

Bosna i Hercegovina

Босна и Херцеговина



The Court of Bosnia and Herzegovina

Case No: S1 1 K 01 4243 13 Kri

Date of pronouncement: 6 December 2013

Written copy sent on: 27 December 2013

Presiding judge: DAVORIN JUKIĆ

Member: Darko Samardžić

Member: Jasmina Kosović

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

vs.

Osman Brkan

VERDICT

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

Sanja Jukić

Defence Counsel for the Accused:

Duško Tomić

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No: S1 1 K 014243 13 Kri

Sarajevo, 6 December 2013

The Court of Bosnia and Herzegovina, sitting on a Trial Panel consisting of Judge Davorin Jukić as the Presiding Judge, and Judges Darko Samardžić and Jasmina Kosović as the Panel members, with the participation of Legal Advisor – Assistant Tanja Curović as the record-taker, in the criminal case of the Accused Osman Brkan, charged with the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH), in conjunction with Article 29(1) of the CC of BiH, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: the Prosecutor's Office of BiH) number T 20 0 KTRZ 0004009 12 of 19 December 2011, which was amended on 21 November 2013, having held an oral, main public hearing in the presence of the Prosecutor of the Prosecutor's Office of BiH Sanja Jukić, the Accused Osman Brkan and his Defence Counsel Duško Tomić, following a confidential deliberation and voting, rendered and on 6 December 2013 the Presiding Judge publicly announced the following:

V E R D I C T

The Accused Osman Brkan, son of Alija and Rahima maiden name Fišić, born on 8 November 1961 in Grušća, Konjic Municipality, a labourer, married, father of two children, place of residence in .., ... by ethnicity, citizen of ..., has no previous convictions.

Pursuant to Article 284(c) of the Criminal Procedure Code of Bosnia and Herzegovina

THE ACCUSED IS ACQUITTED OF THE CHARGES

That

During the war in Bosnia and Herzegovina, at the time of the armed conflict in the territory of Bosnia and Herzegovina, as members of the Army of RBiH, together with other members of the Army of RBiH, they violated the rules of international humanitarian law, specifically Article 3(1)(a) and c) of the Geneva Convention relative to the Protection of Civilian Persons of 12 August 1949 in as much as he:

On or about 13 June 1992, as a member of the Army of BiH, together with other members of the Army of BiH, he came to the village of Blace, Municipality of Konjic, populated by Serbs, where they entered the house owned by Milutin Kuljanin and found some elderly women of Serbian ethnicity sitting on the couch, namely: Ana Kuljanin born in 1908, Danica Kuljanin, born in 1910, Cvijeta Kilibarda born in 1914 and Jelka Kilibarda born in 1911. When they saw the elderly women, Ibro Macić (whose case was separated from the others under the Decision of the Court of BiH No. S1 1 K 011047 13 Krl), fired an unspecified number of bullets at the elderly women, after which the Osman Brkan too fired a number of bullets from his rifle into the victims, thereby depriving them of their lives, and their bodies have never been found,

Whereby

He would have committed the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, in conjunction with Article 29 of the same law.

Pursuant to Article 189(1) of the CPC of BiH, the Accused Osman Brkan is hereby relieved of the duty to pay the costs of the criminal proceedings, which shall be paid from the budget appropriations of the Court of BiH.

Pursuant to Article 198(3) of the CPC BiH, the aggrieved parties are hereby instructed to take civil action to pursue their potential claims under property law.

I. REASONING

1. Under the Indictment of the Prosecutor's Office of BiH No. T 20 0 KTRZ 0004009 12 dated 6 March 2013, the Accused Osman Brkan was charged with the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH (killing), in conjunction with Article 29 of the same law (co-perpetration) by committing the acts explained in Counts 1 through 8. Under the same Indictment, the Accused Ibro Macić is charged with the criminal offence in violation of Article 173(1)(c) and e), in conjunction with Articles 180 and 29 of the CC of BiH for his actions described in Counts 1 through 8.
2. On 13 March 2013, the Preliminary Hearing Judge confirmed the Indictment. On 15 April 2013, the Accused Osman Brkan and Ibro Macić pleaded not guilty of the criminal offence charged against them.
3. The main trial started on 5 July 2013.
4. During the main trial, on 18 November 2013, the Panel rendered a decision to separate the criminal proceedings of Osman Brkan and Ibro Macić, and decided to conduct the proceedings against Osman Brkan under a new number - S1 1 K 0 14243 13 Kri. To that end, on 21 November 2013 the Prosecutor's Office of BiH filed a new amended Indictment against Osman Brkan ¹

1. PRESENTED EVIDENCE

(a) PROSECUTOR'S OFFICE OF BiH

5. During the evidentiary proceedings, the Prosecutor's Office of BiH examined the following witnesses: Salko Macić, Šeho Macić, Nurko Fišić, Mumin Fišić, Zajko Fišić, Hamdija Fišić, Jasminka Džumhur, Midhat Cerovac, Muharem Ahmetović, Dragan Matić, Željko Jurić, Velimir Kilibarda, Rajko Majić, Stoja Vukosav and Milosav Vukosav.
6. The list of documentary evidence presented and admitted in the case file by the Prosecutor is contained in Annex I to the Verdict and forms its integral part.

¹Amended Indictment of 18 November 2013 charging the Accused Osman Brkan with the criminal offence in violation of Article 173(1)(c), in conjunction with Article 29 of the CC of BiH.

(b) DEFENCE

7. During the evidentiary proceedings, the Defence examined the following witnesses: the accused Ibro Macić, Ševko Macić and the Accused Osman Brkan.

8. The list of documentary evidence presented and admitted into the case file by the Defence is contained in Annex Ia) of the Verdict and forms its integral part.

2. Closing Arguments

(a) Prosecutor's Closing Arguments

9. According to the BiH Prosecutor's Closing Arguments, their presented evidence undoubtedly proves that the Accused, in the manner, at the time, in the place and under the circumstances as described in the Operative Part of the Indictment, committed the criminal offences which satisfy all essential elements of the criminal offence charged against Osman Brkan. Also, both documentary evidence and testimony of the examined witnesses establish that the Accused committed the criminal offence as charged during the war in Bosnia and Herzegovina, at the time of the armed conflict in the territory of Bosnia and Herzegovina.

10. The acts of the Accused amount the grave violations under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, given that the victims of his acts were civilians who enjoy protection under the mentioned Fourth Geneva Convention. The Prosecution submits that the criminal offence was committed in the area of Konjic Municipality, the Accused committed it as a member of the Territorial Defence Municipal Headquarters of Konjic and/or Army of BiH member of one side to the conflict, the criminal offences were not justified by military necessity and, when the Accused committed the charged offences, he used his "superior" military position and the "subordinated" position of the civilians – aggrieved parties.

