



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case No. S1 1 K 014977 15 Kri

Delivered on: 9 October 2017

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Before the Panel composed of: Judge Šaban Maksumić, presiding
Judge Vesna Jesenković, member
Judge Staniša Gluhajić, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

V.

NASER ORIĆ AND SABAHUDIN MUHIĆ

JUDGMENT

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

Miroslav Janjić

Counsel for the accused Naser Orić:

Attorney Lejla Čović

Counsel for the accused Sabahudin Muhić:

Attorney Sabina Mehić

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

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

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Number: S1 1 K 014977 15 Krl

Sarajevo, 9 October 2017

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting as a Panel composed of Judge Šaban Maksumić, as the presiding judge, and Judges Vesna Jesenković and Staniša Gluhajić, as the Panel members, and legal advisor – assistant Samira Kustura-Čolić as the record-taker, in the criminal case against the accused Naser Orić *et al.* for the criminal offense of War Crime against Prisoners of War under Article 144 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY) in conjunction with Article 22 thereof, upon Indictment of the Prosecutor's Office of Bosnia and Herzegovina T20 0 KTRZ 0005015 07 dated 27 August 2015 (confirmed on 9 September 2015), having held an oral and public trial during which the public was excluded in part, in the presence of Prosecutor of the Prosecutor's Office of BiH Miroslav Janjić, the accused Naser Orić and his counsel-attorney Lejla Čović from Sarajevo, and the accused Sabahudin Muhić and his counsel-attorney Sabina Mehić from Sarajevo, adopted, and the presiding judge on 9 October 2017 announced, the following:

J U D G M E N T

The accused:

- 1. NASER ORIĆ**, son of... and..., born on... in G.P., municipality of S., currently residing in S. ..., ethnicity..., citizenship..., retired, divorced, father of three children, served in the JNA /Yugoslav People's Army/, received the Zlatni lilijan /golden lily/ medal, brigadier of the Army of BiH, of average financial standing, JMBG /Personal Identification Number/: ...
- 2. SABAHUDIN MUHIĆ** aka..., son of... and..., born on.... in V., municipality of B., residing at ... T., married, father of two children of age, retired, ethnicity..., citizenship..., served in the JNA, ..., of average financial standing, JMBG: ...

Pursuant to Article 284(c) of the CPC BiH,

I

ARE ACQUITTED OF THE CHARGES

That they:

During the war in Bosnia and Herzegovina, during the armed conflict between the Republika Srpska Army and the Army of the Republic of Bosnia and Herzegovina, as members of the Armed Forces of the Srebrenica TO /Territorial Defense/ of the Army of RBiH - Naser Orić, as Commander of the Srebrenica Territorial Defense Staff and Commander of the Armed Forces Staff of Srebrenica Sub-Region Territorial Defense, and Sabahudin Muhić aka Mrčo, as a member of Armed Forces of the Srebrenica Territorial Defense, in the time period between May and December 1992, in the territory of the municipalities of Srebrenica and Bratunac, acted in breach of rules of international humanitarian law by violating provisions of Article 3(1)(a) and (c) of the Third Geneva Convention relative to Treatment of Prisoners of War of 12 August 1949, specifically as follows:

Naser Orić

1. On the afternoon of 12 July 1992, in Zalazje, municipality of Srebrenica, in the vicinity of the house owned by Dragan Rakić at a distance of 100-150 meters from the Orthodox cemetery, Naser Orić killed Slobodan Ilić, prisoner of war of Serbian ethnicity. Specifically, after Slobodan Ilić was captured by unidentified members of the Armed Forces of the Srebrenica TO and brought to the house mentioned above, Naser Orić kicked him with his left leg in the hip which caused Slobodan Ilić to stagger. Thereafter, Naser Orić took a knife out of a sheath attached to his belt and stabbed Slobodan Ilić in the neck, plunging the knife blade all the way into the neck; the stab caused Slobodan Ilić to fall down on his knees. Next, Naser Orić kicked him in the face with his foot wearing an army boot and knocked him to the ground – all of which resulted in the death of victim Slobodan Ilić.

Naser Orić and Sabahudin Muhić, together

2. On the afternoon of an unspecified day in the second half of May 1992, in Lolići, municipality of Bratunac, by the Kravica River in vicinity of the house owned by Asim Mehić, Naser Orić and Sabahudin Muhić killed Milutin Milošević, prisoner of war of Serbian ethnicity who had been captured by unidentified members of the Armed Forces of the Srebrenica TO, tied up and, on Naser Orić's order, brought to the said location. Specifically, Naser Orić, together with other members of the Srebrenica Armed Forces, beat Milutin Milošević by kicking him in the stomach. At one point Orić waved his hand and ordered the soldiers to stand aside, and discharged a burst of fire from an automatic rifle at Milutin Milošević who was lying on the ground. Thereafter, Sabahudin Muhić aka Mrčo discharged a burst of fire from an automatic rifle at Milutin Milošević – all of which resulted in the death of victim Milutin Milošević.

3. On the afternoon of an unspecified day in December 1992, in Kunjerac, municipality of Bratunac, in the vicinity of the water reservoir, Naser Orić and Sabahudin Muhić killed Mitar Savić, prisoner of war of Serbian ethnicity who had been captured by unidentified members of the Armed Forces of the Srebrenica TO. Specifically, after a brief conversation Naser Orić slapped him in the face; next, Orić took a Colt pistol-revolver and fired at Mitar Savić from a distance of one meter, and Savić fell down. Thereafter, Sabahudin Muhić aka Mrčo discharged a burst of fire from an automatic rifle at the body of Mitar Savić – all of which resulted in the death of victim Mitar Savić.

Whereby Naser Orić, by the act described in Count 1 of the operative part of the Indictment, would have committed the criminal offense of War Crime against Prisoners of War under Article 144 of the CC SFRY, and Naser Orić and Sabahudin Muhić, by the acts described in Counts 2 and 3 of the operative part of the Indictment, would have committed the criminal offense of War Crime against Prisoners of War under Article 144 of the CC SFRY in conjunction with Article 22 of the KZ /Criminal Code/ of the Socialist Federal Republic of Yugoslavia.

II

Pursuant to Article 189(1) of the CPC BiH, the accused are relieved of the duty to reimburse costs of the criminal proceedings.

III

Pursuant to Article 198(3) of the CPC BiH, the injured party Jelica Ilić is instructed to take civil action to pursue her claim under property law.

Reasoning

I. COURSE OF THE CRIMINAL PROCEEDINGS

A. INDICTMENT AND TRIAL

1. The Prosecutor's Office of Bosnia and Herzegovina, by Indictment T20 0 KTRZ 0005015 07 dated 27 August 2015 and confirmed on 9 September 2015, charged Naser Orić and Sabahudin Muhić with the criminal offense of War Crime against Prisoners of War under Article 144 of the CC SFRY.

2. The trial in this case commenced on 26 January 2016 by reading out the Indictment as well as presentation of opening arguments of the Prosecution and the Defense. During the trial the Prosecution and the Defense presented numerous pieces of evidence before this Panel.

B. EVIDENTIARY PROCEDURE

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

3. The following persons were examined as Prosecution witnesses during the evidentiary proceedings: witness under the pseudonym "O1", Milomir Lazarević, Vidoje Ilić, Milan Jeremić, Branislav Stanojević, Radivoje Ostojić, Jelica Ilić, Asim Mehić, Radmila Nikolić, Stojanka Savić, Vesna Ivanović, Ibran Mustafić and Branislav Milošević; while Rifat Kešetović, Zoran Stanković, Alma Bravo-Mehmedbašić and Danilo Mihajlović were examined as expert witnesses.

4. At the trial hearing held on 7 June 2016 the Prosecution withdrew the motion to

examine witness Slađana Bajić, and at the trial hearing held on 1 November 2016 the Prosecution withdrew the motion to examine the remaining witnesses proposed in the Indictment: Nenad Grujić, Samir Avdić, Mehmed Omerović, Taib Delimustafić, Dževad Hrvaić, Avdo Suljić, Božana Simić, Stojka Rakić, Marko Slijepčević, Miladin Vukadinović, Ljiljana Rakić, Milanko Vasiljević, Branislav Vasiljević, Zora Petrović, Marija Jeremić and Goran Rakić.

5. The presented Prosecution's evidence, testimonial as well documentary, is listed in Annex II of this Judgment.

DEFENSE FOR THE ACCUSED NASER ORIĆ AND SABAHUDIN MUHIĆ

6. During the trial the defense teams of the accused Naser Orić and Sabahudin Muhić filed a joint motion for the examination of witnesses and presentation of documentary evidence.

7. The following persons were examined as Defense witnesses: "O2", "O3", Sabit Halilović, Mehmed Efendić, Suljo Čakanović, Zulfo Salihović, Mirsad Mustafić, Suljo Hasanović, Salko Tursunović, Izet Ibrić, Fadil Salihović, Sabahudin Tutundžić, Fikret Mustafić, Alija Muškić, Džemail Bećirević, Jasmin Sinanović and Omer Delić.

8. At the trial hearing held on 24 January 2017 the defense teams withdrew the motion to examine witness Hakija Meholjić, while at the trial hearing held on 11 April 2017 the defense teams withdrew the motion to examine the remaining witnesses: Sidik Ademović, Mehmed Omerović, Saim Mustafić, Salko Avdić and Ramo Omanović.

9. The examined witnesses and the presented documentary evidence of the Defense for Naser Orić and the Defense for Sabahudin Muhić are listed in Annex II of this Judgment.

II. CLOSING ARGUMENTS

C. PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

10. The Prosecution noted in the closing arguments that the presented evidence and the accepted established facts, first of all, proved the general elements of the criminal

offense in question, and then the individual charges against the accused.

11. In its closing argument, the Prosecution commented in particular on the facts and circumstances referred to the credibility of the testimony of witness Ibran Mustafić and Witness O1.

12. Further in the closing argument, the Prosecutor also commented on the testimony of the examined witnesses, correlating their testimony with individual counts of the Indictment and pointing to circumstances that were decisive to the adoption of the judgment in the case in question, and holding that the testimony of the examined witnesses corroborated and proved all the allegations in the Indictment.

13. Furthermore, the Prosecutor commented on the evidence by the defense teams, stressing that Defense witnesses Sabahudin Tutundžić, Fadil Salihović, Jasmin Sinanović and Izet Ibrić lacked any credibility and that their testimony contradicted the established facts in the ICTY judgment in *Naser Orić*, the contents of the book *Iza zatvorenih vrata* (Behind closed doors) authored by Fahrudin Alić and the documentary evidence presented at the trial.

14. Finally, the Prosecutor petitioned the Court to find the accused Naser Orić and Sabahudin Muhić guilty of perpetrating the criminal acts charged under the Indictment and sentence them as required by law.

D. DEFENSE FOR NASER ORIĆ

15. In the closing argument, the Defense first of all commented on the capacity of the accused, arguing that, in contrast to Prosecutor's allegations, no witness was examined nor did the Prosecutor tender any documentary evidence in that regard. In particular, the Defense emphasized that Prosecution Exhibits T13 through T18 are irrelevant to the Indictment period, while the remaining Prosecution documentary evidence cannot be linked to the facts presented in the Indictment.

16. In particular, the Defense pointed to lack of credibility on the part of Prosecution Witness O1, alleging that Prosecution's cooperation with this witness is scandalous considering that there is an outstanding warrant for his arrest for evading criminal prosecution, that he is a repeat offender and a convicted criminal.

17. Then the Defense made a detailed analysis of the testimony of the examined witnesses and the presented documentary evidence in relation to the individual counts of the Indictment.

18. When Count 1 of the Indictment is concerned, defense counsel pointed to different versions of the incident given by Witness O1 as well as a series of illogical and arbitrary aspects of his testimony, maintaining that his trial testimony contradicts the testimony given by direct participants of the operation on the village of Zalazje (witnesses: O2, Sabit Halilović, Suljo Hasanović and Mehmed Efendić). Defense counsel stressed that all the Prosecution witnesses and the Defense witnesses who participated in the operation on the village of Zalazje, with the exception of Witness O1, were in full agreement as regards the details relating to the course of the fighting, the fighting intensity on that day, the location of heavy weapons etc. This, in the Defense's view, suggests a conclusion that Witness O1 did not participate in the said operation at all.

19. With regard to the murder of victim Slobodan Ilić, defense counsel submitted that the case file does not contain a single piece of evidence to the effect that Ilić was killed by the accused Naser Orić. Moreover, Witness O1, on whose testimony the Indictment is based, did not say that Naser Orić killed Slobodan Ilić; rather, this witness said the following at the trial hearing held on 23 February 2016 (page 15): *"At one point Naser Orić took a knife that was attached to his belt, I do not know on which side, I cannot recall exactly, he took the knife, took a swing and hit that one prisoner whom I did not know at that time, I did not know who or what he was, he hit that one prisoner whom I did not know at that time, did not know who or what he was, he hit him in the neck, right here, and the prisoner fell down to his knees in front of Orić; then Orić kicked him in the chest again, in the stomach, tipped him over backwards, on... (unclear) and..."*. In contrast, defense counsel argued that it was stated in the Indictment's factual account that Naser Orić stabbed Slobodan Ilić in the neck, plunging the blade all the way into the neck, but no evidence was tendered with regard to this circumstance. The Defense also argued that a report on the autopsy of Slobodan Ilić's body contradicted the Indictment's factual account, i.e. it contradicted the testimony of Witness O1 in terms of the injuries sustained.

20. In the closing argument, the Defense noted in particular that Witness O1 did not mention the murder of Slobodan Ilić or the accused Naser Orić in that context in any of his prior statements. On the contrary, in his interview on the premises of the Bratunac PS /Police Station/ on 3 September 2003, as recorded in the official note of the same

body (Exhibit O5), the witness stated that prisoners from Zalazje were brought to the Police Station in Srebrenica and were kept detained there for eight days. The witness stated that Zulfo Tursunović took that group of prisoners by truck in the direction of Zeleni Jadar and killed them there.

21. Next, the Defense analyzed the testimony of Defense witnesses with regard to circumstances surrounding the death of victim Slobodan Ilić, maintaining that Ilić's death was best explained by Salko Tursunović, Zulfo Tursunović's son. Salko Tursunović testified at trial that there was hostility between Zulfo Tursunović and judge Ilić for many years on various grounds, and that he heard the details surrounding the death of Judge Slobodan Ilić on several occasions. This witness testified that his father told him that during an operation in Zalazje Slobodan Ilić and several of his combatants were ambushed by Zulfo's combatants; there was an exchange of fire and Ilić died.

22. With regard to Prosecution witness Ibran Mustafić, the Defense contended that he and the accused Naser Orić have been at odds for many years; this has not been contested by the witness at the trial and it is corroborated by Defense exhibits O33-O36. Specifically, defense counsel noted that according to Exhibit O35, Mustafić filed false reports against the accused Naser Orić during the war, and relevant police bodies composed official notes in that regard as confirmed at trial by Defense witness Mehmed Efendić. Moreover, the Defense argues that witness Ibran Mustafić's testimony does not corroborate Indictment allegations in any way, as erroneously claimed by the Prosecutor, nor does his testimony correspond with any other piece of evidence in the file. In this connection, the Defense underlines that this witness did not tell the truth when he said that his cousin Mirsad Mustafić showed him a piece of paper in Tuzla in November 1992 allegedly containing names of Serb prisoners from Zalazje (including judge Slobodan Ilić) who were executed, considering that at trial witness Mirsad Mustafić denied ever showing such a piece of paper to Ibran Mustafić.

23. The Defense submitted that the remaining Prosecution witnesses did not corroborate the allegations made in Count 1 of the Indictment either.

24. Furthermore, the Defense commented on the testimony of examined witnesses with regard to the appearance of Judge Slobodan Ilić, pointing out that Witness O1, as a key Prosecution witness, gave a testimony that contradicts all the other presented evidence.

25. In addition, the Defense for Orić maintained in the closing arguments that it

is beyond dispute that the accused participated in the operation on the village of Zalazje, but noted that he was wounded in Zalazje on the day of the operation, i.e. on 12 July 1992, as suggested by the tendered documentary evidence and the testimony of examined Defense witnesses.

26. With regard to Count 2 of the confirmed Indictment, the Defense argued that O1 was once more the principal Prosecution witness, but his testimony with regard to this count of the Indictment again contradicted all other pieces of evidence in the case file; in this connection the Defense pointed to all the illogical aspects of his testimony.

