Sector, Taxpayers Services, no. 04/1-17-1-UPJR -1-4856 – 1/12 of 17 September 2012
T-61	Letter from the Republika Srpska Pension and Disability Insurance Fund no. 04-IP-95-639/16 of 16 June 2016
T-62	Letter from the Public Institution <i>Agricultural school</i> no. 335-1/2016 of 14 June 2016 and letter from the Public Institution <i>Employment Bureau of the Republika Srpska</i> , Prijedor branch-office, no. 02.6.6/0801-691/2016 of 15 June 2016, Certificate no. 1-37-10740-1-2014-134 of 14 June 2016
T-63	Letter from the Basic Court of Prijedor no. 77 0 K 043537 12 Kps of 1 November 2016 and final judgment of the Basic Court of Prijedor no. 77 0 K 043537 12 Kps of 22 October 2012
T-64	Certified photocopy of an extract from the register of persons brought in 1993, Banja Luka CJB /Public Security Center/
T-65	Summary of the wartime path of the 6th Sana Infantry Brigade, Command of the 6th Sana Infantry Brigade, Sanski Most, no. RR230822
T-66	Letter from the Public Institution <i>Fajtovci Elementary School</i> no. 01-443-2/16 of 28 September 2016, extract from the register of the Public Institution <i>Fajtovci Elementary School</i> (Register: IV, no. 4924) for Suvad Kuburić

T-67	Extracts from the register of the Public Institution <i>Fajtovci Elementary School</i> for Rufad Kuburić (Register: III, no. 4603) and Fikreta Avdić (Register: IV, no. 5016)
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b) Exhibits of the Defense for Goran Mrđa

01-1	Official Note composed by Duško Zorić in Skucani Vakuf on 11 April 1993, in connection with an interview with M. P.
01-2	Album 1, Album 2, Album 3, Album 4 with photographic documentation shown to witness Mehmed Brakić at the trial hearing on 7 September 2015
01-3	Record of Interview of Witness Mehmed Brakić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 21 August 2014
01-4	Album 1, Album 2, Album 3, Album 4 with photographic documentation shown to witness Esad Brakić at the trial hearing on 7 September 2015
01-5	Record of Interview of Witness Esad Brakić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 24 October 2015
01-6	Record of Interview of Witness Semira Brakić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 24 October 2014
01-7	Statement by witness S. V., MUP R BiH /Republic of BiH Ministry of Interior/, Banja Luka CSB /Security Services Center/, Public Security Station no. 13-1/02-SM-40/94 of 1 September 1994, Statement by witness S. V., MUP R BiH, Banja Luka CSB no. 02-241 of 5 October 1994, Record of Interview of Witness S. V. in criminal case no. Kri.45/95 composed by investigating judge of the Higher Court of Zenica on 19 September 1995
01-8	Record of Interview of Witness Besim Islamčević, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 16 October 2014
01-9	Record of Interview of Witness Omer Drobić composed on 27 September 1995 by the Higher Court of Zenica and Statement of witness Omer Drobić, MUP of the Republic of Bosnia and Herzegovina, Banja Luka CSB, no. 02-519 of 3 August 1995
01-10	Declaration on proclamation of the Republic of the Serbian people of Bosnia and Herzegovina, published in <i>Official Gazette of the Serbian people in Bosnia and Herzegovina 2/92</i> ; Decision on verification of proclaimed Serbian autonomous regions in Bosnia and Herzegovina, published in <i>Official Gazette of the Serbian people in Bosnia and Herzegovina 1/92</i> ; Constitution of the Serbian Republic of