11. The Prosecutor proves the intent of the Accused through an analysis of the testimony of the examined witnesses. According to witness Šeho Macić, the Accused was aware that the rounds he fired from his weapon in the direction of the elderly women would kill them. This was precisely what the Accused wanted, and clearly shows his intent to kill. The Prosecutor refers to the testimony of witness Salko Macić, who saw the Accused on

the stairs of the house in which the old women were killed. Witness Hamdija Fišić confirmed to have arrived in Blace together with other members of the group. Passing by the house in which Ibro Macić, Halil Macić, Šeho Macić had earlier gone, he saw Osman Brkan there as well. Witnesses Mumin Fišić, Nurko Fišić and Zajko Fišić also stated to have seen Osman Brkan in Blace, but they could not confirm that the Accused opened fire because they did not enter the room.

12. In the further analysis, the Prosecution refers to the testimony of witness Midhat Cerovac who, after learning that the crime was committed, spent some time in the area of Blace village in a fact-finding mission. According to witness Lazar Vukosav, he identified the people, and due to the suspicion that Mirsad Fišić a.k.a. Kolumbo committed the killings, he ordered that couriers bring him in. After that, Fišić personally wrote and signed a statement about the events in the Blace village in which he confirmed the participation of the Accused in the commission of the criminal offence. Witness Jasminka Džumhur stated that the dead persons were women, but she did not enter the house nor did she order anyone to burn the bodies of the dead women. It follows from Exhibit T-4 that Lazar Vukosav saw the dead bodies of Danica Kuljanin, Ana Kuljanin, Jelka Kilibarda and Cvija Kilibarda on a couch in Milutin Kuljanin's house. Then, 25 days after this incident, he found burned couches, burned bodies and partially burned head bones in the same house. According to the Examination Record of witness Vasilija Kuljanin, admitted in the case file as Exhibit T-3, she personally drove the old women to Milutin Kuljanin's house and was the last person to see them alive. Witnesses Muharem Ahmetović and Dragan Matić also confirmed that the old women were dead. The Prosecutor presented a letter of the Missing Persons Institute of BiH to prove that the killed old women were still reported missing.

13. The Prosecutor concluded by saying that only witness Šeho Macić clearly stated who killed the civilians in Milutin Kuljanin's house. Although they were aware that the charges were based only on one direct eye-witness, his testimony was not at all questioned and the Accused was indicted. The Prosecutor finds this testimony most credible since Šeho Macić was not only a member of one side to the conflict, but he belonged to the same armed formation as the Accused. According to the Prosecution, this removes any suspicion about the credibility of his testimony. The only reason this witness gave his testimony was to establish the truth and achieve justice. The Prosecutor called upon the court to examine the testimony of witness Šeho Macić, evaluate its impartiality, consistency, homogeneity, and, bringing it in correlation with portions of other witnesses' testimonies, render a verdict finding the Accused guilty of the murder of four old women

which he committed together with Ibro Macić and substantially contributed to its commission.

(b) Defence's Closing Arguments

14. According to the Defence Counsel for the Accused Osman Brkan, a monstrous crime was committed in the Rakitnica canyon, in Blace. Top officials have done everything they could to cover up the truth about Blace, hiding behind the two men who have been prosecuted for "Blace": Ibro Macić, unfit for military service, and Osman Brkan, who completed only four classes of primary school.

15. The Defence Counsel argues that the crime was conceived with the aim and desire to ethnically cleanse Konjic from Serbs and Croats and to cover it up subsequently. He makes reference to the testimony of the witnesses heard during the main trial, starting with Šeho Macić whose testimony was different from all other witnesses since he was the only one who stated to have seen Osman Brkan inside the house shooting in the direction of the old women who were lying motionless, but he did not know if they had already been dead. The Defence pays special attention to the testimony of witness Salko Macić, Šeho Macić's full brother, who stated that he, Ibro Macić, Šeho Macić, Halil Macić and Mirsad Fišić entered the house, but he never mentioned Osman Brkan. It follows from his testimony that Mirsad Fišić - Kolombo brought the people to the Rakitnica canyon and Blace as part of the assignment to ethnically cleanse the area. All that was part of the plan in which witness Midhat Cerovac also participated and, according to the Counsel, the witness documented everything after the crime was committed, but he did not file a criminal report, nor did he initiate any proceedings.

16. Jasminka Džumhur was accomplice in concealing the crime in Blace, since she too saw Blace, but she never filed a criminal report. The Defence argues that this attack finalised the events which had started in May, when Serb houses in Konjic were burned down, people taken to camps, and children killed, for which Osman Brkan is now being charged as the weakest link. According to the Defence, Ramo Brkan, Osman Brkan's full brother, went to the house in which the crime took place and that was where the story took a turn, so that precisely that same Ramo Brkan now betrayed his own brother by refusing to testify and offering money to declare Osman mentally incapacitated.

17. The Defence refers to the testimony of Nurko Fišić and Ibro Macić who did not incriminate Osman. Witness Hamdija Fišić, who is even at present in fear of his brother Mirsad Fišić – Kolombo, stated that Halil Macić, Šeho Macić, Ibro Macić and another man he did not know went to the house, but Osman Brkan was not in that group. Ibro Macić is the only witness who was not afraid to say that he had seen Osman Brkan in the corridor, but the Defence argues that it was actually Ramo Brkan.

18. The Defence especially disputes the testimony of witness Šeho Macić, arguing that his is the sole evidence that Osman Brkan was in the room and fired in the direction of the old women, and that it is impossible to rule that the Accused Brkan committed the war crime on that basis only.

19. The Defence also makes reference to documentary evidence, specifically Defence Exhibit O-6, showing that Salih Žuljević was aware of the crimes in 1996 already and he informed Major Ibrahim Huskić of the Public Security Sector of the Army of BiH Corps; then Defence Exhibit O-2, in which Zejnil Delalić confirms that Midhat Pirkić attacked and destroyed the village of Blace, and the Counsel correlates this exhibit with the document on the prohibition to leave the Konjic Municipality, which was signed on 20 May by Omer Borić, Head of the Territorial Defence; then Defence Exhibit O-3 signed by Fikret Muslimović, Head of Security of the Army of BiH, which was distributed to all senior officers informing them that a number of criminal offences were committed in the area of Konjic, targeted against commercial and socially-owned property, and criminal offences resulting in the obstruction of the command and control system.

20. According to the Defence, these documents prove that a systematic and organised crime was committed in Blace, but the defendant Osman Brkan played a tragic role in it. What happened in Blace was a war crime, genocide, but it was attributed to the Accused Osman Brkan and covered up by senior officers in an organised manner. The Counsel concludes by moving the court to acquit the Accused Osman Brkan of the criminal responsibility.

21. The Accused Osman Brkan supported his Counsel's closing argument.

II. STANDARDS OF REVIEW AND GENERAL EVALUATION OF EVIDENCE

22. The Court has evaluated the evidence in this case in accordance with the CPC of BiH, primarily applying the presumption of innocence set forth in Article 3 of the CPC of BiH, as the general principle of law which places the burden of proof upon the prosecution to prove the guilt of the accused beyond a reasonable doubt.