27. With regard to the mode of murder of Milutin Milošević, the Defense argued that Witness O1 described on page 26 of the transcript that the murder was allegedly preceded by a conversation between Milošević and Orić; Milošević was allegedly impertinent to Orić, whereupon Orić allegedly took an automatic rifle from one man and discharged a burst of fire at Milutin, and then the accused Sabahudin Muhić allegedly did the same thing. In the view of the Defense, the best piece of evidence on the cause of death of victim Milutin Milošević is Prosecution Exhibit T1: the autopsy report for Milutin Milošević dated 22 March 1993. The autopsy was performed by Mr. Stanković, MD. The report clearly states (paragraph I of the Opinion) that the death was in all probability a result of bleeding from severed blood vessels caused by a hand-held firearm and that a bullet consistent with 7.65 mm ammunition was found in the victim's body. The Defense submitted that this devalues/invalidates the testimony by Witness O1 in its entirety.

28. The Defense further commented on the testimony by Prosecution witness Radmila Nikolić, maintaining that she was confused and lacked credibility and that she changed her statement not only during the investigation but at the trial as well. After that, defense counsel analyzed testimony of Defense witnesses in relation to the death of Milutin Milošević.

29. With regard to Count 3 of the confirmed Indictment, the Defense for Naser Orić maintained that during the trial it was determined beyond doubt, by Prosecution and Defense witnesses alike, that the operation on Kunjerac took place on 14 December 1992 and that the issue of the exact hill on which the accused Naser Orić was at the time of the operation is of crucial importance to this count of the Indictment. The Defense emphasizes that, according to an ICTY judgment, combatants of the Army of BiH commenced an attack in the area of Bjelovac on 14 December 1992 and attacked various hills, with

Kunjerac being but one of the hills that were attacked that day; the Defense referred to Defense witnesses who were examined on those circumstances. In that context, the Defense maintains that the Prosecutor erred in alleging that these Defense witnesses lack credibility, arguing that the Prosecutor gave a distorted picture of the situation, i.e. that the whole operation in the area of Bjelovac related to the Kunjerac Hill only and nothing else.

30. Taking into account that Count 3 of the Indictment, the same as the previous two counts, is based solely on the testimony of Witness O1, the Defense commented on the illogical aspects of his trial testimony in connection with the military operation on Kunjerac and the death of victim Mitar Savić. First of all, the Defense maintained that taking into account the time of the operation the tendered documentary evidence confirmed beyond doubt that this witness did not participate in the operation on Kunjerac (O9 – set of documents of the FBiH Ministry of Defense from the military records of Witness O1).

31. Furthermore, counsel for Naser Orić noted that the best description of circumstances surrounding the death of Mitar Savić was given by the direct participants of the operation in Kunjerac, considering that they saw him after his death, which was additionally corroborated by the testimony of his wife - Prosecution witness Stojanka Savić.

32. Next, the Defense commented on the testimony by the said witness. This witness, who did not corroborate allegations by Witness O1, stated that her husband went to man the line in Kunjerac on 13 December 1992 and there, to her knowledge, he was killed in the course of an attack that occurred on 14 December 1992 (transcript dated 7 June 2016, page 5). The witness received first-hand information about the death of her husband from his fellow-soldiers and she described it in the following manner (page 6 of the transcript): “And that friend of his, he said ‘Mitar, take the machine-gun, shoot’ because Mitar did not have boots. He told him ‘put on, I’ll put on boots, and you do the shooting’. He did not even manage to get up. He just looked up. He said that he did take the machine-gun and he was hit here with a bullet and... when they brought him he was missing his moustache, the part where he was shot, probably. And he told me that he was killed instantly.” The Defense notes that this testimony is consistent with the testimony of Sabahudin Tutundžić who described a mouth injury that he observed on the body of Mitar Savić.

33. Finally, the Defense briefly commented on the issue of whereabouts of the accused Naser Orić on 14 December 1992 during the attack on Bjelovac. The Defense contended

that it is beyond dispute that the accused Orić participated in this operation; what is disputable, however, is what hill he was attacking with his soldiers on the occasion in question. In the Defense's view, this was explained best by Prosecution witness Ibran Mustafić who stated that he set out to Zalazje together with Naser Orić and some other persons from Srebrenica on 14 December 1992 and that he was together with Orić in Zalazje on that day and the day after. The witness described that Naser was in a trench that day and was shooting towards Sase and Andrići, and he was with Orić all day long. This was confirmed by Defense witness Zulfo Salihović as well; the witness was explicit that Orić did not leave Zalazje that day.

34. Based on the foregoing, the counsel for the accused Naser Orić petitioned the Court to acquit the accused of the charges under all three counts of the Indictment and, in connection therewith, relieve the accused of the duty to reimburse the costs of proceedings.

E. DEFENSE FOR THE ACCUSED SABAHUDIN MUHIĆ

35. In her closing argument, counsel for the accused Sabahudin Muhić first of all stressed that Witness O1 is the only one who mentioned Sabahudin Muhić in the context of the alleged events, and that, with regard to the evaluation of his testimony, defense counsel joined the submissions by counsel for the first accused.

36. Defense counsel further noted that the acts with which the accused Sabahudin Muhić is charged are missing an appropriate object of perpetration of criminal offense, and even if all the facts under Count 2 of the Indictment were proved beyond a reasonable doubt, the acts of the accused Sabahudin Muhić would still constitute but Inappropriate Attempt in terms of Article 27 of the CC BiH. In particular, defense counsel underlines the fact that at the trial hearing on 8 March 2016 Witness O1, when asked if he knew whether Milošević was dead or alive before Muhić allegedly opened fire at him, replied that he did not know that (page 23 of the transcript). In the view of counsel for the accused Muhić, and taking into account the testimony of the only alleged eyewitness to the murder of Milutin Milošević, the consequence of the alleged acts by the accused Muhić cannot be determined beyond doubt, which in any event stands in causal connection with the fact that an appropriate object of perpetration of the offense is missing. Counsel added that there was no appropriate object in the case in question and, consequently, there is no

offense.

37. Furthermore, the Defense for Muhić maintained that there is no evidence to the effect that Sabahudin Muhić was at the crime scene in Lolići at all, and that he ever opened fire at the body of Milutin Milošević; this would ensue solely from the testimony of Witness O1 but is not corroborated by any other witness testimony or tendered documentary evidence. Witness O1 stated that Orić and Muhić discharged bursts of fire at the victim, resulting in the victim allegedly being “bullet-riddled, there may have been more than 20 bullets in him,” which contradicts Prosecution Exhibit T1 - Autopsy Report for Milutin Milošević dated 22 March 1993. Namely, in that report the expert witness found that in all likelihood the death was a result of bleeding from severed blood vessels caused by a bullet fired from a firearm (a pistol).

38. In the Defense’s view, the issue relevant to both counts of the Indictment with which Sabahudin Muhić is charged is the fact that, during the cross examination, Witness O1, when asked if he knew Sabahudin Muhić, claimed that they knew each other from before, that they were related and so on and so forth, whereas in the prior statements he mentioned various names of persons and later said that he was in fact referring to Sabahudin Muhić.

39. Regarding the explanation given by Witness O1 as to why he did not mention either Orić or Sabahudin Muhić during the investigation – concerning his statement that he was afraid because Orić was a commander and the like –defense counsel submits that the explanation lacks any conviction whatsoever.

40. Moreover, counsel for the accused Muhić, referring to the testimony of Prosecution witness Radmila Nikolić, maintained that the witness’s testimony was rather unconvincing and inconsistent, given that at the trial she mentioned persons that she had not mentioned in her prior statements, those persons being the accused in this case: Orić and Muhić.

41. With regard to Count 3 of the Indictment, the counsel submitted that from the legal point of view the situation was identical to that in Count 2 of the Indictment. Namely, Witness O1 testified at trial on 23 February 2016 (pages 21 and 22 of the transcript) that Naser Orić allegedly, from a distance of “half a meter” fired twice at the victim Savić, whereupon, quote: “Mitar Savić fell in front of him; later on Sabahudin Muhić took an automatic rifle and discharged a burst of fire at him.” The same as with Count 2 of the Indictment, the condition of Mitar Savić after he was allegedly murdered by Naser Orić at

point blank range remains unclear. In defense counsel's view, it is impossible to rely on the sentences quoted above to make a finding about the guilt of the accused Muhić.

42. Defense counsel noted that even if all the other facts were established as mentioned in the Indictment, it would still be impossible to determine an act by the accused Muhić that, according to the Indictment, resulted in the death of the victim. In this connection, counsel stressed that the court's file does not contain an autopsy or any other report on the victim's death, nor is there any other evidence relating to the act of the accused Sabahudin Muhić.

43. At the end of her closing argument, counsel for the accused Sabahudin Muhić contended that there was no possibility to convict the accused of Counts 2 and 3 of the Indictment. Consequently, counsel petitioned the Court to acquit Sabahudin Muhić.

III. PROCEDURAL DECISIONS

1. Decision to grant in part Prosecutor's motion for acceptance of established facts in proceedings before the ICTY

(a) Prosecutor's Motion and Defense submissions

44. On 13 June 2016, the Court issued Decision S1 1 K 014977 15 Kri, granting in part Prosecutor's Motion for Acceptance of Established Facts T20 0 KTRZ 0005015 07 dated 27 August 2015. The facts established by the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY) in *Prosecutor v. Naser Orić* (IT-03-68-T), the judgment dated 30 June 2006 – referred to in Annex I of this Judgment – are accepted as proven pursuant to Article 4 of the Law on the Transfer of Cases to the extent as specified in the Annex.

45. On 27 August 2015 the Prosecutor's Office of BiH filed to the Court Motion T20 0 KTRZ 0005015 07 seeking acceptance of certain facts from the ICTY Trial Judgment of in *Prosecutor v. Naser Orić* (IT-03-68-T) dated 30 June 2006 as established facts. The Prosecution's Motion was based on the provisions of the Law on the Transfer of Cases, a *lex specialis* in relation to the CPC BiH allowing evidence from trials conducted before the ICTY to be used before courts in BiH.

46. The Prosecutor's Office of BiH proposed for adoption a total of forty-four (44) facts established in the proceedings before the ICTY; the facts, among other things, related to the existence of an armed conflict between the RS Army and the Army of R BiH in the territory of Bratunac and Srebrenica municipalities, and the establishment of the Srebrenica Territorial Defense Staff.

47. Having reviewed the motion by the Prosecutor's Office of BiH, attorneys Lejla Čović and Sabina Mehić, counsel for the accused Naser Orić and Sabahudin Muhić respectively, opposed the Prosecutor's Motion for the Acceptance of Established Facts, adducing reasons for each paragraph of the motion. In connection therewith, the Defense submitted that paragraphs 139 through 153 of the cited judgment are irrelevant to the present criminal proceedings in relation to the factual account and form of criminal responsibility referred to in the Indictment, considering that they relate exclusively to the establishment of the Srebrenica Territorial Defense Staff as well as organization and activities of War Presidency of the Srebrenica Subregion. In the same context, the Defense submitted that paragraphs 147 through 153 relate to the activities of the Srebrenica Operations Staff, the attempted establishment and role of the War Presidency of the Srebrenica Subregion in connection therewith; the Defense argued that the said facts were relevant to the trial conducted against Naser Orić before the ICTY and the form of criminal responsibility and criminal offenses with which he was charged at that time; however, according to the Indictment of the Prosecutor's Office of BiH the accused is not charged with command responsibility but as a perpetrator of the criminal offenses. In relation to paragraphs 597 through 641, the defense teams argued that they refer to an area that is irrelevant to Indictment allegations in terms of space and time, whereas paragraphs 650, 651 and 653 go to the heart of the Bjelovac operation and directly relate to the Indictment's factual account against the accused. Furthermore, in relation to paragraphs 662 through 669 defense counsel opined that the paragraphs are completely irrelevant to this criminal trial because they refer to military operations that occurred outside the scope of the charges (in terms of time and place).

48. With regard to Prosecutor's motion to accept facts referred to in paragraphs 649 and 652, defense counsel maintained that they concurred that these facts be accepted as proved as they relate to the attack on the Bjelovac village that occurred in December 1992, part of which was the operation pertaining to the Kunjerac village under Count 3 of the Indictment. As for the Prosecutor's motion on the remaining paragraphs, the defense

teams petitioned the Court to refuse it as unfounded.

49. Having examined the motion by the Prosecutor' Office of BiH as well as the written submissions filed by the Defense, the Panel decided that the Prosecutor' Office of BiH Motion for the Acceptance of Established Facts is well-founded in part.

(b) Legal analysis

50. **Article 4 of the Law on the Transfer of Cases** allows the Court, at the request of a party or *proprio motu*, after hearing the parties “to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.”

51. The main purpose of accepting established facts is to expedite a trial. By accepting as proven facts established in ICTY judgments, a Panel achieves judicial economy and at the same time protects the right of the accused to a fair trial. This allows a Panel to focus on identifying those facts that are relevant to the specific case, relieving parties of the burden to prove facts already established. What is more, the witnesses are thus spared from repeatedly testifying about traumatic events, while provisions are made for the accused to have a trial within a reasonable time, as guaranteed under 13 of the CPC BiH and Article 6(1) of the European Convention on Human Rights.

52. Acceptance of a fact as established creates a legal presumption of validity of that particular fact. After it is admitted into evidence, the defense bears the burden of disqualifying that fact. **Defense, according to Article 6(2) of the CPC BiH, may present evidence challenging a fact established in relevant proceedings before the ICTY.**

53. In addition, the Court is not bound by the ICTY judgment from which the established facts are taken, and will not base its judgment solely on such established facts. The Panel will examine facts in light of all the evidence presented by the parties during the trial, assessing all the evidence in accordance with Article 15 of the CPC BiH, and thereafter issue a final decision regarding their relevance to this case. In that way the Court will not violate the presumption of innocence of the accused under Article 3(1) of the CPC BiH and Article 6(2) of the European Convention.

54. Finally, an ICTY judgment from which an established fact is taken contains a clear

indication of the evidence on which a factual finding is based. Acceptance of any fact will be without prejudice to the accused's right to challenge any accepted fact while presenting his defense.

(c) Criteria to decide on proposed facts

55. Neither Article 4 of the Law on the Transfer of Cases nor the CPC BiH provides guidelines as to the manner in which the Panel is to assess such facts. It is the case law of this Court to use Rule 94(B) of Rules of Procedure and Evidence of the ICTY as a guideline¹. Rule 94(B) provides:

“At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings”.

56. In their decisions the ICTY Chambers interpreted this provision in a way that they defined criteria before a specific fact can be considered as the one “truly adjudicated” in prior ICTY judgments².

57. Taking into account the case law of the Court of BiH and the arguments advanced by the parties to the proceedings, this Panel, while issuing its Decision, considered the following criteria in the assessment and ruling on whether or not to accept the proposed established facts as proven, citing grounds for not accepting the other facts:

¹ Željko Mejakić *et al.*, X-KR-06/200 (Court of BiH), Decision on established facts, 22 August 2007; Miloš Stupar *et al.* (Kravica), X-KR-05/24 (Court of BiH), Decision on established facts, 3 October 2006; Milorad Trbić, X-KR-07/386 (Court of BiH), Decision on established facts, 13 December 2007; Paško Ljubičić, X-KR-06/241 (Court of BiH), Decision on established facts, 1 February 2008.

² *Prosecutor v. Momčilo Krajišnik*, IR-00-39-T, Decision on prosecution motions for judicial notice of adjudicated facts and for admission of written statements of witnesses pursuant to rule 92 *bis*, 28 February 2003;

Prosecutor v. Slobodan Milošević, IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts dated 28 October 2003 (upholding the Trial Chamber's Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts dated 10 April 2003);

Prosecutor v. Dragomir Milošević, IT-98-29/1-T, Decision on prosecution's motion for judicial notice of adjudicated facts and prosecution's catalog of agreed facts with dissenting opinion of judge Harhoff, dated 10 April 2007.

(i) The fact must have some relevance to an issue in the current proceedings

58. The cited criteria can also be regarded in connection with the provisions of, respectively, Articles 239(2) and 263(2) of the CPC BiH. Namely, it is the duty of the judge or the presiding judge, among other things, to ensure that the subject matter is fully examined and that everything is eliminated that prolongs the proceedings but does not serve to clarify the matter, because the law does not place a duty on the Court to adduce each and every piece of evidence proposed. Moreover, the Panel has observed that some of the proposed facts are repetitive, i.e. they are already contained in other accepted established facts, and on the ground it decided to accept such facts two or more times.