	Bosnia and Herzegovina, published in <i>Official Gazette of the Serbian people in Bosnia and Herzegovina</i> 3/92; Constitutional Law for the implementation of the Constitution of the Serbian Republic of Bosnia and Herzegovina published in <i>Official Gazette of the Serbian people in Bosnia and Herzegovina</i> 3/92; Decision on proclamation of imminent threat of war in the RS published in <i>Official Gazette of the Serbian people in Bosnia and Herzegovina</i> 6/92; General Framework Agreement for Peace in Bosnia and Herzegovina of 21 November 1995 (not tendered in the file – in effect)
01-11	Record of Interview of Witness Fikret Avdić, Ministry of Security, SIPA, no. 16-06/1-04-2-581/14 of 14 November 2014
01-12	Statement by K.Z. no. 02-382 of 17 March 1995, Banja Luka CSB; Record of Interview of Witness K.Z. no. Kri 33/95 of 12 July 1995, Higher Court of Zenica; Record of Interview of Witness K.Z. no. 05-1/04 -5-1865/07 of 19 November 2007, MUP USK, Police Administration, Crime Police Sector; Record of Interview of Witness K.Z. no. T20 0 KTRZ 0006582 13 of 9 September 2014, Prosecutor's Office of BiH; Record of identification of persons on photographs, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 4 December 2014
01-13	Decision no. 01-278-2/16 of 20 May 2016, Public Institution <i>Fajtovci Elementary School</i> , Fajtovci; letter no. 01-278-3/16 of 20 May 2016 Public Institution <i>Fajtovci Elementary School</i> ; certified photocopy of a page from the register referring to Goran Mrđa of 20 May 2016
01-14	Record of Interview of Witness Bego Islamčević, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 16 October 2016
01-15	- Medical documentation for the accused Goran Mrđa: report by a specialist, JZU /Public Health/ Institution <i>Dr Mladen Stojanović Hospital</i> , Psychiatric Ward, general psychiatry infirmary, no. 02-2016-000595/000593 of 10 February 2016; report by a specialist, JZU <i>Dr Mladen Stojanović Hospital</i> , Psychiatric Ward, general psychiatry infirmary, no. 02-2016-000868/000862 of 23 February 2016; report by a specialist, JZU <i>Dr Mladen Stojanović Hospital</i> , Psychiatric Ward, general psychiatry infirmary, no. 02-2015-005330/005220 of 12 November 2015; report by a specialist, JZU <i>Dr Mladen Stojanović Hospital</i> , Psychiatric Ward, general psychiatry infirmary, no. 02-2016-000968/000958 of 29 February 2016; Discharge Summary, JZU <i>Dr Mladen Stojanović Hospital</i> , Psychiatric Ward, no. 02-2016-000179/000179 of 28 March 2016; report by a psychologist, Psychiatric

	<p>Ward of 29 March 2016; report by a specialist, JZU <i>Dr Mladen Stojanović Hospital</i>, Psychiatric Ward, general psychiatry infirmary, no. 02-2016-004462/004417 of 4 October 2016; report by a specialist, JZU <i>Dr Mladen Stojanović Hospital</i>, Psychiatric Ward, general psychiatry infirmary, no. 02-2016-003770/003730 of 22 August 2016; report by a specialist, JZU <i>Dr Mladen Stojanović Hospital</i>, Psychiatric Ward, general psychiatry infirmary, no. 02-2016-002143/002123 of 11 May 2016; report by a specialist, Public Health Institution Istočno Sarajevo Hospital, no. 1116/47 of 15 April 2015;</p> <ul style="list-style-type: none"> - <i>Vuk Karadžić</i> Diploma for Dajana (Goran) Mrđa, Public Institution <i>Branko Ćopić</i> Elementary School in Prijedor, no. 275-8/16 of 26 May 2016; - School attendance certificate issued to Dajana (Goran) Mrđa, Public Institution <i>Srednjoškolski centar Prijedor</i> (secondary school), Prijedor, no. 59/ 16 of 27 September 2016; - Certificate confirming that Darko (Goran) Mrđa is a college student, University of Banja Luka, Faculty of Law, no. 1.219/2016 of 5 October 2016 - Birth Certificate for Dajana Mrđa, town of Prijedor, no. 03/1-200-3408/15 of 14 July 2015; - Birth Certificate for Strahinja Mrđa, town of Prijedor, no. 04-200-1-5532/2011 of 30 March 2011; - Birth Certificate for Zora Mrđa, town of Prijedor, no. 04-200-1-4032/14 of 19 March 2014; - Decision of the Basic Court of Prijedor no. 77 0 K069790 16 Kbs 2 of 9 June 2016; - Decision of the Basic Court of Prijedor no. 77 0 K 069969 15 Kbs of 4 August 2014
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c) Exhibits of the Defense for Milorad Mrđa