23. Article 15 of the CPC lays down the principle of free evaluation of evidence as one of the fundamental principles, stipulating that “to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules”, therefore the value of evidence is not pre-determined either in terms of quantity or quality. The Court is bound to evaluate every piece of evidence individually and its correlation with other evidence, and on the basis of such evaluation reach a conclusion if certain fact is proved or not. The evaluation of evidence includes both rational and psychological assessment, but it is subject to the principle of legality.

24. Article 10 of the CPC of BiH (Legally Invalid Evidence) foresees that:

“The Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code.”

25. The Panel must be satisfied that the evidence is reliable in the sense it is given freely, truthfully and credibly. In this case, the Panel took into account every witness statement and examined every document to decide about its credibility and probative value.

26. Notwithstanding that the entire presented evidence was examined and evaluated, the Panel will refer in the Verdict only to the most relevant evidence, explain and give conclusions exclusively about the facts which are vitally important for the decision.

27. There is no legal obligation to include in the Verdict every single piece of evidence, nor is it required to reflect upon every piece of evidence in the case file. The court is bound by law to examine the entire body of the presented evidence when reaching a decision, and the Court fulfilled this obligation.

28. This position is endorsed and elaborated in detail in the case-law of the ICTY Appeals Chambers:

*The Appeals Chamber recalls that every accused has the right to a reasoned opinion under Article 23 of the Statute and Rule 98ter(C) of the Rules. However, this requirement relates to the Trial Chamber's Judgement; **the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial.**²*

The same position was taken by the ICTY Appeals Chamber in *Mucić et al.*:

*"The Trial Chamber is not obliged in its Judgement to recount and justify its findings in relation to every submission made during trial."*³

29. The Panel reviewed the entire body of evidence presented in the main trial, both subjective and objective, and having carefully analysed and evaluated the evidence individually and in correlation in accordance with Article 281(2) of the CPC of BiH, the Panel did not establish beyond a reasonable doubt that the Accused Osman Brkan committed the criminal offence as charged. Consequently, the Panel applied the *in dubio pro reo* principle and acquitted the Accused of the charges.

III. APPLICABLE LAW

30. Prior to the analysis of the general and individual elements of the criminal offence of War Crimes against Civilians, charged against Osman Brkan, the Panel will first respond to the objections raised by the Defence as to the legal definition of the offence in the Indictment. The Accused Osman Brkan is charged with the commission of the criminal offence defined under the currently applicable CC of BiH as War Crimes against Civilians under Article 173(1)c) (killing).

31. The Defence referred to the Decision of the European Court of Human Rights in *Maktouf&Damjanović*,⁴ and the Decision of the Constitutional Court of Bosnia and Herzegovina which established violations of Article 7 of the European Convention on

² *Kvočka et al; ICTY Appeals Chamber Judgment*, para 23-25.

³ *Mucić et al; ICTY Appeals Chamber Judgment*, para 498.

⁴ *Maktouf and Damjanović v. Bosnia and Herzegovina*, 18 July 2013.

Human Rights and Fundamental Freedoms since the CC of BiH was applied to persons sentenced for war crimes, which is more stringent for perpetrators than the CC of SFRY because it foresees more severe sanctions. According to the Defence, it is unacceptable to qualify the actions of the Accused Osman Brkan in accordance with the currently applicable law (CC of BiH), as the Prosecution did, instead of the CC of SFRY which was in force at the time the criminal offence was committed and which is more lenient to the perpetrator.

32. The Panel found this objection justified and accepted the reasons provided by the Defence in that regard.

33. In clarifying why the general elements of the criminal offence and individual charges and responsibility of the Accused were examined in accordance with Article 173(1)c) of the CPC of BiH, the Panel will reflect upon and rely on the CPC of BiH provisions and on the established rules of criminal legislation.

34. Article 280(1) of the CPC of BiH provides that the verdict shall refer only to the accused person and only to the criminal offence specified in the indictment that has been confirmed, or amended or supplemented at the main trial.

35. Accordingly, the Panel acquitted the Accused Osman Brkan of the offence charged under the amended Indictment. Furthermore, the Panel acquitted the Accused of these charges as they were defined in the Indictment.

36. In reaching this decision, the Panel was guided by applicable legal provisions and case law, which provide that the accused should be acquitted of the acts and offences as defined by the prosecutor in the indictment filed with the court. Since Osman Brkan was acquitted of the charges, the Panel did not find it useful to change the definition of the criminal offence under the Indictment, given that that it would not contravene the position taken by the European Human Rights Court in the *Maktouf&Damjanović* Judgment, which examined the violation of the rights of the appellant regarding Conviction. On the other hand, this course of action does not violate the rights of the accused guaranteed under the Constitution⁵ and under the law.⁶

⁵ Constitution of BiH, Article 2, III Catalog Rights: e) the right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.

⁶ Article 4 of the CC of BiH - Time Constraints Regarding Applicability (*tempore criminis*).

IV. ALLEGATIONS OF THE INDICTMENT

37. Under the amended Indictment of the Prosecutor's Office of BiH of 18 November 2013, Osman Brkan is charged in as much as he: during the war in Bosnia and Herzegovina, at the time of the armed conflict in the territory of Bosnia and Herzegovina, as a member of the Army of BiH, together with other members of the Army of BiH, he violated the rules of international humanitarian law, specifically Article 3(1)(a) and c) of the Geneva Convention relative to the Protection of Civilian Persons of 12 August 1949, on or about 13 June 1992, as a member of the Army of BiH, together with other members of the Army of BiH, he came to the village of Blace, Municipality of Konjic, populated by Serbs, where they entered the house owned by Milutin Kuljanin and found some elderly women of Serbian ethnicity sitting on the couch, namely: Ana Kuljanin born in 1908, Danica Kuljanin, born in 1910, Cvijeta Kilibarda born in 1914 and Jelka Kilibarda born in 1911. When they saw the elderly women, Ibro Macić (whose case was separated from the others under the Decision of the Court of BiH No. S1 1 K 011047 13 Krl), fired an unspecified number of bullets at the elderly women, and immediately after that Osman Brkan too fired an undetermined number of bullets from his rifle at the old women, which resulted in their death, and their bodies have never been found.

1. Legal definition of the criminal offence

38. Article 173 of the CC of BiH provides that the criminal offence of War Crimes against Civilians is perpetrated by "whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the acts" listed under sub-paragraph c) of the same Article, including **killing** as charged against the Accused.