59. By applying the said criteria, the Panel refused to accept as established the facts referred to in the Prosecution's Motion under the following numbers: **640, 641, 653, 662, 666, 667, 668 and 669.**

(ii) The fact must be distinct, concrete and identifiable

60. A fact must be taken from one or more specific paragraphs of the judgment of a Trial Chamber or an Appeals Chamber of the ICTY and must not be vaguely or generally associated with a judgment. It must be distinct by itself even if it is taken out of context. The formulation of the fact must be similar to the original paragraph; however, it can be slightly altered in order to ensure comprehensibility.

61. By applying the said criteria, the Panel refused to accept Fact no. **604** in the Prosecution's Motion.

(iii) The fact, as formulated by the moving party, must not differ in any significant way from the formulation in the original judgment

62. In the event of minor inaccuracies or imprecisions as a result of taking a fact from the original judgment, a Panel may exercise discretion and correct the inaccuracy or imprecision *proprio motu*.

63. By applying the said criteria, the Panel did not accept Fact no. **139**, considering that it differs significantly from the formulation in the original judgment.

(iv) The fact must not be unclear or misleading in the context in which it is placed in the moving party's motion

64. A proposed fact must be analyzed in its original context in order to assess whether the context in which the fact is proposed causes some confusion about its true meaning. Consequently, it is not allowed to reinforce or distort the meaning of a proposed fact by placing that fact in a certain context.

65. None of the proposed facts are incompatible with this criterion.

(v) The fact must be identified with adequate precision by the moving party

66. This criterion implies that a proposed fact can be identified in the judgment from which it is taken. However, as the ICTY Trial Chamber held³, a court may accept a proposed fact even if the moving party mistakenly cited the wrong paragraph of the judgment, provided that the non-moving party understood which factual finding was intended, and the other requirements have been fulfilled.

67. No fact was refused on this ground.

(vi) The fact must represent the factual findings and cannot contain any characterizations that are of an essentially legal nature

68. The purpose of application of this criterion is to prevent acceptance of facts that contain legal qualifications.

69. Although there is much disagreement on this criterion, there is an agreement in principle to prevent acceptance of facts that contain legal qualifications by applying the said criterion. Nevertheless, there is no uniform position in practice as to the issue of which linguistic formulation contains a legal qualification.

70. This Panel holds that when a factual account is accepted as an established fact, that fact is regarded as evidence, the same as evidence obtained from witnesses or documentary evidence presented at trial. Consequently, pursuant to Article 15 of the CPC

³ Decision on Judicial Notice of Adjudicated Facts in *Vujadin Popović et al*, IT-05-88-T, 26 September 2006 (III - A - 9).

BiH, this Panel is free to make its own legal findings on the basis of factual findings accepted as established facts.

71. By applying the said criteria, the Panel refused to accept as established the facts referred to in the Prosecution's Motion under the following numbers: **146, 153, 598, 603, 605, 606, 608, 631, 632, 633, 639, 651, 664, 665**, considering that they relate to legal findings of the ICTY Trial Chamber in the case concerned that need to be proved in the criminal proceedings before this Panel.

(vii) The fact must not be based on an agreement between parties in previous proceedings

72. One of the requirements to accept a fact as established is that it has been previously contested at trial. Accordingly, a fact taken from a judgment arising out of a plea agreement or an agreement that certain facts are not disputed by parties to proceedings, does not meet the preconditions for acceptance as an established fact. If a fact has not been contested in previous proceedings, its probative value does not rise to the level of conviction needed to hold that the prosecution fulfilled its original obligation to present evidence in support of its arguments.

73. None of the proposed facts are incompatible with this criterion.

(viii) The fact must not be related to the acts, conduct or mental state of an accused

74. Some panels, by taking a more liberal approach, accepted facts that do not relate to acts, conduct or mental state of an accused, but do relate to the responsibility of an accused. This mostly involves facts related to acts and conduct of other members of a joint criminal enterprise, with an accused being alleged as a member of that enterprise, i.e. facts related to acts perpetrated by accused's subordinates. In some cases the panels accepted such facts that did not mention the accused as a direct perpetrator⁴.

⁴ Momčilo Mandić, X-KR-05/58 (Court of BiH), Decision on established facts, 5 February 2007; Paško Ljubičić, X-KR-06/241 (Court of BiH), Decision on established facts, 1 February 2008.

75. Other panels, by taking a more restrictive approach, refused to accept facts that directly or indirectly relate to acts, conduct or mental state of an accused⁵. This Panel accepts this view, considering that the acceptance of a fact that would in any way, even in the smallest degree, point to the accused's guilt would undermine the presumption of innocence as the most important principle and right enjoyed by the accused throughout the criminal proceedings.

76. Consequently, this Panel, by applying the said criterion, refused to accept the established facts referred to in the Prosecution's Motion under the numbers **141, 143, 144, 638, 650, 663**.

(ix) The fact must not be subject to pending appeal or review

77. This criterion relates to a precondition that facts from ICTY's first-instance judgments must also be upheld in the second instance, i.e. that these facts were not contested in second-instance proceedings.

78. This criterion must be carefully assessed in a situation when the proposed facts are part of a first-instance judgment that is pending on appeal before the ICTY. In such circumstances, the fact originating from a judgment under review can be accepted only if that fact is not being appealed.

79. The judgment from which the facts in the Motion were taken was subject to appeal, but the proposed facts were either not contested at all or were not successfully contested.

80. Generally speaking, the Court must be satisfied that the acceptance of facts as established achieves judicial economy, while retaining the right of an accused to a fair, public and speedy trial. It is therefore within the Court's discretion to refuse to accept facts that would not expedite the trial and that are not in the interest of justice. Furthermore, the Court may refuse to accept those facts that may satisfy all the criteria but still violate the right to a fair trial. The Court was mindful of all these considerations when issuing the decision in question.

81. Based on the foregoing, the Panel has ruled as stated in the enacting clause above, in accordance with Article 4 of the Law on the Transfer of Cases.

⁵ Milorad Trbić, X-KR-07/386 (Court of BiH), Decision on established facts, 13 December 2007.

2. Decision to exclude the public from part of the trial

82. In accordance with Article 235 of the CPC BiH, during the main trial, with the consent of the parties to the proceedings, the public was excluded on several occasions in order to protect the interest of witnesses, i.e. to examine the need and legitimacy of granting protective measures. Specifically, at a hearing held on 23 February 2016, for the purpose of examining Prosecutor's motion to grant additional protective measures to Witness O1, the Panel decided that it was in the witness's interest to exclude the public from part of the trial. On the same grounds, the Panel, on a motion by the Defense for Naser Orić and with the Prosecutor's consent, excluded the public from part of the hearing held on 13 December 2016 in order to examine the Defense's motion for granting protective measures to Witness O2. Furthermore, at a trial hearing held on 28 March 2017 the Panel decided to exclude the public from part of the trial to examine the motion by the Defense for Naser Orić for granting protective measures to Witness O3, as well as during direct and cross examination in order to examine the witness about the participation of her husband in relevant military operations and his whereabouts during the relevant time period in connection with the allegations made by Prosecution Witness "O1".

3. Decision on resumption of the trial (Article 251(2) of the CPC BIH)

83. In view of the fact that more than 30 days elapsed between trial hearings (respectively, from 12 July until 23 August 2016 and from 4 July until 29 August 2017), the Panel, at the hearings held on 23 August 2016 and 29 August 2017, decided that the main trial would recommence from the beginning as required by the provision of Article 251(2) of the CPC BiH. As the parties and the defense teams agreed that the previously presented evidence need not be presented again, the Panel decided that the previously examined witnesses and presented evidence would not be examined/presented again, but that the testimony of the witnesses given at the prior main trial would be used.

4. Protective measures for witnesses O2 and O3 and additional protective measures for Witness O1

84. This Court, upon a Prosecutor's motion, issued Decision S1 1 K 014977 15 Krn 3

dated 26 August 2015, granting protective measures to Witness O1: protection of the identity (a pseudonym) and personal details for a period of thirty (30) years.

85. At the hearing held on 23 February 2016, the Court honored a Prosecutor's motion and granted additional protective measures to Witness O1. Namely, the Court allowed that the witness testify from behind a screen so that the audience and the public in general do not see the image of this witness.

86. Furthermore, at the hearing held on 13 December 2016, the Court, on a motion by attorney Lejla Čović as counsel for Naser Orić, issued Decision granting protective measures to Witness O2: a pseudonym and testifying from behind a screen. In addition, at the hearing held on 28 March 2017, the Court, on a motion by the Defense for Naser Orić, issued Decision granting a protective measure to Witness O3 (the pseudonym).

87. In the situations mentioned above the Court held that the filed motions for protective measures were well-founded, acknowledging the relevance of reasons that can give rise to a reasonable fear that the security of the witnesses or the security of their family would be endangered on grounds of testifying in the proceedings (Article 3(1) of the Law on the Protection of Witnesses).

5. Expert examination of witness Ibran Mustafić

88. During the trial, the Prosecutor's Office of BiH issued Order T20 0 KTRZ 0005015 07 dated 2 September 2016 that a team of experts in neuropsychiatry composed of Professor Alma Bravo-Mehmedbašić, Prim. Zorica Lazarević, MD, and Prim. Danilo Mihajlović, MD, examine witness Ibran Mustafić with regard to his mental health, the competency to stand trial and the ability to reproduce events experienced in the 1992-1995 period.

89. The team of experts compiled a report on the examination on 3 September 2016, which was presented by experts Alma Bravo-Mehmedbašić and Danilo Mihajlović at the hearing held on 4 October 2016. Thereafter, the cited report, in accordance with procedural law provisions, was admitted as Prosecution Exhibit T-2.

6. Court's decision on the issue of official notes tendered as Defense exhibits (O1-5 and O1-14)

90. During the cross examination of Witness O1 and witness Radivoje Ostojić, the Defense for Naser Orić pointed out certain discrepancies between their testimony and their prior statements; to that end the Defense showed them official notes on interviews conducted with authorized officials in connection with the charges.

91. First of all, and taking into account the principle of free evaluation of evidence (Article 15 of the CPC BiH), the Panel recalls that there are no special formal evidentiary rules for the assessment of legality of individually specified pieces of evidence, but the Court, in line with cited provision as well as the provision of Article 290(7) of the CPC BiH (the contents of the judgment), assesses the legality of each specific piece of evidence in each particular case. The Panel observes that in the matter of assessment of legality of evidence in the case in question it would not be proper, in relation to the tendered official notes, to start from the assumption that any official note compiled by an authorized official is automatically illegal evidence which cannot be used in criminal proceedings. Compiling official notes as part of duties performed by internal affairs bodies represents a routine method of their work regulated by appropriate rules relating to that service. Therefore, an official note represents a document that under certain conditions can, as any other document, be used in criminal proceedings for the purpose of establishing relevant facts.

92. Based on the foregoing, the Court admitted the tendered official notes as Defense exhibits (respectively, O1-5 and O1-14), particularly taking into account that the defense teams used them to ask questions in support of own arguments. On the other hand, the said evidence was not used within the meaning of Article 273(1) of the CPC BiH, i.e. as investigative statements, given that the notes are official notes containing a summary/interpretation of witness statements (Witness O1 and Radivoje Ostojić). Moreover, as it ensues from the said official notes, the witnesses were not advised of their rights and obligations that belong to them in accordance with the provisions of the Criminal Procedure Code. As a result, while issuing the decision, the Panel did not use the said official notes as evidence in terms of their contents.

7. Announcement of the judgment – Article 286(1) (Date and place of judgment’s announcement)

93. Article 286(1) of the CPC BiH provides: “After the pronouncement of the judgment, the Court shall announce the judgment immediately. If the Court is unable to pronounce the judgment the same day the main trial is completed, the judge may postpone the announcement of the judgment for a maximum of three days and shall set the date and place when the judgment shall be announced”.

94. A hearing was held on 12 September 2017 at which the defense teams completed the presentation of their closing arguments; as the Court was not able to deliver its judgment at the same hearing, announcement of the judgment was adjourned. However, the sentencing hearing, with the consent of the parties and defense counsel, was held on 9 October 2017 for the reason that the Panel, due to the volume and complexity of the case as well as commitments of the Panel members in other cases, was not able to pronounce the judgment within the deadline set by law. The Panel notes that neither the parties nor defense counsel had objections to this ruling of the Panel.

95. Finally, this action by the Panel is consistent with the Court’s case law in war crimes cases.⁶

IV. STANDARDS OF PROOF

96. When examining and evaluating the evidence presented at the trial, the Panel was guided by the basic principles laid down in the CPC BiH and the European Convention on Human Rights (ECHR), and the established case law of the ICTY, the International Criminal Tribunal for Rwanda (ICTR) and the European Court of Human Rights (ECtHR), to be discussed in more detail below.

97. First of all, the Panel was mindful of the fact that the purpose of judicial proceedings is to ensure that no innocent person is convicted, and that a criminal sanction be imposed on a perpetrator of an offense in legally prescribed proceedings under the conditions provided by the CC BiH (Article 2(1) of the CPC BiH).

⁶ E.g. see finalized cases: Albina Terzić (S1 1 K 005665 11 krl), Jasko Gazdić (S 1 1 K 005718 11 krl) etc.

98. To that end, 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. Procedural presumption of innocence is the so-called *rebuttable presumption (praesumptio iuris tantum)* that is taken to be true unless proved otherwise. As a result of adoption of this presumption, the accused are relieved of the burden of proving their innocence. Consequently, the burden of proving the opposite of what the presumption of innocence envisages rests with a prosecutor. In this context, the presumption of innocence relates not only to the guilt of an accused but also to all the other essential elements that are intertwined with the notion of criminal offense (act of perpetration, illegality or punishability).

99. This is further corroborated by the case law of the ECtHR⁷, according to which the presumption of innocence entails, among other things, the following:

- (i) an accused is not obliged to prove his innocence and the burden of proof rests on the opposing party, meaning the prosecutor; and
- (ii) a court must acquit an accused not only when it is satisfied of the accused's innocence but also in case of existence of a reasonable doubt.

100. One of immediate effects of the presumption of innocence is an explicit provision contained in Article 3(2) of the CPC BiH, stipulating that 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 in a manner that is the most favorable for accused.

101. Specifically, it is the principle of *in dubio pro reo* or the principle that benefits an accused. The Court may consider a fact to be established on the basis of evidence assessment once it is satisfied of its existence; that needs to ensue from evidence presented at trial, and when the panel can have no more doubts in that regard. In that process, all the facts that are to the detriment of the accused (*in peius*) must be established with absolute certainty. In other words, they must be established *beyond a reasonable doubt*. If that is not achieved then such facts are treated as if they do not exist at all. All the facts that are in favor of an accused person (*in favorem*) are regarded as

⁷ E.g. *Saunders v. the United Kingdom*, 1996, Report 1996-IV, *Barbera, Messegue and Jabardo v. Spain*, 1988, Series A no. 146.

existing even if they are determined as being probable. If after a conscientious evaluation of „...every item of evidence and its correspondence with the rest of the evidence...“⁸ doubts cannot be removed, the norm laid down in Article 3(2) of the CPC BiH places an obligation on the Court to decide in a manner that is the most favorable for the accused.

102. The result of application of the rule of *in dubio pro reo* must in all cases be a judgment in favor of the accused, which, in case of doubt about legally relevant facts specified in substantive criminal law, includes not only a lesser sentence when guilt has been determined but also an acquittal in cases in which the main trial could not clarify the doubt as to whether an accused committed the offense charged.

103. Similarly, Article 284(c) of the CPC BiH provides that an accused will be acquitted of a charge *“if it is not proved that the accused committed the criminal offense with which he is charged”*, which means not only in cases in which no incriminating evidence was presented but also in cases in which evidence was presented but is not sufficient for the court to rely on and make findings about the indubitable existence of the facts presented in the charge.

104. In this context, when assessing the evidence the Panel also took into account the *beyond reasonable doubt* standard of proof, established by case law as a requirement for a conviction. It is universally accepted that the *beyond reasonable doubt* proof is evidence based on which it can be reliably concluded that there is a highest degree or probability that the accused committed the offense.

105. The Panel also took into account the provisions of Article 14(2) of the CPC BiH, stipulating that the Court is bound to study and establish with equal attention evidence that is exculpatory as well as inculpatory for the accused.

106. Moreover, the Panel has considered and evaluated all the pieces of evidence presented at trial, individually and in correspondence with the rest of the evidence, as required by Article 281 of the CPC BiH⁹. However, in the wording of the judgment below,

⁸ Article 281(2) of the CPC BiH.