02-1	<ul style="list-style-type: none"> - Certificate of possession of property issued to Milorad Mrđa, RS Administration for Geodetic and Property Affairs, Banja Luka, Prijedor Region Unit, no. 21.35-952.1-4-766/2016 of 25 April 2016; - School attendance certificate issued to Anđela Mrđa, Public Institution <i>Branko Ćopić</i> Elementary School, no. 15-44/16 of 13 April 2016; - School attendance certificate issued to Anastasija Mrđa, Public Institution
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	<p><i>Branko Ćopić</i> Elementary School, no. 15-45/16 of 13 March 2016;</p> <ul style="list-style-type: none"> - Certificate issued to Saša (Milorad) Mrđa, Republika Srpska Employment Bureau, Istočno Sarajevo – Pale, Prijedor branch-office, no. 1-37-10740-9-2013-312 of 13 April 2016; - Certificate issued to Jagoda (Mile) Mrđa, Republika Srpska Employment Bureau, Istočno Sarajevo – Pale, Prijedor branch-office, no. 1-37-10740-7-2009-1123 of 13 April 2016; - Certificate issued to Milorad (Đurađ) Mrđa, Republika Srpska Employment Bureau, Istočno Sarajevo – Pale, Prijedor branch-office, no. 1-37-10740-7-1998-1636 of 13 April 2016; - Certificate issued to Saša Mrđa, Republika Srpska Ministry of Finance, Tax Authority, Prijedor Regional Center, Prijedor Regional Unit, no. 06/1.03/0801-455.12-24640/2016 of 14 April 2016; - Certificate issued to Jagoda Mrđa, Republika Srpska Ministry of Finance, Tax Authority, Prijedor Regional Center, Prijedor Regional Unit, no. 06/1.03/0801-455.12-24642/2016 of 14 April 2016; - Certificate issued to Milorad Mrđa, Republika Srpska Ministry of Finance, Tax Authority, Prijedor Regional Center, Prijedor Regional Unit , no. 06/1.03/0801-455.12-24643/2016 of 14 April 2016; - Declaration on household members for Milorad Mrđa
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d) Exhibits of the Defense for Ranko Mrđa

03-1	<p>Statement by witness Mehmed Brakić, MUP, Banja Luka CJB /Public Security Center/, no. 13/2-311-47/94 of 1 September 1994; Record of Interview of Witness Mehmed Brakić, Higher Court of Zenica of 20 September 1995; Record of Interview of Witness Mehmed Brakić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 21 August 2014; Record of identification of persons on photographs (witness Mehmed Brakić), Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 4 December 2014, with attachments: photo albums 1, 2, 3, 5, 6, 7 and 8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014 and photo album no. 9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 2 December 2014; Record of Interview of Witness Esad Brakić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 24 October 2014, Record of identification of</p>
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	persons on photographs (witness Esad Brakić), MUP USK /Una-Sana Canton Ministry of Interior/, no. 05-04/03-5-944/14 of 5 December 2014, with attachments: photo albums 1, 3, 5, 6, 7 and 8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014 and photo album no. 9, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 2 December 2014
03-2	Record of identification of persons on photographs (witness Suvad Kuburić), Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 3 December 2014, with attachments: photo albums 1, 2, 3, 5, 6, 7 and 8, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 10 November 2014
03-3	Record of identification of persons on photographs (witness Denis Velić), MUP USK, no. 05-04/03-5-2325/14 of 24 December 2014; Record of Interview of Witness Denis Velić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 25 October 2014 and Record of Interview of Witness Denis Velić, Police Administration, Crime Police Sector, USK, no. 05-1/04-5-2045/07 of 13 December 2007
03-D-1	Decision of the Court of Bosnia and Herzegovina no. S1 1 K 012010 12 Kv of 21 January 2013
03-D-2	Order on termination of investigation against Milorad Jovanović, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 21 April 2015
03-D-3	Order on termination of investigation against Mile Rodić, Prosecutor's Office of BiH, T20 0 KTRZ 0006582 13 of 21 April 2015
03-4	ID card file for Ranko Mrđa, reg.no.3084/85, ser. No. BH03304189 of 5 November 1985
03-5	Photograph depicting the accused Ranko Mrđa with his wife and their second-born son
03-6	Birth Certificate for Rada Mrđa, Una – Sana Canton, Sanski Most, no. 05-13-1-3435/2016, Fajtovci of 11 March 2016
03-7	Report for Rada Mrđa, RO /working organization/ Clinical Medical Center, Banja Luka, OOUR Clinical Hospital Center Banja Luka, NRS infirmary of 5 November 1993; Report for Rada Mrđa, RO Clinical Medical Center, Banja Luka, OOUR Clinical Hospital Center Banja Luka, pulmonary infirmary, of 5 November 1993
03-8	Declaration on household members for Ranko Mrđa, Marriage Certificate, Una – Sana Canton, Sanski Most Municipality, no. 05-13-2-