39. The foregoing provision identifies the following chapeau elements of the criminal offence of War Crimes against Civilians:

- a) *the offence must be in violation of rules of international law,*
- b) *violation must be committed in time of war, armed conflict or occupation,*
- c) *the offence must be related to war, armed conflict or occupation,*
- d) *the perpetrator must order or commit the offence.*

a. Status of victims

40. Article 173 of the CC of BiH prescribes that the offence must be in violation of rules of international law. The Accused in this case was charged with killing and/or depriving civilians of life, which, as a violation upon bodily integrity, represents prohibited behaviour targeted against the inviolable right (the right to life) guaranteed under Article 3(1) common to the Geneva Conventions of 1949, which prohibits all types of killings. This Article guarantees protection primarily to civilians, in addition to other categories. The Panel finds that the killed old women: Ana Kuljanin, Danica Kuljanin, Cvijeta Kilibarda, Jelka Kilibarda, had the status of civilians, which was not disputed during the proceedings.

b. Armed conflict

41. At its session of 8 April 1992, the Presidency of Bosnia and Herzegovina rendered the Decision Declaring Imminent Threat of War.⁷ At the session of 20 June 1992, the Decision was issued Declaring the State of War⁸ in the territory of the Republic of Bosnia and Herzegovina, which was terminated under the Decision of the Presidency of BiH dated 28 December 1995.⁹

42. The Armed Forces of the Republic of Bosnia and Herzegovina were created under the Decree Law, which formed the Army of BiH. Armed Forces were composed of the police and armed formations placed under a single command of the armed forces of the Republic.¹⁰

43. The Decision on Formation of the Army of Srpska Republika BiH (SRBiH) was published in the Official Gazette of the Serb People in BiH No. 6, of 12-17 May 1992.¹¹

44. There is no doubt that there was an armed conflict between the Army of SR BiH and the Army of BiH and/or armed formations under the A RBiH control during the relevant period in Bosnia and Herzegovina, in the area of Konjic Municipality. This fact follows from

⁷ Prosecution Exhibit No. T-6.

⁸ Prosecution Exhibit No. T-7.

⁹ Prosecution Exhibit No. T-8.

¹⁰ Prosecution Exhibit No. T-9, - Decree Law passed by the Presidency of RBiH published in the Official Gazette on 20 May 1992.

¹¹ Prosecution Exhibit No. T-10.

the documentary evidence presented by the Prosecution and from the Defence documentary evidence admitted into the case file,¹² and is also corroborated by witnesses who testified for the Prosecution and the Defence at the main trial.

B. ATTACKS ON BLACE

45. The Panel will first describe the chain of events and give its conclusions about the facts reached following an analysis of the presented evidence and will then explain why it did not find Osman Brkan guilty of the charged offences.

a. May 1992

46. The village of Blace, as the place in which the criminal offence was committed, administratively and geographically belonged to the Konjic Municipality during the relevant period (June 1992). The village was predominantly populated by Serbs, with one Bosniak household.¹³

47. The Prosecution witnesses examined about the circumstances surrounding the attack on Blace mentioned two attacks: in May and in June 1992. Witnesses Velimir Kilibarda, Stoja Vukosav and Milosav Vukosav¹⁴ testified about the attack launched by the HVO and ARBiH on Blace in May 1992.

48. Describing at the main trial the attack of May 1992, witness Velimir Kilibarda says that the village of Blace was attacked from all sides by one hundred (100) soldiers in black clothes, which is when 132 inhabitants of Blace of Serbian ethnicity, including Mumin Maksumić's family, fled towards the Rakitnica river canyon. While they were fleeing, shells impacted and they came under fire. According to witnesses Stoja Vukosav and Milosav Vukosav, they were among the people who were fleeing from Blace because of the attack. The witnesses were consistent in stating that elderly people stayed in the village since they could not flee due to illness or old age. As said by witness Velimir Kilibarda, in

¹² Defence Exhibits: O-1, O-2, O-3, O-5.

¹³ Testimony of Prosecution witness Velimir Kilibarda of 1 November 2013; Hamdija Fišić of 24 September 2013, Stoja Vukosav of 8 November 2013.

¹⁴ Testimony of Prosecution witness Milosav Vukosav of 8 November 2013.

addition to his mother Cvijeta Kilibarda, nine more women and one old man stayed in the village.

49. It follows from Prosecution Exhibit T-3 that there were almost no undamaged houses in the village after the attack, so that Vasilija Kuljanin together with her close friend Stana Kilibarda, carried old women Danica Kuljanin, Ana Kuljanin, Cvija Kilibarda and Jelka Kilibarda in a wheelbarrow to Milutin Kuljanin's house, while Jelka Golubović came there by herself since she was able to walk.

50. Describing the same event, witness Stoja Vukosav explained that her mother Goja Vukosav hid in the woods after the attack on Blace in May, and she occasionally went to the village. She would briefly visit Milutin Kuljanin's house to give the old women who were there something to eat. At the main trial, witness Milosav Vukosav told the same story about the old women who stayed in the house, as he heard it from his father.¹⁵

51. It follows from the testimony of witnesses Velimir Kilibarda and Stoja Vukosav¹⁶ that civilians were killed and houses burned during the attack on Blace. Their allegations were corroborated by Defence Exhibit - O2, which on page 9 states:

„ 15/16 May. Muslims led by Midhat (Avdo) Pirkić - Mitke, attacked and completely destroyed the Serbian village of Blace. They destroyed 25 houses and killed 18 people, exclusively civilians“.....¹⁷

52. The Court gives full credence to the prosecution witnesses since they consistently and unequivocally testified about the same circumstances, and did not contravene other presented evidence on which this Verdict relies. It clearly follows from their testimony that an attack was launched on the village of Blace in May, resulting in the death of old women: Cvijeta Kilibarda, Danica Kuljanin, Ana Kuljanin and Jelka Kilibarda who were not able to move due to illness and old age, so they stayed in Milutin Kuljanin's house up to 13 June 1992, which is when they were deprived of their lives, as will be explained in the next section.

¹⁵ "Old women who could not escape stayed in the house, under the roof slab, my father visited them, took care of them, he says they were fine and in good health."

¹⁶ Testimony of witness Stoja Vukosav: "They saw houses on fire"; Witness Velimir Kilibarda – late Goja Vukosav told him that she "saw burned houses, only Milutin Kuljanin's cottage remained on the edge of the village."

¹⁷ Defence Exhibit No. O2.

b. June 1992

53. It follows from the testimony of Prosecution witnesses: Salko Macić, Šeho Macić, Nurko Fišić, Mumin Fišić, Hamdija Fišić and Ševko Macić¹⁸ that as members of the ARBiH they were assigned to go to the Rakitnica river canyon in June. Their superior was Midhat Pirkić-Mitko,¹⁹ while their immediate superior was Mirsad Fišić a.k.a. Kolumbo.

54. Witnesses Salko Macić, Šeho Macić, Ševko Macić, Nurko Fišić, Hamdija Fišić, Zajko Fišić, and the Accused Osman Brkan and Ibro Macić testified at the main trial. According to them, Šeho Macić, Salko Macić, Ševko Macić, Halil Macić, Ibro Macić, Hamdija Fišić, Mumin Fišić, Nurko Fišić, Zajko Fišić, Osman Bubalo, Mustafa Bubalo, Muho Bubalo, Salko Ramić, Ramo Brkan, Osman Brkan,²⁰ together with their superior Mirsad Fišić a.k.a. Kolumbo, left in the direction of Rakitnica canyon in June 1992. All these individuals, 16 of them in total, after completing their assignment, on 13 June 1992, arrived in the area of Blace.