⁹ Article 281 of the CPC BiH (Evidence on which the judgment is grounded): *The Court shall reach a judgment solely based on the facts and evidence presented at the main trial. The Court is obligated to conscientiously evaluate each item of evidence and its correspondence with the rest of the evidence and, based on such evaluation, to conclude whether the (fact)s have been proved.*

the Panel will address only the evidence that is relevant to a ruling, explaining and presenting only findings of facts that are essential to the Court's ruling.

107. Furthermore, the Panel recalls Article 15 of the CPC BiH by which it was guided. This article contains one of fundamental principles of criminal legislation – the principle of free evaluation of evidence limited only by the principle of legality of evidence¹⁰, which means that evaluation of evidence is not limited by formal legal rules determining the value of individual pieces of evidence. By introducing this principle, the legislator gave necessary latitude to the judicial authorities and demonstrated confidence in the judges' evaluation ability.

108. In addition, the Panel took into account case law of the ECtHR¹¹ stating that courts, although obliged to give reasons for their decisions, are not required to provide a detailed answer to every argument advanced by either of the parties to the proceedings.

109. Similarly, the Panel relied on the view of the ICTY Appeals Chamber in *Kvočka et al.* that it is in the discretion of the Trial Chamber as to which legal arguments to address. With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record.¹²

110. Article 6(1) of the ECHR imposes an obligation on all courts to “point with sufficient clarity to the bases on which their decisions are founded.”¹³ Whilst acknowledging the domestic judicial authorities' prerogative to assess the evidence and decide what is relevant and admissible, Article 6(1) of the ECHR places the domestic tribunals under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties.¹⁴ In this connection, the courts are required to examine and clarify

¹⁰ Article 10 of the CPC BiH (Legally invalid evidence): *The Court may not base its decision on evidence obtained through violations of human rights and freedoms prescribed by the Constitution and treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code.*

¹¹ ECtHR, *Garcia Ruiz v. Spain*, No. 30544/96, 21 January 1999.

¹² ICTY Appeals Chamber judgment in *Kvočka et al.* (IT-98-30/1-A), paras. 23-25.

¹³ ECtHR, *Georgiadis v. Greece*, para 606.

¹⁴ ECtHR, *Van de Hurk v. The Netherlands*, para 59.

any major inconsistencies in statements by parties to procedure, point out if any of the disputed pieces of evidence is inadmissible and, if so, on what grounds.¹⁵

111. When assessing the testimony of the examined witnesses, the Panel made efforts to analyze their testimony in entirety, assessing both the contents of the testimony and the demeanor of the witnesses when giving testimony. In that context, the Panel took into account the case law of the ICTR and the view of the ICTY Appeals Chamber taken in *Nahimana et al.* In that case the Appeals Chamber recalled that *"the Trial Chamber has full discretionary power in assessing the appropriate weight and credibility to be accorded to the testimony of a witness. This assessment is based on a number of factors, including the witness's demeanor in court, his role in the events in question, the plausibility and clarity of his testimony, whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence, and the witness's responses during cross examination."*¹⁶

112. The Panel took into account that the reliability of a witness's testimony depends on the witness's knowledge of facts. However, the reliability of a testimony can largely be affected by a lapse of time, inconstancy of human perception and the traumatic nature of the incident about which the witness is testifying. Inconsistencies in the witness's testimony, by themselves, do not necessarily suggest that a reasonable trial chamber must reject that testimony as unreliable.¹⁷ Similarly, factors such as a time span between the incident and a testimony, possible influence by third parties, disparities or stressful circumstances at the time of the incident do not automatically exclude the possibility of a panel relying on such a testimony. The Panel has compared facts about which a witness testified to the facts established by other witnesses and documentary evidence, in order to find whether the witness's allegations have been corroborated or contested by other evidence in this case.

113. When assessing the probative value of the witness testimony, the Panel has examined discrepancies between the witness trial testimony and their statements from the previous stages of the proceedings, as pointed out by the Prosecution and Defense alike. In that context, in each particular case the Panel analyzed and assessed discrepancies in

¹⁵ ECtHR, *Khamidov v. Russia*, para 173.

¹⁶ ICTR, Appeals Judgment in *Nahimana et al.* (ICTR-99-52-A), para 194.

¹⁷ ICTY Appeals Chamber judgment in *Mucić et al.* ("Čelebić"), para 485 and paras. 496-498.

statements regarding certain facts (given at various time periods and before various bodies), clarifications on the causes behind those discrepancies given at the main trial and their connection with other evidence, and thereafter ruled on their credibility, to be discussed in more detail below, in the analysis of evidence in relation to the Indictment's account of facts.

V. PANEL'S FINDINGS

114. According to the Prosecution's Indictment, the accused Naser Orić and Sabahudin Muhić are charged with the criminal offense of War Crimes against Prisoners of War under Article 144 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY), reading in relevant part:

“Whoever, in violation of rules of international law, orders **murders**, tortures, inhuman treatment **of prisoners of war**, including therein biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, causing of great sufferings or serious injury to the bodily integrity or health, compulsive enlistment into the armed forces of an enemy power, or deprivation of the right to a fair and impartial trial, or who commits some of the foregoing acts,

shall be punished with a sentence of imprisonment for not less than five years or by the death penalty.”

115. According to the legal definition, this offense by its character belongs to the category of offenses with blanket provisions. Consequently, as with any other criminal offense with a blanket provision, in order to determine whether certain acts satisfy essential elements of a criminal offense, a blanket regulation (i.e. a regulation to which a blanket provision relates) needs to be consulted. Blanket regulations for the criminal offenses prescribed by the provision of Article 144 of the CC SFRY are rules of international law. However, in order to raise the issue of the criminal offense prescribed by the three provisions, the following must be proved as well:

- that the perpetrator perpetrated the act by violating international law;

- that the perpetration was directed against a protected category of persons, and
- that the perpetrator ordered or perpetrated some of the acts prescribed by the cited article.

116. Taking into account that the analysis and evaluation of the presented documentary evidence did not show *beyond a reasonable doubt* that the accused Naser Orić and Sabahudin Muhić committed the criminal offense of War Crimes against Prisoners of War charged under the Indictment, at this point the Panel will not engage in a detailed examination of existence of *Chapeau* elements required for the criminal offense in question, but will address individual charges in the text below and present its findings and assessment in that regard.

VI. EVALUATION OF THE PRESENTED EVIDENCE - FACTS

A. IN GENERAL

117. An analysis of whether the charges have been proved needs to commence with certain indisputable findings. The Panel, relying on the presented evidence, found beyond doubt that military operations were carried out in Zalazje, Lolići and Kunjerac at the relevant time, and that members of the Army of BiH and members of the RS Army participated in those operations as the opposing parties. Furthermore, the Panel holds that it is beyond dispute that the victims Slobodan Ilić, Milutin Milošević and Mitar Savić, as members of the RS Army, participated in the said operations and that that was the last time they were seen alive.

118. In addition, the Panel holds that it unequivocally ensues from the testimony of the examined witnesses and the presented documentary evidence¹⁸ that the victims Slobodan Ilić, Milutin Milošević and Mitar Savić were murdered.

119. However, an issue arises as to whether the aforementioned persons were murdered by the accused under the circumstances and in the manner as charged.

¹⁸ Prosecution Exhibits T-1, T-4, T-5 and T-6.

120. The Panel notes that the facts offered in the Indictment are based on the testimony of Witness O1 to a decisive extent, who claims to have witnessed the murders. For that reason, an evaluation of his testimony was of decisive importance for a proper resolution of this criminal matter.

121. Specifically, the testimony of a single witness on a legally relevant fact does not require, as a matter of law, corroboration by another witness's testimony¹⁹. However, in such a situation, the Panel needs to analyze such witness's testimony with special attention prior to accepting it as a sufficient proof of an accused's guilt.

122. Whether or not a Panel would rely on the testimony of a single witness depends on various factors in each particular case, and a Trial Panel is under obligation to consider whether the witness is reliable and whether the presented evidentiary material is credible.

123. In this context, the Panel points to a view taken by the Appellate Panel of the Court of BiH in *Vuković et al.* that it would not be unfair to base a decision on guilt on the testimony of a single witness, but only if that testimony is sufficiently convincing and logical, consistent with the other evidence, and also that the decision based on such testimony is the only possible and reasonable conclusion in the case.

124. Consequently, in the reasons below, the Panel will make a detailed and thorough analysis of the testimony of Witness O1 with regard to the charges referred to in the individual counts of the Indictment, and examine the testimony in light of the other presented evidence.

B. COUNT 1 – THE ACCUSED NASER ORIĆ

125. According to the factual allegations in this count of the Indictment, the accused is charged that he, on the afternoon of 12 July 1992, in Zalazje, municipality of Srebrenica, in the vicinity of the house owned by Dragan Rakić at a distance of 100-150 meters from the Orthodox cemetery, killed Slobodan Ilić, prisoner of war of Serbian ethnicity. Specifically, after Slobodan Ilić was captured by unidentified members of the Armed Forces of the Srebrenica TO and brought to the house mentioned above, Naser Orić kicked him with his left leg in the hip, which caused Slobodan Ilić to stagger. Thereafter, Naser Orić took a knife out of a sheath attached to his belt and stabbed Slobodan Ilić in the neck, plunging

the knife blade all the way into the neck; the stab caused Slobodan Ilić to fall down on his knees. Next, Naser Orić kicked him in the face with his foot wearing an army boot and knocked him to the ground – all of which resulted in the death of victim Slobodan Ilić.

126. The following witnesses: O1, Milomir Lazarević, Vidoje Ilić, Milan Jeremić, Branislav Stanojević, Radivoje Ostojić, Ilić Jelica and Ibran Mustafić, as well as medical expert Rifat Kešetović, among others, gave evidence in connection with this count of the Indictment.

Evidence given by Witness O1

127. Given the fact that this is the only witness who directly incriminated the Accused with his evidence, when evaluating his statement the Panel took as the starting point the fact that, should the Court's decision be based solely on a statement of one witness, that statement must be such so as not to leave the slightest doubt in its accuracy and credibility. The Panel, therefore, made every effort to evaluate the evidence given by Witness O1 in full, including both the substance of the evidence given at the main trial as well as its consistency with his prior statements.

128. Testifying about the relevant circumstances, Witness O1 stated at the main trial that the operation against the village of Zalazje started on the Serb holiday of St. Peter's Day in 1992, at around 10.00-10.30 hrs, when he, together with other members of the Army of B-H, set off from Likari toward Zalazje, and that at around 12.00 hrs they entered Zalazje in the area where there were the Orthodox Christian cemetery and two houses. The witness added that at that moment he saw the Accused Naser Orić on the upper floor of one of the houses talking to someone, and that he saw Zulfo Tursunović in front of that house. The witness also said that at that moment he saw other members of the Army of B-H arriving and bringing three or four prisoners and taking them into the courtyard of the referenced house, and added that two or three prisoners were in military olive-drab uniforms while the others were in civilian clothes, and their hands were all tied. He stressed that he did not know the prisoners.

129. Describing further developments, the witness stressed that he saw the Accused Naser Orić who descended into the courtyard and started interrogating the prisoners, and explained that at that moment he was sitting on a fence at the entrance to the courtyard

¹⁹ ICTY Appeals Chamber judgment in *Prosecutor v. Aleksovski*, IT-95-14/1-A, 24 March 2000.

together with Zulfo Tursunović and other members of the Army of B-H. Witness O1 added: "... I saw that one man provoked Orić ... after that ... he punched him with clenched fist to his face and chest ... and again asked him something."²⁰ However the witness stressed that he did not hear either the Accused Orić's question or the prisoner's answer.

130. According to the witness, at that moment the Accused Orić was angry and nervous and he hit the same prisoner once again and then took out a knife that was attached to his belt, swung it and stabbed the prisoner in the neck, whereupon the witness saw that the prisoner fell down to his knees in front of Orić who kicked him in his chest and stomach and knocked him over. Witness O1 stated that he was watching this from a distance of 5-7 meters, and that on that occasion the present members of the Army of B-H were angry, they shouted and yelled, but nobody dared approach the prisoner or try to do something because they respected their commander and obeyed his orders.

131. The witness then said that at one moment Zulfo Tursunović told him and the present members of the Army of B-H that someone had informed him that members of the Army of Republika Srpska (VRS) had been "fleeing" from Zalazje toward Sase with a *TAM* truck with an anti-aircraft machine-gun or gun mounted on top and that they should go and intercept them. The witness also said that, at the moment when they set off to that task with Zulfo, he heard someone shouting that three members of the enemy army were fleeing toward Likari and that he saw Orić shooting at them, but that he did not see whether they were wounded or killed, given that immediately after that he set off in another direction with the task to intercept the *TAM* truck. However, the statement of Witness O1 does not contain a clearly defined timeframe and sequence of the described events. Witness O1 did not say at what moment Zulfo Tursunović told him and the present members of the Army of B-H about the *TAM* truck or how long after the killing of Slobodan Ilić they left with the task to intercept the truck, and he did not say where the Accused and the other members of the Army of B-H were at that moment, either. Also, Witness O1 did not describe at the main trial whether and how the Accused Orić reacted to the news that certain members of the VRS were "fleeing" Zalazje on a *TAM* truck and did not say what happened ultimately, that is, how they managed to stop them.

132. Answering the Prosecutor's question what happened with the prisoner who was stabbed with a knife, Witness O1 answered that at the moment when he was leaving to

²⁰ Transcript of 23 February 2016, p. 15.

carry out the task of “intercepting” the TAM truck the prisoner remained lying on the spot, and stressed that when he returned from the task he saw that the prisoner’s face was covered in blood and that blood trickled out of his eye and that he did not show any signs of life.

133. Witness O1 stated at the main trial that he did not know the man whom Orić stabbed in the neck and did not know that the man was a judge, and that he learned of his identity only upon the return from the task of “intercepting” the TAM truck when Zulfo Tursunović angrily told him and all present soldiers that that was a judge who had sentenced him before the war and that he had told the commander not to touch him, that he would deal with the judge. Such assertion of Witness O1 is unconvincing and illogical given that, according to his own words, he was together with Zulfo Tursunović all the time from the moment the prisoners had been brought to the moment they set off to the task of “intercepting” the TAM truck, and he did not say in a single moment that he had heard any conversation between Zulfo Tursunović and the Accused Naser Orić, or any address of Tursunović’s concerning prisoner Slobodan Ilić.

134. The Panel also points that it is absolutely illogical that, in the circumstances of the relevant event as described by Witness O1, Zulfo Tursunović reacted later on and expressed disagreement with the Accused Orić’s act although he was present when the Accused questioned and hit Slobodan Ilić, according to Witness O1.

135. In his further testimony, Witness O1 stated that during the loading onto a truck he saw a total of five dead bodies, that of the prisoner of whom he later learned had been a judge and of four other persons lying next to the judge’s body. In addition to the dead prisoners’ bodies, living members of the Serb army were also loaded onto the truck together with arms and ammunition. According to the witness, Zulfo sat in the truck’s cabin together with driver Amir Salihović aka Arkan from Potočari, while he and other members of the Army of B-H sat on the truck and drove in front of the station of the Command of MUP (Ministry of the Interior) in Srebrenica, where the ammunition and arms were unloaded, while the dead bodies stayed on the truck and he does not have any information as to what happened later with the bodies.

136. The Panel states that Witness O1’s statement is illogical, unconvincing and incomplete in this part as well, that is, it does not mention the circumstances of the arrival of the truck at the spot and it does not explain the circumstances of the killing of the other

four persons whose bodies were loaded onto the truck together with Slobodan Ilić's body.

137. Unlike in the referenced evidence given at the main trial, when giving a statement in the investigation in 2014 (Witness Examination Record made by the Prosecutor's Office No. T20 0 KTRZ 0007663 13 of 10 July 2014, tendered as Defense Exhibit O1-6), Witness O1 did not at all mention the operation against the village of Zalazje or the killing of Slobodan Ilić in Zalazje, although he described in detail other operations in which he participated, and provided his information about the killings that happened in those operations. Thus Witness O1 provided his information about the operation against the villages of Zagoni and Kravica, the information about the disappearance of Nurif Rizvanović, the killing of Milutin Milošević, and other events in the place of Kolonija, in Sase and Lolići.

138. Describing the operation against the village of Zagoni, Witness O1 stated in investigation in 2014 that Naser Orić took part in that operation together with some 180 armed persons and that civilians followed them and collected the property. The witness added that in the operation against the village of Zagoni some 10 civilians got killed, that he saw two dead women, one decapitated and one slaughtered body, and that he saw armed people and civilians setting ablaze Serb houses in the village of Zagoni, and emphasized that the "man in charge" of all events during the operation against the village of Zagoni was Naser Orić, and that his "right-hand men" were Zulfo Tursunović, a person called "Mrki" Mandžić from Potočari and Ahmo from Skelani.