	<p>591/2016 of 11 March 2016;</p> <p>Birth Certificate for Aleksandar Mrđa, Srpski Sanski Most municipality, no. 200 – 176/2000 of 13 January 2000;</p> <p>Marriage Certificate, Una – Sana Canton, Sanski Most municipality, no. 05-13-2-114/02 of 22 July 2002;</p> <p>Certificate confirming that Rada (Ranko) Mrđa is a college student, University of Banja Luka, Faculty of Engineering, no. 16/4.1524/15 of 19 November 2015;</p> <p>Certificate, <i>CIMSS</i> d.o.o. of 19 September 2016;</p> <p>Employment records for Ranko Mrđa, no. 16/1 – 058 -1/80;</p> <p>Payroll sheets for May, June and July 2016 for Ranko Mrđa, <i>Karpenteri Vitorog</i> doo, expot – import, Prijedor;</p> <p>Certificate of possession of property issued to Ranko Mrđa, RS Administration for Geodetic and Property Affairs, Banja Luka, Prijedor Region Unit, no. 21.35-952.1-4-972/2016 of 7 June 2016</p>
03-9	<p>Certificate issued by <i>A1 Remont</i> d.o.o. Kranj no. 28/95 – 2016 of 28 December 2016, translated by the Republika Srpska Association of Court Interpreters no. 17 – PD – 006262 of 11 January 2017</p>

e) Exhibits of the Defense for Mile Kokot

04-1	<p>Declaration on confirmation of household members no. 22621 of 12 December 2016; Declaration on household members no. 22556/16 of 12 December 2016; Certificate issued by the Tax Administration, Ministry of Finance, Banja Luka Regional Center, no. 06/1.02/0801.2 -455.2.3-107695/2016 of 12 December 2016; Certificate on disbursement of pensions and other funds, RS Pension and Disability Insurance Fund, Banja Luka branch-office, no. T -10-3085/16 of 12 December 2016</p>
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f) Court exhibits

S-1	Court of BiH Order to Conduct an Expert Examination no. S1 1 K 018013 15 Kri of 22 December 2015; medical documentation for Radija (Mustafa) Velić, Health Institution Sanski Most Health Center, Center for Mental Health no. 01-1-1464/15 of 21 December 2015; forensic psychiatric examination by Evresa Okanović, MD, specialist in neuropsychiatry, of 11 January 2016
S-2	Report by an expert on the general health condition of and competency to stand trial for Goran Mrđa, born in 1973, from Prijedor, by Zorica Lazarević, MD, neuropsychiatrist, subspecialist in forensic psychiatry, of 6 May 2016
S-3	Forensic psychiatric examination by Evresa Okanović, MD, specialist in neuropsychiatry, of 3 October 2016