55. Prosecution witnesses Rajko Majić and Dragan Matić²¹ were also in Blace in June at the same time and on the same occasion as members of the HVO Brigade Intervention Squad, together with other members under the command of Goran Blažević a.k.a. Garo. They stated that the so called “Mitke’s soldiers” (*Mitketova vojska*) were in the village at that time.²² The examined witnesses Salko Macić, Šeho Macić, Mumin Fišić, defence witness Ševko Macić, all of them members of “Mitke’s soldiers” under direct supervision of Kolumbo, corroborated witnesses Rajko Majić and Dragan Matić in stating that those two military components met in Blace with soldiers of Goran Blažević Garo.²³

¹⁸ Testimony of Prosecution witnesses: Salko Macić of 12 July 2013; Šeho Macić of 6 September 2013; Testimony of witnesses Nurko Fišić and Mumin Fišić of 17 September 2013, Testimony of witness Hamdija Fišić of 24 September 2013; Testimony of defence witness Ševko Macić of 29 November 2013.

¹⁹ Testimony of witness Midhat Cerovac of 27 September 2013: “In the chain of command, *Mitke Pirkić’s unit belonged to the Territorial Defence*”; Witness Šeho Macić: “*Midhat Pirkić lined them up and told them that the Rakitnica canyon should be cleansed*”; Nurko Fišić: “...”. *It was the assignment, their superior at that time was Mitko Pirkić, their immediate superior was Mirsad Fišić.*”

²⁰ Prosecution Exhibit No. T-11- VOB1 Form showing that Osman Brkan served military service as Lieutenant from 15 April 1992 to 22 April 1996, Personal file in the name of Osman Brkan showing that he was a Lieutenant in the ARBiH from 15 April 1992 to 8 May 1996.

²¹ Testimony of Prosecution witnesses, Rajko Majić of 1 November 2013 and Dragan Matić of 18 October 2013.

²² Midhat Pirkić was their superior, which is why the unit was called “Mitke’s soldiers.”

²³ Prosecution of BiH witnesses: Salko Macić, Šeho Macić, Mumin Fišić; defence witness Ševko Macić.

56. Witnesses were consistent in stating that after arriving in the Blace village, one part of the sixteen soldiers under the direct command of Mirsad Fišić a.k.a. Kolumbo sat by a well to rest and eat.

57. According to the consistent, therefore credible witness testimony, some of the soldiers, including Kolumbo, left towards the houses.

58. The witnesses were not consistent in specifying who among the soldiers stayed by the well and who left to “move around” Blace. Witness Šeho Macić named the following soldiers who stayed by the well: himself, brothers Mustafa and Muho Bubalo, Nurko and Zajko Fišić and Šefko Macić, while witness Nurko Fišić submitted that Salko Macić, Šeho Macić, Halil Macić, Ramo Brkan, Ibro Macić and Mirsad Fišić left towards Donje Blace. Witnesses Hamdija Fišić and Zajko Fišić were unison in submitting that Halil Macić, Šeho Macić and Ibro Macić were the ones who left the group, while Zajko Fišić added Salko Macić.

59. Witness Hamdija Fišić was firm in stating that Osman Brkan was not in the group of soldiers who left the well. All witnesses who, according to Hamdija Fišić, stayed by the well consistently stated to have heard shooting while they were sitting by the well.

60. According to witness Šeho Macić, Ibro Macić and Ramo Brkan approached them while they were eating by the well and they told them “*come to see if there are live Chetniks here*“, then the two went back in the same direction. As stated by witness Hamdija Fišić, who testified about the same circumstance, Ibro Macić, Halil Macić and Šeho Macić returned shortly after they had left, and one of them said “*you should see the chicks*“, then they said they had killed some old women, showing in the direction of the house where the old women were.

61. According to witness Salko Macić, when Ibro Macić and Halil Macić told them “here are come Chetniks”, he, Halil Macić, Šeho Macić, Ibro Macić and Kolumbo, went to a house, while Šeho Macić stated that he and Nurko Fišić came to a house made of building blocks and climbed the stairs to the house porch.

62. As stated by witness Hamdija Fišić, it did not take long for the members of his unit to reach the house, referring to the house where the old women were, and the house at which Ibro, Halil or Šeho earlier pointed.

i. Killing of old women Ana Kuljanin, Danica Kuljanin, Cvijeta Kilibarda and Jelka Kilibarda

63. Šeho Macić describes the sequence of events after Ibro Macić and Ramo Brkan showed up by the well, while he and Nurko Fišić came to the house made of building blocks and climbed the stairs to the house porch. When he stepped in one room, he saw “*Osman Brkan mowing down the old women with his weapon*“, showing with his hands at the same time how Osman Brkan allegedly fired a round of several bullets from his automatic rifle at the old women. He saw the old women lying on the couches, covered with some blankets, but he did not know how many old women were there. While all that was happening, the Accused Osman Brkan was one meter away from him.

64. The witness could not tell if the old women were dead or alive before the Accused fired at them, nor could he tell if anyone else other than Osman Brkan fired at the old women beforehand.

65. According to witness Salko Macić, he came to the house together with Ibro Macić, Šeho Macić and Mirsad Fišić a.k.a. Kolumbo, climbed up the stairs and entered a small room, where he saw three women sitting there with scarves on their heads. At that moment, Ibro Macić “*fired at the old women and their scarves shook.*“ Mirsad Fišić started yelling at Ibro for doing that because he wanted to ask the old women where their army was.

66. When he got out of the house, Salko Macić saw other members of his unit.

67. It also follows from the testimony of prosecution witness Midhat Cerovac²⁴ that the old women were killed in the house. As the Head of the TD HQ, when he was informed that a crime was committed in Blace, he visited the village and saw the dead old women.

68. Having been informed about the crime in Blace which took place in June 1992, witness Cerovac arrived in the area of Blace on a fact-finding mission. He found six dead bodies of elderly women whom he identified on the basis of a statement given by Lazar Vukosav, and drafted a report. The testimony of witness Cerovac was corroborated by Witness Examination Record for Lazar Vukosav, stating that he saw dead bodies in Milutin Kuljanin’s house: Danica Kuljanin, Ana Kuljanin, Jelka Kilibarda and Cvija Kilibarda.

²⁴ Testimony of witness Midhat Cerovac of 27 September 2013.

Danica and Ana were lying dead on one couch and Jelka and Cvija on the other couch. He saw wounds inflicted by bullets. Two or three days afterwards, when Midhat Cerovac called him, Lazar Vukosav went again with him to the house and saw the old women at the same place. He gave their full names and Cerovac wrote them down.²⁵ Lazar Vukosav told his son Milosav Vukosav about the old women and the information he gave to Cerovac, and Milosav Vukosav testified about that at the main trial.