139. Also, when giving a statement in 2014, the witness referred to the order-issuing role of the Accused Orić in the action against the village of Kravica, when Orić issued the instruction: "Kill everything that walks on two legs"²¹.

140. The Panel also stresses that at the end of his 2014 statement, Witness O1 confirmed that he had nothing more to add and that he had no objection to the manner in which the examination was conducted, and confirmed that he was not threatened in any way or promised anything.

141. After he was shown his 2014 statement, Witness O1 reiterated the facts and circumstances presented during his evidence at the main trial, so he was asked to explain

²¹ Defense exhibit O1-6, Witness Examination Record for O1 No. T20 0 KTRZ 0007663 13, 10 July 2014, p. 5.

why he had not presented his information about the killing of Slobodan Ilić in Zalazje while giving a statement to the Prosecutor's Office in 2014. He responded that when giving a statement in the investigation he was not sure who he was talking to, that is, whether he could speak freely about certain events and whether that would jeopardize his safety.

142. The Court considers that the explanation provided by the witness is neither convincing nor logical. During the examination at the Prosecutor's Office of B-H in 2014, the witness described in detail other operations and participation of the Accused Naser Orić in them (operation against the village of Zagoni, operation against the place of Kravica), so, consequently, the Panel considers that there was no reason for the witness not to present his information, if he had any, about the Accused Orić's participation in the killing of Slobodan Ilić and other events related to the operation against the village of Zalazje.

Comparison of Witness O1's evidence with other witnesses' evidence and analysis thereof

143. In view of the foregoing, the Panel had to evaluate the statement of Witness O1, as the only eyewitness to the referenced killing, with utmost caution, and it sought its corroboration in the substance of the other adduced evidence.

144. In that respect, the Panel points at the position of the International Criminal Tribunal for Rwanda, taken in *Aloys Simba v. the Prosecutor*, that corroboration is simply one of many potential factors in the Trial Chamber's assessment of a witness's credibility.²²

145. The Panel primarily stresses that the statement of Witness O1 is not consistent in terms of decisive facts with the statements of other examined witnesses, primarily the statements of witnesses – fellow fighters of Slobodan Ilić's, who were in the immediate vicinity of the events on the relevant occasion, that is, who were hiding in the loft of Dragan Rakić's house, namely, Milomir Lazarević, Vidoje Ilić, Radivoje Ostojić and Milan Jeremić, who described the relevant events in an absolutely different way.

146. The foregoing witnesses, as participants of the operation against the village of Zalazje, described in a mutually consistent manner certain events regarding the operation.

²² ICTR Judgment, ICTR-01-76-A, 27 November 2007, para. 2.

Thus they stated that they put up resistance on the relevant day until the village of Zalazje was surrounded by members of the Army of B-H, when they retreated to the loft of Dragan Rakić's house wherefrom they heard further developments in front of the house.

147. The Panel will primarily comment on the statements of these witnesses about the operation against the village of Zalazje and point at the observed inconsistencies between their respective statements and the statement of Witness O1.

148. Contrary to the statement of Witness O1, who said that the Army of B-H entered the village of Zalazje at around 12.00 hrs on the relevant day, witnesses Milomir Lazarević, Vidoje Ilić and Radivoje Ostojić stated in unison that the attack on the village of Zalazje lasted approximately until 17.00 hrs. Thus witness Milomir Lazarević stated that the attack on the village of Zalazje lasted until 17.00 hrs; witness Vidoje Ilić said that the attack started at around 09.30-10.00 hrs and that they offered resistance until 16.00-17.00 hrs. Witness Radivoje Ostojić also stated that they resisted until perhaps 17.00 hrs, while witness Milan Jeremić denied during cross-examination that the Army of B-H entered the cemetery in Zalazje at 12.00 hrs.

149. The following inconsistency in the statements of Witness O1 compared with the foregoing witnesses concerns the description of the circumstances of the capturing of Serb soldiers, including Slobodan Ilić, that is, description of the atmosphere at the moment when the soldiers were brought in.

150. Thus Slobodan Ilić's fellow fighters, witnesses Vidoje Ilić and Milan Jeremić, stated consistently that while hiding at the loft of Rakić's house, they heard the Accused Naser Orić addressing his soldiers through a megaphone in front of the house congratulating them on the captured places, praising them and calling the Serb soldiers to surrender. After that, according to the consistent statements of the witnesses who were hiding on that occasion at the loft of Dragan Rakić's house, namely, Milomir Lazarević, Vidoje Ilić and Milan Jeremić, the Serb soldiers surrendered, whereupon these witnesses heard the present members of the Army of B-H recognizing, that is, calling out by names certain captives, including Slobodan Ilić. Witness Milan Jeremić stated that he heard that the Simić brothers, Branko and Petko, Dragomir Vujadinović, Slobodan Ilić, and Mijo Rakić surrendered²³, while witness Milomir Lazarević stated that he heard one soldier of Naser's

²³ Transcript of 5 April 2016, p. 49.

shouting, "Mr. Naser, here they are, Slobodan Ilić, Mijo Rakić, Branko Simić, Petko Simić, Dragomir Vujadinović, Milislav Ilić and Dragomir Tubić"²⁴, and witness Vidoje Ilić stated that he heard shouts, "Here he is, the judge, we will put him on trial now".²⁵

151. Unlike the referenced witnesses, Witness O1 described the atmosphere on the relevant occasion in a completely different manner. When giving evidence at the main trial the witness did not mention any address of the Accused Naser Orić through megaphone at the moment the Serb soldiers were brought in, or the calling out of judge Slobodan Ilić or the other prisoners when they were brought in by members of the Army of B-H, which would have been realistic to expect given the fact that at that moment Witness O1 was standing right next to the Accused Orić and other members of the Army of B-H, according to his own words.

152. As stated earlier, when testifying at the main trial, Witness O1 said that all members of the Army of B-H present during the relevant event, that is, the killing of Slobodan Ilić, were angry and shouted, protested, but that nobody dared approach the captive or try to do something, which is also not corroborated by the statements of the aforementioned witnesses. When speaking about the events at the scene upon the bringing of the prisoners, the witnesses who were hiding at the loft of Dragan Rakić's house said that they did not hear any shouting and did not mention any facts or circumstances from which it would be possible to conclude beyond doubt that anyone among the present people undertook any action against the apprehended Serb prisoners in the manner argued by the Prosecution, and they did not mention the Accused Orić in that context either. Witnesses Milan Jeremić²⁶ and Milomir Lazarević²⁷ were among the ones asked by Defense Counsel for the Accused Naser Orić whether they heard yelling, shouts, killing and mistreatment, and they answered that they did not hear anything, and the foregoing does not follow from the statements of the other examined witnesses either.

153. The Trial Panel also considers that the Accused Orić's behavior on the relevant occasion, described by witnesses Milomir Lazarević and Milan Jeremić, does not corroborate the allegations by Witness O1 and that it calls into question his statement in the part where he incriminates the Accused Naser Orić. Witness Milomir Lazarević stated

²⁴ Transcript of 22 March 2016, p. 13.

²⁵ Transcript of 5 April 2016, p. 13.

²⁶ Transcript of 5 April 2016, p. 57.

²⁷ Transcript of 22 March 2016, p. 27.

that he heard that someone started beating Milislav Ilić and that Naser Orić said: "Don't beat him, we are not Chetniks, we are not Ustashas, we are the Army of B-H, they will be tried by military court."²⁸ He also said that he heard Naser issuing an order that the captives and armament be loaded onto trucks and transported to Srebrenica.²⁹

154. Accordingly, witness Milan Jeremić stated at the main trial that he heard that the person of the same voice that had previously introduced himself as commander Naser Orić, was addressing through megaphone the present members of the Army of B-H telling them that the prisoners should not be harmed and that they would be tried in Srebrenica.³⁰

155. Likewise, neither witness Radivoje Ostojić nor witness Vidoje Ilić mentioned in their respective evidence at the main trial the Accused Orić in the context of the killing of a prisoner on the relevant occasion. Witness Radivoje Ostojić stated at the main trial that he only heard that a lining-up took place in front of the house where they were hiding, while witness Vidoje Ilić stated that he heard the Accused Naser Orić calling his troops through megaphone to retreat toward Srebrenica and take the prisoners along.

156. In view of the foregoing, the Panel concludes that, contrary to the statement of Witness O1, the Prosecution witnesses who were in the immediate vicinity of the developments on the occasion concerned, namely Milomir Lazarević, Vidoje Ilić, Milan Jeremić and Radivoje Ostojić, did not make any reference to the killing of judge Slobodan Ilić in front of the house or the killing of other prisoners of which Witness O1 testified. The only thing that these witnesses confirmed consistently is a fact that they heard the Accused Naser Orić calling his troops to retreat toward Srebrenica and take the prisoners along, whereupon they heard the retreating of the members of the Army of B-H from Zalazje and "the sound" of a departing truck.

157. The Panel did not have any reason not to accept as credible the statements of Milomir Lazarević, Vidoje Ilić, Milan Jeremić, Branislav Stanojević and Radivoje Ostojić, given the fact that they testified about direct information they had about the relevant event, and that their statements were reasonable, convincing and mutually consistent, and particularly the fact that they were fellow fighters and acquaintances of the victim, Slobodan Ilić, who, as such, had a realistic and logical interest to fully present everything

²⁸ Transcript of 22 March 2016, p.15.

²⁹ Transcript of 22 March 2016, pp. 16, 17.

³⁰ Transcript of 5 April 2016, pp. 48, 50.

they knew about the events on the relevant occasion, that is, all facts and circumstances on the basis of which criminal responsibility of the perpetrator of Slobodan Ilić's killing could be established.

158. Also, when it comes to the description of Slobodan Ilić's looks on the relevant day, the Trial Panel considers the statement of Witness O1 in that respect to be contradictory and opposite to the other adduced evidence.

159. Witness O1 described in different ways the looks of Slobodan Ilić, so, at the beginning of the examination at the main trial, he described him as a little short man with moustaches and dark grey hair, but in the further course of his evidence at the main trial he gave a different description of Ilić, saying that he had dark hair with a parting, that he was broad-shouldered and of medium height, that he had moustaches and that he wore olive-drab trousers, military sweater and military boots.

160. Contrary to the statement of Witness O1, witness Branislav Stanojević, who knew Slobodan Ilić well from before as he was his neighbor and fellow comrade and who participated together with Slobodan Ilić in the operation against Zalazje on the occasion concerned, described Slobodan Ilić's looks in that period completely differently, describing him as a bulky tall man of some 90 kilograms who did not have either moustaches or beard on the relevant occasion.

161. Given the foregoing, the Court fully accepted as credible witness Branislav Stanojević's statements about the looks of Slobodan Ilić and found them to be authentic and impartial.

162. The Panel was also mindful of the statements of witness Jelica Ilić about the looks of her husband Slobodan Ilić, who also did not say that he had moustaches but just said that her husband had stubble of some days the last time they saw each other. However, the Panel finds that these statements of Slobodan Ilić's wife are not relevant for the description of his looks on the day concerned, that is, 12 July 1992, given that the last time witness Jelica Ilić and her husband met was in early or mid-June 1992, according to her.

163. Witness Ibran Mustafić also testified at the main trial about the circumstances of the killing of prisoner of war Slobodan Ilić, which is when he presented his indirect knowledge about the killing of the referenced captured persons. This witness said that in Tuzla he heard for the first time about execution of some captives from Zalazje, and he described

how once in November 1992 in Tuzla his cousin Mirsad Mustafić brought him a piece of paper reading that the execution of some prisoners from the area of Zalazje had been carried out in Srebrenica.

164. The witness also stated that on that paper he recognized the names of certain persons, including Slobodan Ilić, Branko Simić, Petko Simić, Mijo Rakić and nurse Rada, but he could not remember the names of the other persons on the paper as he did not know them. Witness Ibran Mustafić also said that he did not remember what was written next to the referenced names, that nothing else interested him particularly at that moment, and added that he did not talk with Mirsad Mustafić about the contents of the paper.

165. However, witness Mirsad Mustafić, who testified at the main trial, denied the averments of witness Ibran Mustafić, that is, he denied that during their encounter in Tuzla he gave Ibran any piece of paper with the names of the captives from Zalazje, stressing that in that period he did not have any information about the alleged event.

166. Witness Mustafić also testified that on one occasion the Accused Naser Orić told him about the execution of Slobodan Ilić, that he stabbed Slobodan Ilić in the eye with a bayonet and that he “slaughtered him quickly”.³¹ Witness Ibran Mustafić added that his brother Samir Mustafić had also been present during the referenced conversation with the Accused Orić, but the brother was not examined as a witness in these criminal proceedings as he had died.

167. Based on the foregoing, the Panel finds that this witness’ statement was confusing and non-credible so the Panel did not credit it, especially having in mind the fact that the witness was an indirect witness whose statement was not corroborated by any other adduced evidence.

168. When evaluating the statement of witness Ibran Mustafić, the Panel evaluated both the substance of his statement as well as his conduct while giving evidence at the main trial, that is, his attitude, posture, physical and emotional reactions to the questions as well as his verbal and non-verbal behavior toward the Accused and their Defense Counsel in the course of cross-examination.

³¹ Transcript of 18 October 2016, p. 8

169. In line with the foregoing, having comprehensively analyzed the evidence given by Ibran Mustafić, the Panel gained an impression that this witness made use of these criminal proceedings in order to present at the main trial his view of the wartime events in Srebrenica, putting emphasis on the alleged assassination attempt aimed at him and his family, of which he also accused Naser Orić.³² The Panel is of the opinion that the very substance and manner of Ibran Mustafić's evidence indicate that his motive was not to present at the main trial every piece of information that he had about the relevant charges, but to promote the contents of his book, *A Planned Chaos* [*Planirani haos* in the vernacular; translator's note], as he said that he had given his "evidence" in the book.³³

170. Finally, the Panel states that the killing of Slobodan Ilić, described in the facts of Count 1 of the Indictment, could not be confirmed by the examined expert witness Dr. Rifat Kešetović either. The expert witness, who took part in the process of exhumation and identification of mortal remains of Slobodan Ilić, stated at the main trial that it was not possible to establish the exact and specific cause of Slobodan Ilić's death through examination of skeletonized remains due to the absence of soft tissue.

171. Based on the foregoing, and especially being mindful of many instances of inconsistency, unconvincingness, defects and illogicalities with respect to decisive facts in the evidence of Witness O1 as well as in terms of its correspondence with the other adduced evidence, the Panel concluded that the evidence given by Witness O1, as the key witness, about the circumstances referred to in Count 1 of the Indictment could not constitute a reliable factual basis on which it would be possible to establish beyond reasonable doubt the guilt of the Accused Naser Orić for the killing of Slobodan Ilić. Therefore, in application of the *in dubio pro reo* principle, the Panel acquitted him of responsibility for Count 1 of the Indictment.

C. COUNT 2 – THE ACCUSED NASER ORIĆ AND SABAHUDIN MUHIĆ, TOGETHER

172. Under Count 2 of the Indictment the Accused Naser Orić and Sabahudin Muhić were charged that in the afternoon of an undetermined day in the second half of May 1992, in the place of Lolići, Bratunac Municipality, next to the Kravica River, in the vicinity

³² Transcript of 18 October 2016, p. 28

³³ Transcript of 18 October 2016, p. 25.

of a house owned by Asim Mehić, they killed a Serb prisoner of war, Milutin Milošević, who had been captured and tied by an unidentified member of the Srebrenica Armed Forces and, following an order by Naser Orić, taken to the referenced location. He was beaten and kicked to his stomach by Naser Orić and other members of the Srebrenica Armed Forces. At one moment Orić waved his hand and ordered the soldiers to move away and fired a burst from automatic rifle at Milutin Milošević, who was lying on the ground, whereupon Sabahudin Muhić aka Mrčo fired a burst from automatic rifle at Milutin Milošević, which resulted in Milutin Milošević's death.

173. Witness O1, Radmila Nikolić and Asim Mehić testified about the circumstances referred to in Count 2 of the Indictment, as well as Zoran Stanković, witness expert in forensic medicine.

174. Witness O1 is the key Prosecution witness with respect to this Count of the Indictment, too, that is, the only witness who linked the Accused Naser Orić and Sabahudin Muhić to the killing of Milutin Milošević.

Evidence given by Witness O1

175. Testifying about the circumstances under Count 2 of the Indictment, Witness O1 said at the main trial that when he arrived in the village of Lolići, he saw tied Milutin Milošević, former police officer whom he knew well, but the witness did not describe the circumstances and reasons of his arrival in the village of Lolići, nor did he specify where exactly inside Lolići he had seen Milutin Milošević. The witness only stated that inhabitants of Lolići were by Milutin's side and that on that occasion he was hiding from Milutin so that Milutin would not see him and perhaps ask for help.

176. The witness also stated that at one moment some of the present persons shouted that the Accused Naser Orić and Zulfo Tursunović were arriving together with other members of the Army of B-H. The witness described how the Accused Naser Orić then approached the captured Milutin and asked him something, whereupon he saw Zulfo Tursunović grabbing Milutin's left arm or shoulder, shaking him and asking him: "Will you talk or not?"³⁴ Witness O1 particularly stressed that at those moments Milutin was impertinent to the Accused Naser Orić and Zulfo Tursunović and other members of the

Army of B-H, that is, that he "rebelled", whereupon the Accused Naser Orić punched him strongly in his chest with a clenched fist.

177. The witness described that he saw the Accused Orić having a conversation with Milutin Milošević, but that he did not hear the content of that conversation as he was standing at some distance from them, and he said: "In that conversation, I saw that he hit him two-three times, and afterward he turned around, took an automatic rifle from one man and fired at him"³⁵. The witness then specified that he was watching the situation from the distance of 7-10 meters and that on that occasion the Accused Naser Orić fired 7-8 bullets at Milutin Milošević's body.

178. The witness then said that he saw the Accused Sabahudin Muhić also taking a rifle and firing a burst at Milutin Milošević, cursing his mother in the process, and said that on that occasion he was 2 meters behind the Accused Muhić. The witness clarified that the Accused Sabahudin Muhić fired at Milutin Milošević approximately 3-5 minutes after the Accused Orić had first shot at him. Asked specifically if he saw the body of the victim, the witness said at the main trial: "Yes, I was standing next to him, I just turned him with my foot as he had fallen to his side, and I turned him around to see if that was Milutin, as I had known Milutin personally before the war"³⁶. He added that Milutin Milošević showed no signs of life, that his body was "riddled with bullets as there were more than 20 bullets in his body"³⁷.

179. The witness added that Commander Naser Orić issued an order that members of the Army of B-H should retreat from Lolići and return to Srebrenica.

180. Unlike the referenced evidence given at the main trial, in which Witness O1 described the details he saw relative to the killing of Milutin Milošević, the Panel states that, in the investigation, in a statement before the Prosecutor's Office (Record No. T20 0 KTRZ 0007663 13 of 10 July 2014, tendered as Defense Exhibit O1-6), Witness O1 gave a completely different version of Milutin Milošević's killing, which differs in the decisive part from the version given at the main trial.

³⁴ Transcript of 23 February 2016, p. 26.

³⁵ Transcript of 23 February 2016, p. 26.

³⁶ Transcript of 23 February 2016, p. 27.

³⁷ Transcript of 23 February 2016, p. 29.

181. Testifying about the relevant circumstances in 2014, Witness O1 did not say at all that he had been an eyewitness to the relevant killing, but said only that he heard that in 1992 a captured police officer from Ljubovija, Milutin, had been killed “because he had opened fire at our soldiers”³⁸, and that he had been stopped in Lolići where he was killed and buried. Also, Witness O1 said that he had heard of the referenced killing from Safet Mehić, and that Safet Mehić, Asim Mehić and Senad Mehić had the information about the location where Milutin Milošević had been buried.

182. When evaluating the evidence given by Witness O1 at the main trial, the Panel was also mindful of the view that it is not a legal error to accept and rely on a statement that is inconsistent with prior statements or other evidence adduced in the course of the trial, but that a Trial Panel is bound to take into account inconsistencies and any explanation offered in respect of them when weighing the probative value of a statement.³⁹

183. Asked at the main trial to explain the referenced discrepancies in respective statements, Witness O1 repeated that during the examination at the Prosecutor's Office on 10 July 2014 he felt fear, that is, he did not know the Prosecutor, due to which he dared not convey to him the information he had about the relevant event, and he confirmed that what he said about the relevant event at the main trial was accurate. However, the Panel did not consider the referenced explanation of Witness O1 to be convincing or logical given that in his statement to the Prosecutor's Office the witness charged the Accused Orić with other events and killings of other persons, as explained previously in the analysis of the witness' statement about the circumstances referred to in Count 1 of the Indictment.

Comparison of Witness O1's evidence with other witnesses' evidence and other adduced evidence and analysis thereof

184. In addition to Witness O1, witnesses Asim Mehić and Radmila Nikolić also testified about the referenced circumstances.

185. Witness Asim Mehić stated at the main trial that on 29 May 1992, some time between 10.00 and 11.00 hrs, VRS members carried out an attack on the village of Lolići

³⁸ Record No. T20 0 KTRZ 0007663 13 of 10 July 2014, p. 6.

³⁹ Appeal Judgment in *Muhimana*, para. 135; Appeal Judgment in *Niyitegeka*, para. 96.

and that the Lolići inhabitants succeeded in repelling the attack, and that during the attack he was in the forest above Lolići and that he did not take part in the combat activities.

186. He stated that there were casualties on both sides and that nobody dared approach the dead bodies on that occasion because of the shelling. He also explained that only after some 15 days, when wind carried around the odor of corpses, did he see the bodies of the casualties which they managed to bury afterward. On that occasion he recognized among them Milutin Milošević, whom he had known from before as Milošević had previously come to his village. The witness did not have any information about the circumstances of Milutin Milošević's death, he just described that they found Milutin Milošević's body in the river, next to Mehmed Omerović's house, that his hands were tied to a tree by wire, whereupon they extracted the body and buried him separately. According to witness Asim Mehić, Milutin Milošević wore a multi-colored camouflage uniform and the witness said that he only saw an injury to the forehead.

187. Witness Radmila Nikolić also testified about the death of Milutin Milošević. In her statement at the main trial she said, among other things, that she had learned from the wife of Milutin Milošević (who was the witness' uncle) that on 29 May 1992, Milutin Milošević left in the morning for Kravica and that he never returned home afterward. The witness also said that her father, having learned that his brother Milutin had been captured in Sandići, went the following day together with her to the nearby hill by the school which is close to their house and called through a megaphone neighbors from the village of Sandići and asked them if Milutin was with them telling them: "Give me Milutin, don't kill him, kill me"⁴⁰. The witness also explained that her father's shouting to the neighbors from Sandići through the megaphone lasted whole day and that she heard a voice from Sandići calling out through a megaphone: "Milutin is in safe hands ... We can't hand him over to you ... Muhić and Naser will kill him ... if he doesn't kill one Milošević, he will kill the other one"⁴¹. The witness also said at the main trial that she heard that their neighbors from Sandići also mentioned one Omerović via the megaphone.

188. Unlike the referenced evidence given at the main trial, witness Radmila Nikolić described the death of Milutin Milošević in a completely different manner in her statement in the investigation.

⁴⁰ Transcript of 31 May 2016, p. 6.

⁴¹ Transcript of 31 May 2016, pp. 9,10,11.

189. During the examination at Bratunac PS (Police Station) (Record of Examination No. 10-1-7/01-230-515/09 of 8 October 2009, tendered into evidence as Defense Exhibit O1-17), the witness had named a completely different person as the perpetrator of Milutin Milošević's murder, had not at all mentioned the Accused Naser Orić and Sabahudin Muhić in any circumstances and had not referred to the manner of searching for Milutin Milošević and conversation via megaphone about Milutin Milošević's whereabouts, which she mentioned at the main trial. In her 2009 statement, witness Radmila Nikolić described the referenced event in a completely different manner, so she said that some seven days after Milutin had gone to the Command in Kravica, a Muslim woman from the village of Pobuđe appeared, which the witness again confirmed during cross-examination. In the investigation the witness said that she learned from the said woman that the Muslim troops captured and killed all policemen and soldiers who had gone with Milutin Milošević, that Milutin was captured, that he was alive but wounded and that one Meho, whose last name she thought was Omerović, treated him in his family house in Lolići. Witness Radmila Nikolić also confirmed this during cross-examination at the main trial. The witness said in her statement in the investigation that Meho hid and treated Milutin for several days, but that one day Medo Omerović, son of Ismet, from Kamenice, whose child had been killed by a shell some days previously, came to Meho's house and killed Milutin by firearms shooting in his forehead without much ado and cursing his Chetnik mother. The witness also said that she learned from the said woman from Lolići that Milutin was buried separately, several meters away from the grave where the others were buried, and that he was placed into quicklime.

190. Commenting on the referenced significant discrepancies in the respective statements, witness Radmila Nikolić stated that when she gave the statement in the investigation she said the same things as at the main trial, that she signed the Record, but that she did not know who had drafted that Record. The witness clarified that everything quoted in the Record from the investigation stage represented the contents of the conversation through megaphone, but that she did not mention the Accused Naser Orić and Sabahudin Muhić on that occasion because she did not remember their names. However, the Panel finds that it is not clear in which context the witness could have mentioned the names of the Accused in the investigation stage, given the fact that in that stage she mentioned by full name another person as the perpetrator of Milutin Milošević's killing, that is, she named Medo Omerović as the perpetrator.

191. The Panel finds this explanation of the witness to be unacceptable, as it is neither convincing nor logical, and the Panel particularly stresses the fact that the statement the witness Radmila Nikolić gave in the investigation corresponds in essential details with the statement of witness Asim Mehić which the Panel found to be objective and convincing, for which reason it did not give credence to the evidence given by witness Radmila Nikolić at the main trial.

192. Witness Radmila Nikolić said in the investigation that Medo Omerović shot Milutin Milošević in the forehead, and witness Asim Mehić said at the examination at the main trial that of the injuries on the body of the killed Milutin Milošević he saw only a wound on his forehead, which is contrary to the statement of Witness O1, who said at the main trial that he saw wounds from 20 bullets at least on Milutin Milošević's body. Asim Mehić also said that they found Milutin Milošević's body next to Mehmed Omerović's house and that they buried the body separately, which witness Radmila Nikolić also referred to in the investigation: "Milutin was buried separately, several meters away from the grave where the others were buried"⁴².

193. The Panel also states that the statement of Witness O1 at the main trial about the acts undertaken by the Accused on the occasion concerned, that is, that the Accused individually fired bursts from automatic weapon against Milutin Milošević, is also not corroborated by the Finding and Opinion of expert witness in forensic medicine, Zoran Stanković, which was tendered into evidence as Prosecution exhibit T-1.

194. Contrary to the averments of Witness O1 that Milutin Milošević's body was riddled with more than 20 bullets, the referenced expert witness' Finding reads that only one perforating wound was found in the body of the victim, below his left shoulder blade. In the opinion of expert witness Stanković, the described wound is compatible with 7.65-mm ammunition and the death was a result of exsanguination of the ruptured blood vessels and fissure of tissue along the penetrating canal which were caused by the impact of the referenced projectile which the expert witness designated as pistol ammunition, as well as a result of damage and breakage of vitally important cerebral centers caused by fractured bones in the left parietotemporal area.

⁴² Witness Examination Record No. 10-1-7/01-230-515/09 of 8 October 2009, tendered into evidence as Defense exhibit O1-17.

195. Based on the foregoing and the fact that Witness O1 was the only witness who said that the Accused were the perpetrators of the criminal acts they were charged with under this Count of the Indictment, that his statements were contradictory, and that his averment was not corroborated by the other adduced evidence, the Panel did not find that the adduced evidence, by its substance and quality, possessed the required force of plausibility to conclude beyond reasonable doubt that the Accused Naser Orić and Sabahudin Muhić committed the referenced criminal offense, hence, in application of Article 284(c) as read with Article 3 of the CPC B-H, the Panel acquitted the Accused of the acts they were charged with under this Count of Indictment.

D. COUNT 3 OF THE INDICTMENT – THE ACCUSED NASER ORIĆ AND SABAHUDIN MUHIĆ, TOGETHER

196. Under Count 3 of the Indictment the Accused Naser Orić and Sabahudin Muhić were charged that in the afternoon of an undetermined day in December 1992, in the place of Kunjerac, Bratunac Municipality, close to a water reservoir, they killed a Serb prisoner of war, Mitar Savić, who had been captured by an unidentified member of the Srebrenica Armed Forces. After a brief conversation Naser Orić slapped Mitar Savić, whereupon he shot at him from a Colt pistol-revolver from the distance of one meter, whereupon Savić fell down to the ground, after which Sabahudin Muhić aka Mrčo fired a burst from an automatic rifle into Savić's body, which resulted in Savić's death.

197. Witnesses O1, Stojanka Savić and Vesna Ivanović testified about the circumstances referred to in Count 3 of the Indictment.

198. As is the case with preceding Counts, Count 3 of the Indictment is also primarily based on the evidence given by Witness O1, for which reason the Panel will first analyze his evidence.

Evidence given by Witness O1

199. Testifying about the circumstance referred to in Count 3 of the Indictment, Witness O1 stated at the main trial that in the late fall of 1992 members of the Army of B-H carried out an operation against the village of Kunjerac and that he, too, participated in it. The witness described how they came from Pirići to Kunjerac, where on one road he came across the Accused Naser Orić and other members of the Army of B-H and where he

saw five captured members of the VRS, among whom he only recognized Mitar Savić aka Mačak, who had been a photographer in Bratunac, according to his knowledge.

200. The witness added that on that occasion Mitar Savić was in a uniform, that he was short and fat and sported long moustaches. The witness also said that he was hiding from Mitar Savić so that Savić would not see him, and that he was watching the Accused Naser Orić asking Savić some questions. The witness added that Mitar Savić was impertinent to the Accused Naser Orić and that he opposed him in a high-pitched voice asking him: "What do you want, I have no respect for you, none whatsoever,"⁴³ whereupon he saw that the Accused Naser Orić, who was provoked by Mitar Savić's reaction, started beating him and then took his Colt and shot Mitar Savić at his chest, due to which Savić fell in front of the Accused Orić, whereupon the Accused pressed the pistol against Savić's chest and fired two shots at him.

201. Witness O1 stated that immediately after that he saw the Accused Sabahudin Muhić taking an automatic rifle and firing a burst at Mitar Savić, which the witness was watching from a distance of 5-8 meters, whereupon he approached Mitar Savić's body in order to see whether he was dead.

202. The witness added that two other persons were killed subsequently, but said that he did not know them, and did not relate the circumstances under which they were killed.

203. The Defense for the Accused Naser Orić stated in the course of the cross-examination of Witness O1 that, unlike in the evidence given at the main trial, the witness did not mention the killing of Mitar Savić in his statement given in the investigation in 2014 (Witness Examination Record made by the Prosecutor's Office No. T20 0 KTRZ 0007663 13 of 10 July 2014, tendered as Defense Exhibit O1-6).

204. The witness again explained this with the fact that at that time he did not know the Prosecutor, that he was not sure who he was talking to, that is, whether he could speak freely about certain events and whether it would jeopardize his safety somehow.

205. The Panel will not particularly comment here on the reasons why in the 2014 investigation Witness O1 did not present to the Prosecutor's Office the facts and circumstances related to the charges referred to in Count 3 of the Indictment, as the Panel

commented on it in the previous section when analyzing Witness O1's evidence about the circumstances referred to in Counts 1 and 2 of the Indictment.

Comparison of Witness O1's evidence with other adduced evidence and analysis thereof

206. The Panel stresses that Witness O1's statements about the actions undertaken by the Accused are not corroborated by the other adduced evidence either. The Panel especially stresses that Witness O1's statement is contrary to the statement of witness Stojanka Savić, who said that she had received the information about Mitar Savić's death directly from his fellow comrade who had eye-witnessed his death. In the Panel's opinion, as wife of the killed Mitar Savić, the witness had the strongest motive for all the facts and circumstances under which her husband got killed to be established.

207. Witness Stojanka Savić was examined at the main trial and she presented the indirect information she had about the killing of her husband, Mitar Savić.

208. At the main trial the witness said that her husband Mitar Savić had gone to the frontline at Kunjerac on 13 December 1992, that he had been deployed there by the army commander to guard the water installation, and that she heard that the attack on Kunjerac had happened on 14 December 1992. The witness added that her husband was found two months later, that his body was transported in front of the Health Center in Bratunac on 16 February 1993, and that some 15 days from his discovery she received information about his killing from her husband's comrade, one Zoran, who told her that on that occasion he had been in a trench together with her husband. The witness also said that she learned from Zoran that there were four of them in the trench and that Zoran told her husband Mitar Savić to shoot from a machine gun since one Zoran aka Mrki, who had manned the gun, had got killed before, whereupon Mitar Savić started getting up at which moment he was hit by a bullet in his mouth and killed on the spot.