69. Witness Stoja Vukosav substantiated the testimony of Lazar Vukosav and his son Milosav Vukosav. Her mother told her that she had come to Milutin Kuljanin's house once in June, she peeked through the door into the room where the old women were and saw them lying dead two by two on couches, Danica and Ana on one, and Cvija and Jelka on the other.

70. After Midhat Cerovac inspected the village of Blace and drafted a report about the situation, he suspected certain Fišić a.k.a. Kolumbo of the killings in the Blace village. He then went to the Zvekuša mountain and ordered that couriers find and bring that man. Mirsad Fišić arrived and told the witness what had happened in Blace, and then, according to Cerovac, Fišić personally wrote everything down and signed it.

71. In that regard, the Prosecution tendered Midhat Cerovac's Record of 17 June 1992 as the documentary evidence which corroborates his allegations, together with the handwritten statement given by Mirsad Fišić – Kolumbo, which *inter alia* states: "*Together with my 16 men, I cleansed the Rakitnica canyon, we went up to Blace and killed six old women there, then we left in the direction of home.*"²⁶

72. Witness Hamdija Fišić, Mirsad Fišić's brother, confirmed that Mirsad wrote a statement about the incident in Blace after his conversation with Cerovac.

73. It follows from the statements given by Ibro Macić and Salko Macić that a crime was committed in Blace on 13 June 1992, including the relevant incident – the killing of the old women.

²⁵ Examination Record for witness Lazar Vukosav of 13 October 2013.

²⁶ Prosecution Exhibit No. T-2; - Midhat Cerovac's Record and Mirsad Fišić's statement.

74. In his statement, Ibro Macić *inter alia* says: As members of Mitko Pirkić's detachment, Mirsad Fišić's squad on 13 June 1992 "we burned down everything up there and killed some seven women."²⁷

75. Witness Salko Macić, who was in Blace at the relevant time, wrote in his statement: "Mitko Pirkić assigned us to cleanse the Rakitnica canyon the best we could. We started on 13 June and completely cleansed the terrain by night, we did not spare even a hen. Then we proceeded to Blace, where we found some (old) women, who we, Kolumbo's team, personally killed"²⁸

76. Prosecution Exhibit T-12 makes reference to these statements, mentioning "two interesting statements" given to the Konjic Security and Information Service by Ibro Macić and Salko Macić, members of Mitko Pirkić's unit, in which they admitted their participation in the committed crime and gave the names of other participants.²⁹

77. Witness Salko Macić stated at the main trial that he and Ibro Macić wrote and signed those statements so that the HVO could dissociate from the crime in Blace and that they could become members of the HVO. However, the Panel found that the other presented evidence spoke otherwise and did not give credence to this testimony. It follows from the evidence that he was in the house when the old women were killed, furthermore, according to his own testimony, he was present when Ibro Macić allegedly fired at the old women. The Panel dismissed this testimony as unconvincing and unsubstantiated since the witness was motivated by his personal interests to exonerate himself for the crime in Blace.

78. Witness Dragan Matić came to the Blace village in June as a member of Goran Blažević's intervention squad at the same time when Mitko's team was there. He did not find a living soul there, but he saw three or four dead women in a house in a half-prostate position.

79. Jasminka Džumhur³⁰ testified about the dead women. As the President of the Commission for the Wounded, Killed and Missing and Exchange of Prisoners of War, she came to Blace. She was informed about the crime in mid June and she went to Blace some seven or eight days after the crime had taken place. When she arrived there, she

²⁷ Prosecution Exhibit No. T-19.

²⁸ Defence Exhibit No: O-7.

²⁹ Prosecution Exhibit No. T-12 /Security Services Centre, Mostar Crime Police Sector of 5 December 1996.

³⁰ Testimony of BH Prosecution witness Jasminka Džumhur of 27 September 2013.

saw a burned site and corpses belonging to older women, scattered around. There was a strong stench coming from the village, it was a horrible scene. She noted down in her notebook the names of the killed persons, which she received from someone who was there and did not belong to the funeral company.

80. Witness Muharem Ahmetović³¹ was in Blace at the same time as Jasminka Džubur. As an undertaker, on orders from his superiors, he went to Blace to bury the bodies of the killed Serbs, inhabitants of Blace. Witness Željko Jurić³² drove a truck for the HVO on that occasion and he saw four to five dead female bodies in the house.

81. Having taken into account the evidence which directly, undeniably and clearly shows that the old women Ana Kuljanin, Danica Kuljanin, Cvijeta Kilibarda and Jelka Kilibarda were deprived of their lives on 13 June 1992, and the evidence which indirectly shows that the killings in Blace indeed took place, the Panel has no doubt about the factual allegations of the Indictment that the old women Ana Kuljanin, Danica Kuljanin, Cvijeta Kilibarda and Jelka Kilibarda were deprived of their lives.

82. Since dead bodies of the old women have never been found, the Panel does not at all question their missing persons status.³³ On the other hand, it remained unclear what had actually happened to their bodies, given that the evidence presented at the main trial was inconclusive in this regard.

83. Moreover, obvious differences concerning the potential number of victims of the relevant incident show that the old women whose names were listed in the factual allegations of the Indictment were not the only victims. It follows from the Prosecution Exhibits T-16³⁴ and T12 that Jelka Golubović was also killed in the same incident in Blace, and her body was found not far from Milutin Kuljanin's house, then Manojlo Golubović and his wife Spasenija, Milica Kilibarda and others, all of them elderly people.³⁵ However, since those killings were not charged under the Indictment, the Panel did not specifically examine those incidents.

³¹ Testimony of BH Prosecution witness Muharem Ahmetović of 18 October 2013.

³² Testimony of BH Prosecution witness Željko Jurić of 1 November 2013.

³³ Prosecution Exhibit No. T-15, Supply of requested information by Missing Persons Institute of 19 October 2011, confirming that Ana (Lazar) Kuljanin, Danica (Spasoje) Kuljanin, Cvija (Marko) Kilibarda and Spasenija (Simo) Kilibarda are listed as missing persons.

³⁴ Exhibit: Dispatch of the Konjic PA No. 18-13-02-299/2000 of 12 June 2000.

³⁵ Testimony of witness Stoja Vukosav: "*Spasenija, Jelka and Radojka were also killed, other people were also killed, other than them, some have never been found.*"

84. Since there was no evidence to prove otherwise, the Panel is satisfied that the members of the ARBiH who were in Blace on the relevant occasion under the command and control of Mirsad Fišić a.k.a. Kolumbo participated in the killing of the old women.

85. On the other hand, the Panel had doubts as to who among the members of that unit directly participated in the killings, and/or if the Accused Osman Brkan took part in depriving the old women of their lives. Seeking to resolve this issue, the Panel will proceed by analysing the evidence relevant to this fact which was presented during the main trial.

C. DID OSMAN BRKAN PARTICIPATE IN THE KILLING OF OLD WOMEN?

86. Paragraphs 63 and 64 give Šeho Macić's account of how the Accused Osman Brkan fired in the direction of old women on the relevant occasion.