209. Finally, the witness said that she had not seen her husband's dead body, but that she was told in an infirmary in Bratunac that he had a wound to his mouth, that he was missing a tooth and half a moustache.

⁴³ Transcript of 23 February 2016, p. 21.

210. The statement of Mitar Savić's wife was corroborated by the statement of witness Vesna Ivanović, who carried out the identification of Mitar Savić's body.

211. Witness Vesna Ivanović stated that on 16 February 1993, in front of the Health Center in Bratunac she saw Mitar Savić's wife in tears, who told her that four bodies were transported there including her husband's body, but that she did not dare go down to the morgue to see his dead body. Witness Vesna Ivanović had known Mitar Savić, so, asked by his wife, she went to the morgue to see the dead body and she identified Mitar Savić and Zoran Trišić. The witness stressed that she did not examine the dead body, she only identified it. The witness said that the referenced four dead bodies that were brought there were registered as missing as of 14 December 1992, the day of the attack on Bjelovac, and that in that period Mitar Savić was at the locality of Kunjerac, which the witness knew because one month prior to the attack Mitar Savić had paid her a visit and told her that he would be going to Kunjerac.

212. The Panel accepted the respective statements of witnesses Stojanka Savić and Vesna Ivanović given that they were clear, convincing and mutually consistent with respect to essential circumstances.

213. Given the foregoing, and the fact that with respect to Count 3 of the Indictment as well Witness O1 was the only one who incriminated the Accused Naser Orić and Sabahudin Muhić in his statement at the main trial, and that the statement was not corroborated by the other adduced evidence, the Panel *could not establish beyond any reasonable doubt, based only on the statement of Witness O1*, that it was exactly the Accused Naser Orić and Sabahudin Muhić who carried out the act of killing Mitar Savić, hence, guided by the principle of *in dubio pro reo*, the Panel acquitted the Accused Naser Orić and Sabahudin Muhić of the charges under this Count of the Indictment as well.

214. In accordance with the established standards of proof, and given the fact that the Panel did not find that the evidence adduced by the Prosecution, listed and evaluated separately in the previous part of the reasoning of the Judgment, by its substance and quality possessed the required force of plausibility which would allow one to conclude beyond reasonable doubt that the Accused Naser Orić and Sabahudin Muhić committed the criminal offense the Indictment charged them with, the Panel did not find it necessary to analyze in more detail the evidence adduced by the Defense for the Accused.

General comment on the evidence given by Witness O1

215. Finally, the Panel will once again comment on the statement of Witness O1, given the fact that it is a witness who, as the key witness for the Prosecution, was examined about the circumstances referred to in all three Counts of the Indictment.

216. First of all, the Panel stresses, as already analyzed in the above reasoning of the Judgment, that the evidence given by Witness O1, with respect to the reference to the facts and circumstances concerning all three Counts of the Indictment, contains a number of inconsistencies, contradictions, illogical statements, and that it is not corroborated by the evidence given by the other examined witnesses or the adduced documentary evidence.

217. The Trial Panel also stresses that with respect to all three Counts of the Indictment the chronology of account given by Witness O1 is identical as is the pattern of behavior of Witness O1, the injured parties and the Accused. In all three cases Witness O1 said that he had come to the scene but he did not provide the details of his arrival. After that, he described the questioning of the prisoners in an identical manner, that is, that in all three cases the prisoners were questioned by the Accused Naser Orić while he was watching it mainly from the same distance, which distance was not sufficient for him to hear the Accused Orić's questions or the prisoners' answers. It is symptomatic that during the interrogation by the Accused Naser Orić all three prisoners, Slobodan Ilić, Milutin Milošević and Mitar Savić, demonstrated disrespect and impertinence to the Accused, which behavior of the injured parties in the given circumstances in all three cases provoked a reaction of the Accused Orić, according to Witness O1. The Accused then undertook the specifically described acts of shooting from firearms at the injured parties, whereupon the Accused Sabahudin Muhić did the same relative to Counts 2 and 3 of the Indictment, that is, he fired bursts from firearms at the injured parties.

E. CONCLUSION

218. In application of its discretion, the Panel evaluated all pieces of adduced evidence and found that in the case at hand the evidence by Witness O1 was not sufficiently convincing, logical, or consistent with the other adduced evidence, and, as stated

previously, the Panel therefore concluded that his evidence did not constitute a reliable factual basis on which it would be possible to establish beyond reasonable doubt the guilt of the Accused Naser Orić and Sabahudin Muhić. Therefore, in the case at hand, the Panel found it justified to apply the principle of *in dubio pro reo*, that is, the rule according to which the facts that are to the detriment of the accused person must be established with absolute certainty, that is, beyond reasonable doubt, and if there exists a doubt with respect to such facts, as the Panel found did exist in the case at hand, they cannot be regarded as established. On the other hand, the other principle of the referenced rule is that the facts that are in favor of the accused person are regarded as established, even if they are only probable.

219. By having stipulated that the accused person shall be acquitted of the charges if it is not proven that he committed the criminal offense he is charged with (Article 284(c) of the CPC B-H), the legislator implicitly but unambiguously enabled application of the principle of doubt to the benefit of the accused. Therefore, if the available evidence provides only certain indications that the Accused committed the offense that is the subject-matter of the charges, he must be acquitted on the basis thereof, hence, the Court cannot, that is, must not render a conviction unless it is convinced firmly and without any dilemma of the existence of the guilt of the Accused.⁴⁴

220. Pursuant to the referenced principle, and mindful of the fact that in the case at hand the Prosecution did not prove *beyond reasonable doubt* that the Accused Naser Orić and Sabahudin Muhić committed the criminal offense they were charged with, the Court, acting pursuant to Article 284(c) of the CPC B-H, rendered a judgment acquitting the Accused.

F. DECISION ON THE COSTS AND CLAIMS UNDER PROPERTY LAW

221. Pursuant to Article 189(1) of the CPC B-H, the costs of the criminal proceedings referred to in Article 185(2)(a)-(f) of the CPC B-H, as well as the necessary expenditures of the Accused and the necessary expenditures and remuneration of the Defense Attorneys shall be paid from the budget.

⁴⁴ See Judgment by the Appellate Panel of the Court of B-H in *Ranko and Rajko Vuković* No. X-KRŽ-05/217 of 13 August 2008.

222. Pursuant to Article 198(3) of the CPC B-H, the injured party Jelica Ilić is hereby instructed to pursue her claim under property law in a civil action.

RECORD-TAKER

Legal Advisor-Assistant

Samira Kustura Čolić

PRESIDING JUDGE

JUDGE

Šaban Maksumić

LEGAL REMEDY: The parties to the proceedings and the Defense Attorneys may file an appeal from this Judgement with a Panel of the Appellate Division of the Court within 15 (fifteen) days from the day of the receipt of a written copy thereof.

Pursuant to Article 293(4) of the CPC B-H, the injured parties may contest the Judgment only with respect to the Court's decision on the costs of the criminal proceedings and with respect to the decision on the claim under property law.

*The Appeal shall be filed with the Court in a sufficient number of copies.

G. ANNEX I

The facts established by the ICTY in the Trial Judgment in *Prosecutor v. Naser Orić*, No. IT-03-68-T, dated 30 June 2006, which have been admitted as proven:

1. By 18 April 1992, the day Srebrenica fell to the Serbs, nearly all representatives of the municipal authorities had left Srebrenica town. In the weeks that followed, most Bosnian Muslims who remained behind hid in the surrounding woods. After the recapture of the town subsequent to 8 May 1992, there was a pressing need to coordinate the local Bosnian Muslim groups under a single military command in order to organise an effective defence.
2. The Trial Chamber finds that while the legitimacy, and even the existence, of the Bajramović Decision has been contested by some, it is undoubtedly the basis upon which local leaders in the Srebrenica area organised themselves after the start of hostilities. The Bajramović Decision marks the establishment of the Srebrenica TO Staff, although this provided only a rudimentary form of defence structure.
3. During a meeting held on 3 September 1992, the Srebrenica TO Staff, referring to itself for the first time as the 'Srebrenica Armed Forces Staff', established an Operations Staff as one of its constituent bodies. It appointed Osman Osmanović both as chief of the Operations Staff and as chief of staff of the Srebrenica Armed Forces Staff. The decision also provided for the possibility of merging the Operations Staff with the Srebrenica Armed Forces Staff, which ultimately took place on 14 October 1992. On 19 September 1992, Osman Osmanović proposed the names of 11 people to head the respective departments of the Operations Staff, a proposal which was adopted at a joint meeting of the Srebrenica War Presidency and the Srebrenica Armed Forces Staff on the same day. From that date onward, the Operations Staff, with only slight variance in composition, began meeting regularly to discuss issues both of a civilian and military nature, such as maintaining public order and planning military activities.
4. Members of both the Operations Staff and the Srebrenica Armed Forces

Staff soon came to realise that a merger between them would increase military efficiency. Hence, on 14 October 1992, they decided to merge into one joint staff, to be named the Srebrenica Armed Forces Staff.

5. On the same day, a decision on the structure of the Srebrenica Armed Forces was adopted by the still existing Operations Staff, according to which the Srebrenica Armed Forces would be composed of the following units: 1st Potočari Brigade, 2nd Sućeska Brigade and 3rd Karačići Brigade. Furthermore, six independent battalions were envisaged: 1st Srebrenica Battalion, 2nd Srebrenica Battalion, 3rd Biljeg Battalion, 4th Osmače Battalion, 5th Skenderovići Battalion, and 6th Luka Battalion. However, the Trial Chamber heard little evidence concerning the manner in which the Srebrenica Armed Forces operated on the ground.
6. As Bosnian Serb military activity in the area intensified from November 1992 onward, attempts were made to join Bosnian Muslim forces in eastern B-H under a single military authority. The establishment of a sub-region, which would have both a civilian and a military component, and encompass the Bosnian Muslim-held parts of the municipalities of Bratunac, Zvornik, Vlasenica and Srebrenica ("Sub-region"), was envisaged.
7. Throughout November 1992, a number of meetings were held in Konjević Polje and Cerska to discuss the implementation of the initiative. On 4 November 1992, at a meeting held in Konjević Polje, the Sub-region was formally proclaimed. The session was attended by a number of Bosnian Muslim representatives from the municipalities concerned, including Hamed Salihović, but not the Accused. At meetings in the days that followed, the War Presidency of the Sub-region was established, with Hamed Salihović as its President, the Accused as Commander of the Subregion, and Ferid Hodžić as Chief of Staff of the Sub-region.
8. In his capacity as President of the War Presidency of the Sub-region, Hamed Salihović was extremely active in trying to make the Sub-region operational. He issued reports to Tuzla, Sarajevo and the international community at large regarding the situation in eastern B-H via ham radio from Srebrenica. He also attempted to establish radio communications between Srebrenica and Cerska, which were isolated from each other.

9. Despite the strenuous efforts of Hamed Salihović, between November 1992 and demilitarisation of the Srebrenica enclave in April 1993, the Sub-region never materialised into an entity exercising political or military authority in eastern B-H. One integrated command over the armed groups of Kamenica, Cerska, Konjević Polje and Srebrenica was not to be achieved before demilitarisation. A number of factors made it impossible for the Sub-region to become functional. The main factor was the intense Serb attacks on Cerska and Konjević Polje, resulting in their complete isolation from Srebrenica. To a lesser extent, the time and effort devoted to alleviating the dire humanitarian situation caused by the Serb attacks also played a role in the inability of the Sub-region to materialise.
10. Between April and June 1992, Bosnian Serbs and Bosnian Muslims engaged in mutual fighting in the Ratkovići area. Evidence was heard that Bosnian Serbs attacked numerous Bosnian Muslim villages from the direction of Ratkovići, Dučići, Fakovići and Brađevina. Consequently, the inhabitants of these villages fled to the woods. On the morning of 21 June 1992, Bosnian Muslims attacked Ratkovići, Gornji Ratkovići and Dučići.
11. In the afternoon of 21 June 1992, Bosnian Serbs counter-attacked Ratkovići, Gornji Ratkovići and Dučići. Artillery coming from Magudovići and Fakovići destroyed some of the houses.
12. By the end of that day, all the buildings in the village of Ratkovići were burned to the ground. In Gornji Ratkovići, Polimći and Dvorište, “there were no roofs left [and] [t]here was [one] hundred per cent damage.”
13. Tensions between Bosnian Muslims and Bosnian Serbs in the area began to mount as early as 1991. During May and June 1992, Bosnian Serbs, including inhabitants of Bjelovac, attacked Bosnian Muslim villages in the vicinity of Bjelovac, such as Zalužje and Voljevica, as well as Bosnian Muslim neighbourhoods in ethnically-mixed villages. As a result, Bosnian Muslims fled their homes. Bosnian Serb attacks on the dispersed Bosnian Muslim population from the direction of Bjelovac, Ložnička Rijeka, Kunjerac, Sikirić and Zalužje took place between mid-October and the beginning of December 1992. On the early morning of 14 December 1992,

Bosnian Muslims attacked Bjelovac and Sikirić.

14. The attack on Bjelovac began when Bosnian Muslims entered the village shooting. Although the attack caught the Bosnian Serbs by surprise, some were able to mount a defence, firing back on the attackers from their houses. Others looked for shelter or tried to escape. At around 9:30 a.m., and subsequently at different times during the day, while shooting continued, two planes flying from the direction of Bratunac circled the area dropping bombs. The concentration of bombing occurred over the area of Sikirić and Ložnička Rijeka.

H. ANNEX II – EVIDENCE

1. Prosecution evidence

(a) Witnesses and expert witnesses for the Prosecution:

1. Witness O1 – 23 February 2016 and 8 March 2016 (via video-link)
2. Milomir Lazarević – 22 March 2016
3. Vidoje Ilić – 5 April 2016
4. Milan Jeremić – 5 April 2016
5. Branislav Stanojević – 19 April 2016
6. Radivoje Ostojić – 19 April 2016
7. Jelica Ilić – 10 May 2016
8. Asim Mehić – 31 May 2016
9. Radmila Nikolić – 31 May 2016
10. Stojanka Savić – 7 June 2016
11. Expert witness, Dr. Rifat Kešetović – 12 July 2016
12. Expert witness, Dr. Zoran Stanković – 23 August 2016
13. Vesna Ivanović – 6 September 2016
14. Expert witness, Professor Dr. Alma Bravo-Mehmedbašić – 4 October 2016
15. Expert witness, Primarius Dr. Danilo Mihajlović – 4 October 2016
16. Ibran Mustafić – 18 October 2016

(b) Documentary evidence tendered by the Prosecutor's Office:

- T-1 Autopsy record to the name of Milutin (father's name Stevo) Milošević, 22 March 1993, medical examiner LtCol Dr Zoran Stanković (also the evidence of the Defense)
- T-2 Finding and opinion: A team neuropsychiatric forensic examination of Ibran Mustafić, signed by Professor Dr Alma Bravo-Mehmedbašić, Primarius Dr Zorica Lazarević, Primarius Dr Danilo Mihajlović, Sokolac, 3 September 2016
- T-3 Photo-documentation of the Tuzla Canton MUP (Ministry of the Interior) No. 08-02/3-5-04.6-220/10, 16 February 2011
- T-4 Death certificate to the name of Slobodan Ilić No. 02-4/202-458/15, 25 August 2015
- T-5 Death certificate to the name of Milutin Milošević No. 02-4/202-589/09, 19 October 2009
- T-6 Death certificate to the name of Mitar Savić No. 02-4-202-457/15, 25 August 2015
- T-7 Record of site visit of 26 August 2015
- T-8 Photo-documentation of the Bijeljina CJB (Public Security Center) No. 678/15, 24 August 2015
- T-9 Photo-documentation of the Bijeljina CJB No. 679/15, 24 August 2015
- T-10 Photo-documentation of the Bijeljina CJB No. 680/15, 24 August 2015
- T-11 Presidency of the Republic of B-H: Order No. 1921/92 of 23 August 1992 – ICTY No. 00498463
- T-12 Presidency of the Republic of B-H: Order No. 1291/92 of 23 August 1992, published in the *Official Gazette of the Republic of B-H* No. 15 of 5 September 1992
- T-13 Army of the Republic of B-H, Command of the 8th Operations Group – *Srebrenica*, Proposal No. 130-28-23/94 of 10 April 1994 – ICTY No. 8811003323
- T-14 Army of the Republic of B-H, Command of the 8th Operations Group – *Srebrenica*, Proposal No. 130-28-122/94 of 10 September 1994 – ICTY No. 8811003163 through to 8811003166

- T-15 Army of the Republic of B-H, Command of the 8th Operations Group – Srebrenica, Proposal No. 04-28/95 of 23 February 1995 – ICTY No. 8811003734 through to 8811003737**
- T-16 Army of the Republic of B-H, Command of the 8th Operations Group – Srebrenica, Proposal No. 130-28-08/94 of 1 April 1994 – certified copy**
- T-17 Army of the Republic of B-H, Command of the 28th Division, Proposal No. 04/55/95 of 4 May 1995**
- T-18 Army of the Republic of B-H, Command of the 8th Operations Group – Srebrenica, Proposal No. 130-28-204/94 of 9 December 1994 – ICTY No. 01837569 through to 0183760**
- T-19 Army of B-H, Operations Staff Srebrenica, Decision No. 11/92 of 2 July 1992, ICTY No. 01801587 of 2 July 1992**
- T-20 Army of B-H, Operations Staff Srebrenica, Decision No. 11/92 of 2 July 1992**
- T-21 Srebrenica Armed Forces Staff, Order of 28 August 1992, ICTY No. 88 11003760**
- T-22 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Decision No. 06/92 of 3 September 1992, ICTY No. 8811003754**
- T-23 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 4/92 of 7 September 1992, ICTY No. 881100200**
- T-24 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 28/92 of 15 October 1992, ICTY No. 8811002002**
- T-25 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 29/92 of 15 October 1992, ICTY No. 8811003756**
- T-26 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 34/92 of 20 October 1992, ICTY No. 8811002013**
- T-27 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 49/92 of 29 October 1992, ICTY No. 8811002004**
- T-28 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 51/92 of 31 October 1992, ICTY No. 8811001992**
- T-29 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 183/92 of 24 December 1992, ICTY No. 8811001991**
- T-30 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 185/92 of 25 December 1992, ICTY No. 8811002008**

- T-31 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 101/93 of 3 February 1993, ICTY No. 8811001971
- T-32 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 116/93 of 5 February 1993, ICTY No. 8811003370
- T-33 Republic of B-H, Armed Forces Supreme Command Staff, Letter No. 05-1/6-16 of 11 July 1994, ICTY No. 01807376
- T-34 Army of the Republic of B-H, Srebrenica Armed Forces Staff, Order No. 171/92 of 22 December 1992, ICTY No. 01239544
- T-35 Decision to Declare an Imminent Threat of War, came into effect at the moment of rendering -- “immediately”; published in the *Official Gazette of the Republic of B-H* No. 1/92, 9 April 1992.
- T-36 Decision of the Presidency of the Republic of B-H to declare state of war, published in the *Official Gazette of RB-H* No.7/92, 20 June 1992
- T-37 Decision of the Presidency of the Republic of B-H to abolish the state of war, published in the *Official Gazette of RB-H* No. 50/95
- T-38 Decree Law on the Armed Forces of the Republic of Bosnia and Herzegovina published in the *Official Gazette of RB-H* No. 4/92, 20 May 1992
- T-39 Decision on the forming of the Army of the Serb Republic of Bosnia and Herzegovina, published in the *Official Gazette of the Serb People in B-H* No. 6/92, 12-17 May 1992
- T-40 Letter of the State Investigation and Protection Agency No. I-16-17-04-2-964-14/11 of 24 August 2015, with attachments
- T-41 Letter of the Republika Srpska MUP, Bijeljina CJB, No. 10/02/1-230-1080/08 of 23 December 2008, with attachments
- T-42 *Iza zatvorenih vrata, Srebrenica 1992-1995 [Behind Closed Doors, Srebrenica 1992-1995]* by Fahrudin Alić, The Netherlands, 2015, publisher: *OFF-SET Tuzla*, pp. 170-177
- T-43 *Information which is to be included in the chronicle of the Army of B-H*, forwarded to the Sector for Moral Guidance of the 2nd Corps, Tuzla, No. 69/94, 7 March 1994, ICTY No. 0645510 through to 06455154, attachment, electronic certification by the Mechanism for International Criminal Tribunal

2. Defense evidence

(a) Witnesses for the Defense for the Accused Naser Orić and Sabahudin Muhić:

1.	O-2	13 December 2016
2	Sabit Halilović	13 December 2016
3	Mehmed Efendić	27 December 2016
4	Suljo Čakanović	27 December 2016
5	Zulfo Salihović	24 January 2017
6	Mirsad Mustafić	24 January 2017
7	Suljo Hasanović	7 February 2017
8	Salko Tursunović	7 February 2017
9	Izet Ibrić	28 February 2017
10	Fadil Salihović	28 February 2017
11	Sabahudin Tutundžić	15 March 2017
12	Fikret Mustafić	15 March 2017
13	Alija Muškić	28 March 2017
14	O-3	28 March 2017
15	Džemail Bećirević	11 April 2017
16	Jasmin Sinanović	11 April 2017
17	Omer Delić	25 April 2017

(b) Documentary evidence tendered by the Defense for the Accused Naser Orić and Sabahudin Muhić:

O-I-1	Excerpt from criminal records for protected Witness O1 from Bratunac PS (Police Station) No. 12-5/01-234-1-22/16, 10 February 2016
O-I-2	Decision by the Cantonal Prosecutor's Office of Tuzla Canton No. A-I-21/16, 9 February 2016
O-I-3	Decision by the Tuzla MUP, Tuzla Canton, No. 08-01-04.2-2-78/16, 11 February 2016
O-I-4	Letter of the Federation Ministry for Veterans and Disabled Veterans of the Defense and Liberation/Homeland War, No. pov.br. 07/1-03-81-1/16, 22 February 2016

- O-I-5** Official Note, Bijeljina CJB, Bratunac PS, No. 12-1-7/02-230- /03, 3 September 2003, made by Authorized Official Person Maksim Maksimović
- O-I-6** Witness Examination Record for O1 made by the Prosecutor's Office of B-H No. T20 0 KTRZ 0007663 13, 10 July 2014
- O-I-7** Request for conducting an investigation against Naser Orić *et al.*, Office of the War Crimes Prosecutor, Republic of Serbia, Belgrade, No. KTRZ-16/11, 4 August 2011
- O-I-8** Report on the compiled intelligence, MUP of the Republic of Serbia, Police Directorate, Crime Police Administration, Service for discovering war crimes, 03/4-7-1 str.conf. No. 230-4018/15-1, 31 July 2015, Belgrade
- O-I-9** A set of documents of the Federation Ministry for Veterans and Disabled Veterans of the Defense and Liberation/Homeland War No. pov. 01-41-1/16-1, 11 February 2016 (29 documents)
 - O-I-9-1 Letter No. pov. 07/49-03/6-15/16, 9 February 2016
 - O-I-9-2 Certificate No. 07/49-41/1-3-45-1/2011, 17 December 2015
 - O-I-9-3 Record No. 05-R-41-1098/11, 17 December 2015
 - O-I-9-4 Letter No. 07/49-41/1-3-45-2/15, 23 December 2015
 - O-I-9-5 Letter No. 07/49-41/1-3-45-1/15, 23 December 2015
 - O-I-9-6 Letter No. 07/49-41/1-3-45/11, 17 December 2015
 - O-I-9-7 Summons No. 07/49-41/1-3-45-1/2011, 18 December 2015
 - O-I-9-8 Delivery receipt of 19 December 2015
 - O-I-9-9 Certificate No. 07/49-41/1-3-45/2011, 4 April 2013
 - O-I-9-10 Record No. 05-R-41-1098-1/11, 21 January 2011
 - O-I-9-11 Hand-written request No. 17-08-04-05-1-23/2005, 27 January 2005
 - O-I-9-12 Unit Personal File
 - O-I-9-13 Excerpt from the list of the Armed Forces
 - O-I-9-14 Decision No. UP-1 17-08-04-05-1-23/2005, 1 February 2005
 - O-I-9-15 Letter No. UP-1 17-08-04-05-1-23/2005, 1 February 2005
 - O-I-9-16 Official Note of 27 September 2005, Banovići
 - O-I-9-17 A specialist doctor's Finding and Opinion for Witness O1 of 19 September 2005
 - O-I-9-18 Certificate No. 27-19-18-7-34-1-9-402/05, 11 May 2005
 - O-I-9-19 Information No. 07/49-41/1-3-45-1/15, 23 December 2015
 - O-I-9-20 Decision No. UP-I-03-41-ZKZ-2472/13, 23 December 2015

- O-I-9-21 Decision No. 06/01-41-560-15/05, 4 December 2006
- O-I-9-22 Certificate No. 17-08-04-03-22-52-953/2004, 27 September 2005
- O-I-9-23 Certificate of reevaluation No. 17-08-04-03-22-953/2004, 27 September 2005
- O-I-9-24 Finding and opinion of medical board in reevaluation procedure No. 4239-R, 21 February 2007
- O-I-9-25 Letter No. 06/01-41-560-15/05, 20 September 2005
- O-I-9-26 Certificate No. 27-19-18-7-34-1-9-402/15, 11 May 2005
- O-I-9-27 Decision No. pov. 03-0721/96, 24 April 1996
- O-I-9-28 Record No. 05-R-41-1098-1/11, 21 January 2011
- O-I-9-29 Report by the Tuzla University Clinical Center No. 239/06, 21 March 2006
- O-I-10** Document from the ICTY archives concerning the deployment of forces (ICTY No. O0641755)
- O-I-11** Certificate on the wounding of the Accused Naser Orić No. 07/12-03/2-331/15, 28 September 2015
- O-I-12** Excerpt from the minor offense records and documentation of the Court in Živinice for protected Witness O1, No. 033-0-Pov-16-00003 Pov, 3 March 2016
- O-I-13** Witness Examination Record for Vidoje Ilić made by Republika Srpska MUP, Bijeljina CJB, Srebrenica PS, No. 12-1-6/02-467/05, 14 October 2005
- O-I-14** Official Note of 16 June 1993 made by Dusan Jovanovic, certified by ICTY
- O-I-15** Witness Examination Record for Radivoje Ostojić made by Republika Srpska MUP, Bijeljina CJB, Srebrenica PS, No. 12-1-5/02-250/06, 3 October 2006
- O-I-16** Letter by the Federation Ministry for Veterans and Disabled Veterans of the Defense and Liberation/Homeland War No. 07/1-03-82-1/16, 22 February 2016
- O-I-17** Witness Examination Record for Radmilo Nikolic No. 10-1-7/01-230-515/09, 8 October 2009
- O-I-18** Complementary report on undertaken measures and actions No. I-16-17-04-2-964-20/11, 1 September 2015, with the following attachment: Witness Examination Record for Alija Muškić, State Investigation and Protection Agency, Tuzla Regional Office, No. 16-17-04-2-212/15, 31 August 2015 (the original inspected)
- O-I-19** Final Judgment by the Municipal Court in Banovići No. 127 0 K 001885 12 K, 13 January 2014; Letter by the Court of B-H No. S1 1 K 014977 15 Kri of 7 March 2016; Letter by the Municipal Court in Banovići No. 127 0 K 001885 12 K of 3 March 2016

- O-I-20** Letter by the Court of B-H No. S1 1 K 014977 15 Kri of 17 April 2017; Letter by the Municipal Court in Banovići No. 127-0-Su-17-000-001- Pov of 7 April 2017; Permission for inspection of file; Information, Municipal Court in Banovići No. 127-0-Su-17-000-001-Pov, 7 April 2017.
- O-I-21** Permission for inspection of file, Municipal Court in Banovići No. 127-0-Su-17-000-001-Pov-1, 7 April 2017
- O-I-22** Permission for inspection of file, Municipal Court in Banovići No. 127-0-Su-17-000-001-Pov-2, 7 April 2017
- O-I-23** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-1445/16, DO 919/16, 30 January 2017; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16 DO-919/16, 30 January 2017; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16 DO-919/16, 26 December 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16 DO-919/16, 7 November 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16 DO-919/16, 7 October 2016
- O-I-24** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-4008/16, DO-2343/16, 15 September 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-4008/16, DO -2343/16, 15 September 2016
- O-I-25** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-1445/16 DO -919/16, 7 September 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP – 7-1445/16, DO-919/16, 7 September 2016
- O-I-26** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-3666/16,DO-2098/16, 1 August 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7—3666/16,DO – 2098/16, 1 August 2016
- O-I-27** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-3156/16, DO-1801/16, 27 June 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-3156/16,DO-1801/16, 27 June 2016

- O-I-28** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-1445/16, DO-919/16, 7 June 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16,DO-919/16, 7 June 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16,DO-919/16, 23 May 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16,DO-919/16, 25 April 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-1445/16,DO-919/16, 29 March 2016
- O-I-29** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP – 7-792/16, DO 763/16, 15 March 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-792/16 DO – 763/16, 15 March 2016
- O-I-30** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-412/16, DO -383/16, 22 January 2016; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP-7-412/16, DO -383/16, 8 February 2016
- O-I-31** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-6226/15, DO -3818/15, 16 December 2015; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP – 7-6226/15 DO-3818/15, 16 December 2015
- O-I-32** Information of Department of Judicial Police of Courts in Tuzla Canton, No. SP-7-5469/15, DO -3615/15, 1 December 2015; Official Note of the Department of Judicial Police of Courts in Tuzla Canton, Banovići Station, No. SP – 7-5469/15 DO-3615/15, 1 December 2015
- O-I-33** Sections of the book entitled *Planirani kaos 1990-1996. [A Planned Chaos 1990-1996]* by Ibran Mustafić, the 2008 edition, pp. 187, 188, 222, 223, 224, 225, 226, 227, 286, 287, 288, 289, 290, 291, 325, 326.
- O-I-34** Conclusion of the personnel board of the Party of Democratic Action No. 358/94 of 3 June 1994
- O-I-35** Overview of the security situation, Srebrenica SJB (Public Security Station), ICTY No. 01837463

- O-I-36** Request to dismiss Ibran Mustafić from the post of a deputy in the Assembly of the Republic of B-H and strip him of his parliamentary immunity, Presidency of Srebrenica Municipality, No. 01-88/94, 21 March 1994. ICTY No. 0702-9175
- O-I-37** Document of Republika Srpska MUP – State Security Department (RDB) – Sarajevo, No. 05-2000/95 of 13 July 1995, forwarded to Deputy Minister of the Interior of Republika Srpska and the head of RS MUP – Bijeljina Public Security Department (RJB). ICTY No. 0324-3435
- O-I-38** E-mail message by Ljiljana Bulatović of 24 May 2008, ICTY No. 0706-3801
- O-I-39** Letter by the Federation Ministry for Veterans and Disabled Veterans of the Defense and Liberation/Homeland War No. POV-05-41-4/16, 18 March 2016. The first instance Decision of the Service for Veterans and Disabled Veterans Affairs of Tuzla Municipality, No. 10-41-UP/LI/2-400/05, 21 April 2014. The second instance Decision by the Federation Ministry for Veterans and Disabled Veterans of the Defense and Liberation/Homeland War No. UP-II-03-41-690/14, 22 June 2015. Finding and opinion of the first instance medical board for forensic medicine analysis in Sarajevo about a review of the persons who fall within the scope of the Law on the Rights of Defenders and Their Families No. RVI-POV-TZ-61/14 of 13 March 2014. Finding and opinion of the second instance medical board for forensic medicine analysis in Sarajevo about a review of the persons who fall within the scope of the Law on the Rights of Defenders and Their Families No. DOV-RVI-SA- 83/14 of 25 February 2015.
- O-I-40** Order of the General Staff of the Armed Forces of the Republic of B-H, No. 02/349-330 of 10 July 1992, ICTY No. 01805444-01805445
- O-I-41** Data about a missing person–Slobodan Ilić; Jelica Ilić, of 4 August 2000
- O-I-42** List of the persons killed in Sandići, ICTY No. 02075896
- O-I-43** Official Note of the Municipal Court in Banovići No. 127-0-Su-17-000-001-Pov-2, Banovići, 20 April 2017
- O-I-44** Indictment of protected Witness O1 filed by the Cantonal Prosecutor's Office of Tuzla Canton, No. T03 0 KT 0039686 14 of 7 April 2015
- O-I-45** Statement of Branislav Milošević of 8 April 1993, given in Bratunac, Bratunac Police Station, ICTY No. 03728048
- O-I-46** Witness Examination Record for Branislav Milošević No. **T 20 0 KTRZ 005015 07**, 25 May 2017

- O-I-47** Video-recording *Founding of the Bratunac Brigade* together with an article downloaded from Wikipedia web portal
- O-I-48** Map of Bjelovac.