87. There is no doubt that the Accused Osman Brkan was in the village of Blace on the relevant occasion. This irrefutable fact was corroborated by a number of witnesses, including Osman Brkan himself when he testified as a witness.³⁶

88. However, Šeho Macić is the only witness who stated that Osman Brkan had fired at the old women.

89. The Panel therefore carefully examined the testimony of this witness, evaluating both its subjective side and objective circumstances, correlating these allegations with other presented evidence.

90. The Panel is first of all satisfied that the witness Šeho Macić was in Milutin Kuljanin's house in which the old women were killed, as it follows from the documentary evidence, testimony of other witnesses and from his own testimony.

91. Witnesses Nurko Fišić, Hamdija Fišić, Zajko Fišić consistently stated that Šeho Macić was among the soldiers who left the group by the well and, when they returned, some of them said there were some "chicks" down there (referring to the old women). Witness Mumin Fišić heard Ibro Macić saying he had done away with four women. According to witness Hamdija Fišić, someone from the group said they had killed them.

³⁶ Testimony of defence witness for the Accused Osman Brkan of 22 November 2013.

92. Then Hamdija Fišić and Zajko Fišić came to the house where the old women were. Witness Hamdija Fišić mentioned that some members of Mitke's unit (Halil, Ibro, Šeho) entered the house, Šeho Macić and Salko Macić supported that, but neither Hamdija Fišić nor Zajko Fišić could confirm to have seen Osman Brkan entering the house or firing at the old women.

93. Witness Salko Macić saw Osman Brkan on the stairs to the house, but he did not see him firing at the old women. According to the Accused Ibro Macić,³⁷ the Accused Osman Brkan was in the house where the old women were, but he did not shoot, it was done by Šeho, his brother Salko Macić and Kolumbo.

94. In his witness statement, the Accused Osman Brkan argues he was not in the house, nor did he participate in the killing of old women. His testimony about the killing of old women, same as Ibro Macić's testimony about Brkan's participation in depriving the old women of their lives, the Panel evaluated in the scope of other presented evidence, but attributed no special importance and/or value to them. The Panel is satisfied that both Accused were undoubtedly motivated to testify to their own benefit, in particular having in mind that the Accused Ibro Macić, as the co-perpetrator, is charged with the same criminal offence as the Accused Osman Brkan and before the same Panel.

95. As opposed to that, when examining the testimony of witness Šeho Macić, who directly implicates the Accused Osman Brkan, the Panel has taken into account and evaluated a number of specific circumstances relevant to this witness and his testimony.

96. First of all, responding to Prosecutor's questions during the main trial, witness Šeho Macić stated among other things that he did not say that Osman Brkan fired rounds at the old women when he was examined in SIPA, but subsequently he decided to tell the truth, called the prosecutor and told her that Osman Brkan had fired at the old women. When asked why he did not say that while in the SIPA, he said he feared for his life, but he did not explain why or whom he feared.

97. According to witness Nurko Fišić, Šeho Macić asked him not to mention that he was in the house with Kolumbo, and to say that he stayed with him, but he refused to do so and clearly stated at the main trial that Šeho had gone to the house with Kolumbo. After giving the statement about this incident, Mirsad Fišić-Kolumbo also visited other witnesses, members of his unit who were in Blace at the relevant time. The witness heard

³⁷ Testimony of defence witness Ibro Macić of 22 November 2013.

that mother of the Accused Brkan was beaten up by Mirsad Fišić Kolumbo's brother. Witness Mumin Fišić did not want to see Kolumbo since people were afraid of him. According to Hamdija Fišić, after the incident in Blace, Kolumbo told them not to speak about it.

98. The Panel accepts the Defence allegation about the intention to conceal the crime in Blace and the perpetrators thereof. The testimony about the threats and behaviour of Mirsad Fišić Kolumbo, who was superior to these witnesses,³⁸ IF brought in correlation with the documentary evidence shows, that the whole group was in Blace at the relevant time, therefore their culpability could also be examined.³⁹

99. Having examined the testimonies individually and in mutual correlation, as well as in the context of the other presented evidence, both subjective and objective, taking into account that the witnesses were members of the group which was in Blace when the crime took place, the Panel concludes that the testimonies of these witnesses form a complete and logic whole. Witnesses gave consistent accounts about the incidents in the village of Blace and the circumstances afterwards, which makes their testimonies plausible and acceptable.

100. In accordance with the case law of international criminal tribunals, a convicting judgment may rely on indirect evidence, and a Trial Chamber has the discretion to decide whether the circumstances of a case require corroborating evidence.⁴⁰

101. The Appellate Panel of the Court of BiH in the case *Vuković et al.* held that it could not be considered unfair to base a decision on guilt of the testimony of only one witness, provided that the testimony is sufficiently convincing and logical, consistent with all other evidence and that the decision based on that is the only logical and reasonable conclusion in the case at hand.

102. Having examined the entire body of evidence and exercising its discretionary right, the Panel is satisfied that the Accused Osman Brkan cannot be convicted solely on the grounds of Šeho Macić's testimony, who was the only witness who stated at the main trial

³⁸ Testimony of witnesses Nurko Fišić, Hamdija Fišić and Mumin Fišić - paragraph 99 of the Verdict.

³⁹ Defence Exhibit No. O-8 – Report on the committed crime and perpetrators thereof No: P16-04-04-250-9/10 of 15 March 2011.

⁴⁰ Appeals Judgment in *Kajelijeli* case, Section 170 citing the Appeals Judgment in *Niyitegeka* case, Section 92 ("The Appeals Chamber has consistently held that a Trial Chamber is in the best position to evaluate the probative value of evidence and that it may, depending on its assessment, rely on a single witness's testimony for the proof of a material fact"). Appeals Judgment in *Gacumbitsi*, Section 72 citing Appeals Judgment in *Semanza* case, Section 153.

that the Accused had fired at the old women during the relevant incident. The Panel does not find his testimony sufficiently convincing, logical and/or consistent with the other presented evidence. Furthermore, there are other circumstances which cast reasonable doubt on its reliability.

103. Witness Šeho Macić changed his original testimony about the conclusive facts, precisely in the part relevant to the offence charged against the Accused Osman Brkan. To that end, the Panel has taken into account several relevant factors which guided it to dismiss the testimony of this witness. First of all, according to the physical evidence, Šeho Macić himself is suspected of the crimes committed in Blace, therefore it was in his interest to give a different account of his involvement in the incident in Blace and about the decisive facts than those that had actually happened. This position is substantiated by witness Nurko Fišić, who testified that Šeho Macić tried to persuade him not to mention his presence in the house the relevant night. However, Macić was aware that both Nurko Fišić and other witnesses would nevertheless talk about that, so at the main trial he confirmed his presence in the house where the crime had taken place, obviously with the intention to leave the impression that he had seen the Accused Osman Brkan shooting at the old women. In an attempt to explain why he testified at the main trial to have seen the Accused shooting at the old women, witness Šeho Macić said he feared for his life, but he failed to provide any explanation as to whether he was afraid of the Accused or someone else. Moreover, correlating witness Šeho Macić's testimony with other objective circumstances shows the intention to conceal the crime and its perpetrators. His testimony about the key fact that on 13 June 1992, the Accused Osman Brkan fired an unspecified number of bullets from his rifle at old women Ana Kuljanin, Danica Kuljanin, Cvijeta Kuljanin and Jelka Kilibarda was not corroborated by any other objective or subjective piece of evidence. It clearly follows from the above that the testimony of this witness is obviously so deficient that the Panel dismissed it.

104. Since all this casts reasonable doubt on the reliability of this testimony and the credibility of this witness when he directly incriminated the Accused, the Panel finds it deficient and insufficiently convincing to be able to conclude that Osman Brkan committed the offence charged against him.

105. Having applied the *in dubio pro reo* principle, which foresees that a fact may be considered established only if it is proved beyond doubt at the main trial, the Panel applied

the provisions of Article 284c), as read with Article 3 of the CPC of BiH and due to the lack of evidence, acquitted the Accused Osman Brkan of the charges.

V. DECISION ON THE COSTS OF THE PROCEEDINGS AND CLAIMS UNDER PROPERTY LAW

106. Pursuant to Article 189(1), the Panel relieved the Accused Osman Brkan of the obligation to reimburse the costs of the criminal proceedings and lump sums, which will be paid from the budget appropriations.

107. Pursuant to Article 198(3), the injured parties are referred to pursue their property law claims by taking civil action.

Legal Advisor - Assistant PRESIDING JUDGE

Tanja Curović

Davorin Jukić

LEGAL REMEDY: An appeal from this Verdict may be filed with the Appellate Division of this Court within 15 days from the receipt of the written copy thereof.

VI. EVIDENCE

Annex I

LIST OF PROSECUTION EVIDENCE

Evidence number	<u>Contents of evidence</u>
T-1	Witness examination record for Nurko Fišić, Prosecutor's Office of BiH No: T 20 0 KTRZ 0001870 11 of 17 October 2011;
T-2	Original Report on the crime in Blace and Mirsad Fišić's statement on two sheets of paper, Konjic 17 June 1992 at 14.15 hrs;
T-3	Witness examination record for Vasilija Kuljanin No: T20 0 KTRZ 0001870 11 of 28 September 2011;
T-4	Witness examination record for Lazar Vukosav No: T20 0 KTRZ 0001870 11 of 13 October 2011 and No:17-13/3-1-127/07 of 19 July 2007.
T-5	Witness examination record for Đuro Kilibarda No: T20 0 KTRZ 0001870 11 of 31 October 2011;
T-6	Decision Declaring Imminent Threat of War published in the "Official Gazette of RBiH" No: 1 of 9 April 1992;
T-7	Decision Declaring the State of War published in the "Official Gazette of RBiH" No: 7/92 of 20 June 1992;
T-8	Decision of the Presidency of BiH terminating the State of War, published in the "Official Gazette of RBiH" No: 50/95
T-9	Decree Law on the Establishment of the Armed Forces of Bosnia and Herzegovina published in the "Official Gazette of RBiH" No: 4/92 of 20 May 1992;
T-10	Decision on the Formation of the Army of Srpska Republika BiH published in the Official Gazette of the Serb People in BiH No. 6/92 of 12-17 May 1992;
T-11	Letter No: 07/03-81-1/11 of 4 January 2012 from the Ministry of War Veterans and Disabled Veterans with attachments: VOB1 form and Form per.7 in the

	name of Osman Brkan;
T-12	Letter from the Security Services Centre, Mostar Crime Police Sector No: 956/96 of 5 December 1996 certified copy of the Ministry of Defence;
T-13	State Investigation and Protection Agency - Record on the scene inspection No: P 16-04-04-04-2-250/10 of 17 October 2011;
T-14	State Investigation and Protection Agency – Photo documentation No: 16-13/1-7-97/11 of 14 November 2011;
T-15	Letter from the Missing Persons Institute of Bosnia and Herzegovina No: 03/1-40-2-3824/11 of 19 October 2011;
T-16	Dispatch of the Konjic PA No. 18-13-02-299/2000 of 12 June 2000;
T-17	Birth Certificate in the name of Cvijeta Kilibarda of 12 October 2011; Birth Certificate in the name of Jelka Kilibarda of 12 October 2011; Birth Certificate in the name of Danica Kuljanin of 7 October 2011;
T-18	Criminal Record Certificates for Osman Brkan and Ibro Macić No: 02-02/4-2-04-10-22-160/12 of 18 December 2012;
T-19	Ibro Macić's handwritten statement and transcribed original of 8 July 1992;

Annex Ia

LIST OF OSMAN BRKAN'S DEFENCE DOCUMENTARY EVIDENCE

Evidence number	<u>Contents of evidence</u>
O-1	Letter from the Ministry of Defence of BiH No: 13-04-1-187-4/11 of 16 January 2012 with attachments (Activity Plan drafted by Nezir Agan, Assistant Commander for Security of the 43 rd Mountain Brigade Konjic;
O-2	Sequence of events in the territory of Konjic municipality 1992 - 1993;
O-3	Special information No: 114 of 25 June 1993, Republic of Bosnia and Herzegovina, Supreme Command Staff, Security Administration;
O-4	Photocopy of Mirsad Fišić's handwritten statement with the note about the existing situation in Blace on 17 June 1992 drafted by Midhat Cerovac;

O-5	Transcribed Official Note original and photocopy of the Official Note in the attachment, Konjic Municipal Staff of 8 July 1992 drafted by Mladen Zovko a.k.a. Kuhar (Cook);
O-6	War crime in Blace village, Konjic municipality, Security Services Centre, Mostar Crime Police Sector, No: str.pov 256/96 of 5 December 1996;
O-7	Photocopy of Salko Macić's and Ramo Brkan's statements about the events in Blace village of 26 June 1992, Konjic;
O-8	Report on the committed criminal offence, Ministry of Security of BiH, State Investigation and Protection Agency No: P16-04-04-250-9/10 of 15 March 2011, along with the Report on the committed criminal offence of War Crimes against Civilians in violation of Article 173 of the CC of BiH, No: P16-04/2-04-2-KU:5/11 of 15 March 2011;
O-9	Decision designating the cultural landscape of the Blatačko lake with part of the Rakitnica gorge, prehistoric grave mounds and necropolises with stećak and nišan tombstones in the village of Blace, Konjic Municipality, rendered by the Commission to Preserve National Monuments at a session 8 – 11 November 2009;
O-10	Witness examination record for Osman Brkan, State Investigation and Protection Agency, No: 16-04/2-5-04-2-63/11 of 17 February 2011;
O-11	Witness examination record for Ševko Macić, State Investigation and Protection Agency, No: 16-04/2-5-04-2-60/11 of 16 February 2011;